

TANZANIA / JUDGMENT

20170912 TZHC Mwanza3

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TZHCDECIDED
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IN THE HIGH COURT OF TANZANIA (MWANZA REGISTRY) AT MWANZA HC.LAND APPEAL
NO.42 OF 2015 (Arising from the District Land and Housing Tribunal of Musoma District at
Musoma in Land Case No. 27 of 2015) KASUNGA MAGINA I! ■ 1111SI ■■■..... ■
..... I • APPELLANT VERSUS DAVID ANTHONY
MAKORO RESPONDENT Last order: 19/07/2017 Judgmenc
12/09/2017

JUDGMENT

MAKARAMBA, J.: · This Judgment is on appeal from the decision of the District Land and Housing Tribunal for Mara at Musoma in Miscellaneous Application No. 27 of 2015 dated 8 th of April, 2015 before H_on. Ilanga, M.T. ·Esq Chairman. The background to this appeal briefly is that, in 2009 the Respondent DAVID ANTHONY MAKORO instituted a suit in Application No. 23 of 2009 before the Mugumu Urban Ward Tribunal of Serengeti against the Appellant, KASUNGA MAGINA, seeking for a declaration that he was the lawful owner of the suit land. The suit ended in favour of the Respondent {'Mshindi ni David Anthony Makoro';. The record shows that, on the 10th of February, 2015; the Appellant, KASUNGA MAGINA, lodged an application for execution before the District Land and Housing Tribunal as if Page 1 of 5 (~ he was the Decree Holder. On the 8 th of April, 2015 when the matter '·;. came for hearing of the application· for execution, . the Hon. Chairman summarily dismissed the application. It is against this decision he has been dissatisfied with and hence instant appeal before this Court, the ·subject of this Judgment. In . the appeal lodged in this Court by the Appellant, the following grounds are stated in the Petition of Appeal, namely;

1. That the Appellate Tribunal erred in law and facts for failure to call on for the trial Tribunal records as satisfy on its decision.
2. That the Appellate Tribunal erred in law and fact to dismiss the application for execution No. 27 of 2015 without looking into its merits an~ .
3. The Appellate Tribunal grossly erred in law to dismiss the application without right to be heard. The Appellant has prayed for the following orders:-
 1. The Appellant's Court order be set aside pending the determination of this appeal·

2. This Court be pleased to call for records of the appellate Tribunal for revision/
 3. The Appellant be allowed to be fully heard in this application No. 27 of 2015.
 4. The Respondent be condemned to bear the costs of this case/.
 5. The Respondent be restrained from trespassing into the suit plot for any intent. Page 2 of 5
 (. , _ In prosecuting the appeal, the Appellant, Kasunga Magina, appeared in person. The Respondent, DAVID ANTHONY MAKORO failed to appear .. The Appellant sought leave to proceed ex parte as against the Respondent which prayer this Court duly granted and the Appellant argued the grounds of appeal by way of written submissions. In his written submissions, the Appellant stated that, the Appellate Tribunal erred in law and fact to dismiss the Application for Execution No. 27 of 2015, which the Appellant had lodged before the same Tribunal, as originating from the decision of the Ward Tribunal of Mugumu Mjini-Serengeti in land Application No. 23 of 2009, which was decided on merits, thus resulting in the application for execution. The Appellant prayed that the application be ordered to be heard before another competent chairman. On the records of the Tribunal, on the 10th of February, 2015, the Appellant, Kasunga Magina, lodged Application No. 27 of 2015 before the District Land and Housing Tribunal of Musoma seeking to execute the . Judgment and Decree of the Mugumu Ward Tribunal dated 14/03/2011. The record further reveals that on the 8 th of April, 2015 the application came for hearing and both parties were present. Unfortunately, the application was summarily dismissed with costs. The record of the Tribunal does not show if the parties were given any opportunity to argue the application, since there is nothing on record that has been recorded as coming from the parties, thus creating doubt if the parties were ever accorded the right to be heard by the Tribunal. The Tribunal Chairman even failed to record the reasons for dismissing the application summarily. Page 3 of 5 (. . . It is settled law that the right to be heard is a fundamental right which the ' parties ought to have been accorded with. It is not even clear why the application was dismissed summarily. I am of the considered view that, the proceedings and the decision by the District Land and Housing Tribunal in respect of the application for execution was tainted with irregularities and thus a nullity. It is for the above reasons this Court finds that, the appeal has merits. It is accordingly allowed. The proceedings and the decision by the District Land and Housing Tribunal of Musoma at Musoma in Miscellaneous Application No. 27 of 2015 are hereby quashed. The Tribunal records shall immediately be remitted to the District Land and Housing Tribunal of Musoma at Musoma for the hearing of the application afresh. Considering the nature of the matter and the situation of the parties, I shall not make any order as to costs. The Appellant shall bear his own costs in this appeal. It is so ordered. SGD: R.V. MAKARAMBA . JUDGE 12/09/2017 Date: 12/09/2017 Coram: Hon. Makaramba, J. Appellant: Present in person Respondent: Absent . Page 4 of 5 .- (" C/C: Ignas Court: Judgment delivered : ;::jt:~.. , .. _ _ , .. _ _ , ;::, , . ' --~. , . BA
- \~_\I JUDGE AT MWANZA.A~:._\ 12/09/2017" _.- Page 5 of 5

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