

TANZANIA / JUDGMENT

kazi benedicto itutu vs wanani miyayo 2020 tzhc 2402 31 august 2020

COURT
TZHCDECIDED
31 August 2020

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY OF MUSOMA AT MUSOMA MISCELLANEOUS LAND APPEAL NO 42 OF 2020 (Arising from Land Appeal No 155 of 2019 in the District Land and Housing Tribunal of Musoma, Origin Land Application No 02/2019 of Kamugegi Ward Tribunal) KAZI BENEDICTO ITUTU..... APPELLANT Versus WANANI MIYAYO..... RESPONDENT

JUDGMENT

8th July & 31th August, 2020 Kahyoza, J. 1 Kazi Benedicto Itutu sued Wanani Miyayo before the ward Tribunal claiming for a piece of land (the disputed). Kazi Benedicto Itutu alleged that the disputed land was previous owned by his late father. Kazi Bededicto Itutu sued as the administrator of his late father, Kibeyo Benedictor Itutu. Unfortunately, the ward tribunal did not indicate in the title of the case that Kazi Bededicto Itutu was suing in that capacity. Kazi Bededicto Itutu won the case. Wanani Miyayo appealed to the District Land and Housing Tribunal (the DLHT). The DLHT overturned the decision of the ward tribunal. It declared Wanani 1 Miyayo the owner of the disputed land. Dissatisfied, Kazi Benedicto Itutu appealed to this court contending; one, that the DLHT erred in law to raise suo mottu an issue that the claim was time barred; two, that the DLHT erred in law to hold that the respondent occupied the disputed for more that 20 years without considering that the respondent was given the disputed land by the appellant's father with the agreement to return it; three, that the DLHT failed to consider the exhibit showing that the village government allocated the disputed land to the appellant's father on the 15/08/1988;four, that the DLHT erred in law to decide in favour of the respondent who failed to prove his ownership. The issues for determination at this stage are;

1. Was it proper for the DLHT to raise suo motto an issue that the claim was time barred?
2. Did the appellant's father invite the respondent on the disputed land?
3. Did the village government allocate the disputed land to the appellant?
4. Did the respondent establish his ownership over the disputed land? Before the Court heard the appeal, the appellant's advocate Mr. Kulwa sought guidance on the issue that whether the suit was properly before the Court. He contended that the appellant sued as the

administrator of the estate of his late father. The ward tribunal did not indicate that the appellant was suing in that capacity. I perused the record of the ward tribunal. I uncovered that the appellant filed documents depicting that he was an administrator of the estate of his late father. Basing on that discovery, I directed that the omission was not fatal. I allowed the appeal to proceed on merit and reserved my reasoning to that end. The reason behind my decision is that a ward tribunal is not expected to be so technical. There are no trained staff. Not only that but also parties who appear before the ward tribunal do not institute cases by presenting legal instruments like a plaint, they appear and give their accounts of event. After listening, to the complaint, the ward tribunal opens a file and writes down the complaint. The appellant presented letters of administration to the ward tribunal. For that reason, he was suing as the administrator of the deceased's estate. The ward tribunal's omission to indicate that he was suing as the administrator is not fatal. It is a settled rule of practice that, a case filed by the executor or administrator of the deceased's estate, should indicate in the title that, the party thereto is an administrator of the deceased's estate. However, the omission to indicate that fact in the title of the case does not vitiate the proceedings, if, there is evidence that letters of administration were tendered and admitted. The Court of Appeal took this stance in *Suzana S. Waryoba vs Versus Shija Dalawi*, Civil Appeal No. 44 of 2017, CAT at Mwanza (unreported), when it held that: "Before we pen off we wish to address one little disquieting aspect. This is that the appellant sued as an administratrix of the estate of the late Stanslaus Waroyba. However, that aspect did not reflect in the title of the case. We are of the considered view that the fact that Suzana Waryoba was suing in her capacity as an administratrix of the estate of the late Stanslaus Waryoba should have been reflected in the title of the case. However, we haste the remark that the omission is not fata! given that it was clear throughout that she was suing in that capacity and the judgment of the Primary Court which appointed her as such, was tendered in evidence at the very outset. We only wish to accentuate that when a litigant sues as an administrator or administratrix of estate, it is desirable that the same should be reflected in the title." [Emphasize added]" The appeal was argued orally. Mr. Kulwa represented the appellant while the respondent fended for himself. Was it proper for the DLHT to raise suo motto an issue that the claim was time barred? Mr Kulwa, the appellant's learned advocate argued the first and second ground together that the DLHT erred to decide that the claim was time barred without considering a fact that the respondent was an invitee to the disputed land. The respondent replied that he was given the land in question in 1992 by the village authorities. The appellant's complaint was that the DLHT made a determination that the appellant's claim was time barred sua sponte without inviting the parties to address it regarding that issue. I examined the record of the DLHT and found that Wanani Miyayo 4 never complained that the claim was time barred. Not only that but also the ward tribunal did not considered that issue whether the claim was time barred or not. It is in the judgment, where the DLHT determined that the appellant's claim was time barred. The DLHT stated in its judgment- " The humble assessors are of the unanimous opinion that this appeal be dismissed. I however, with due respect entertain a different point of view. This is because there is enough evidence on record that the appellant, Wanani Mihayo has in peaceful occupation of the suit land for the time of more than twenty years,

that is from

1992. The matter was therefore time barred against the respondent, Kazi Benedicto Itutu, as land claims are limited to twelve years. That said and done, I set aside the judgment of the ward tribunal." Given the part of judgment of the DLHT quoted above, I am in total agreement with the appellant, that the DLHT raised the issue whether the appellant's claim was time barred or not suo mottu. It also decided it without affording the parties an opportunity to address it. The DLHT was wrong. It condemned the parties, especially the appellant without hearing him. The DLHT ought to have invited the parties to address it on that issue before it reached its conclusion. It is settled that it is inappropriate for courts to raise jurisdictional matters suo motu and determining them without hearing the parties. The Court of Appeal has taken that stance in cases without number. 5 Some of those cases are; one, Margwe Erro, Benjamin Margwe & Pater Marwe V. Moshi Bahalulu, Civil Appeal No.III of 2014, where the Court of Appeal stated: "The parties were denied the right to be heard on the question the learned judge had raised and we are satisfied that in the circumstances of this case the denial of the right to be heard on the question of time bar vitiated the whole judgement and decree of the High Court. Without much ado, we find there to be merit in this appeal which we accordingly allow. We find the judgment of the High Court to have been a nullity for violation of the right to be heard. " (emphasis added). Two, the case of Ex-B.8356 S/Sgt. Sylvester S. Nyanda Vs the Inspector General of Police & The Attorney General, Civil Appeal NO. 64 of 2014 (unreported) in which the High Court raised jurisdictional matters suo motu and determining them without hearing the parties. The record showed that three issues were framed for determination by the trial High Court. But, while preparing its judgment, the trial court abandoned all the three issues and framed a completely new issue upon which it based its decision. Before revising and quashing the entire proceedings of the trial High Court, the Court of Appeal observed: "There is similarly no controversy that the trial judge did not decide the case on the issues which were framed, but her decision was anchored on an issue she framed suo motu which related to the jurisdiction of the court. On this again, we wish to say that it is an elementary and fundamental 6 principle of determination of disputes between the parties that courts of law must limit themselves to the issues raised by the parties in the pleadings as to act otherwise might well result in denying of the parties the right to fair hearing." (Emphasis added) It was wrong for the DLHT to raise the issue suo motu and determine without hearing the parties. As shown above, if, a court or tribunal fails to invite parties to submit on an issue that court or tribunal raised suo motu, the omission vitiates the proceedings. Thus, the proceedings of the DLHT and the resultant judgment are a nullity. Before I conclude, I wish remind the DLHT that a first appellant court or tribunal has a duty to re-hear or re-evaluate the evidence if, necessary make its own conclusion on the matter. See Siza Ptrice V. R Cr. Appeal No 19/2010, where the Court of Appeal observed that- "I/l/e understand that it is settled law that a first appeal is in the form of a rehearing. The first appellate court has a duty to re- evaluate the entire evidence in an objective manner and arrive at its own findings of fact, if necessary". The DLHT should always discharge that

duty. In the upshot, having found that failure to summon the parties to address the DLHT on the issue it raised suo motu vitiated its proceedings, I invoke my powers of revision under section of the Land Disputes Courts Act, Cap 216 R.E. 2019 to quash the proceedings of the tribunal and set aside the judgment. I further, order the DLHT to 7 hear the appeal de novo before another chairman. There is no reason why I should deliberate on the rest of the grounds of appeal. In the end, I allow the appeal. Given the nature of this matter each party shall bear its own costs. It is ordered accordingly. J. R, Kahyoza JUDGE 31/8/2020 Court: Judgment delivered in the presence of the parties. Right of Appeal explained. B/CTenga present. J. R. Kahyoza JUDGE 31/8/2020 8

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