

TANZANIA / JUDGMENT

20161018 TZHC Dodoma

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MISCELLANEOUS LAND CASE APPEAL NO. 58 OF 2015 (From the Decision of the District Land and Housing Tribunal of SINGIDA District at SINGIDA In Land Case Appeal No. 97 of 2014 and Original Ward Tribunal of MGUNGIRA Ward in Application No. 28 of 2014) KISONGASONGA SHAGENGE APPELLANT VERSUS MARISHA YOBWA 1st RESPONDENT NGAKA MALOMO 2ND RESPONDENT 26/9/2016 & 18/10/2016

JUDGMENT

SEHEL, J: This is a second appeal preferred by the appellant. The appellant sued the respondents at Mgungira Ward Tribunal alleging 1 that the first respondent sold his land to the second respondent. After hearing both parties' case, the Ward Tribunal decided the dispute in favour of the respondents. Being aggrieved with that decision, the appellant lodged his appeal to the District Land and Housing of Singida at Singida which dismissed his appeal with costs and affirmed the decision of the Ward Tribunal. Still aggrieved, through the services of Kidumag and Associates (Advocates), the appellant preferred the present appeal. He advanced three grounds of appeal, namely: That, the District Land and Housing Tribunal for Singida erred in law and fact, having found that there is no on court record the proceedings relating to answers given in cross-examination at trial, in not finding that the omission of such vital part of the proceedings gave the Appellant the benefit of doubts that the hearing at the trial Ward Tribunal was tainted with bias that occasioned miscarriage of justice to the Appellant. That, the District Land and Housing Tribunal for Singida erred in fact and law in not holding that there was a refusal by the Ward Tribunal to admit the written acknowledgements from the Respondents that the land in dispute belonged to the Appellant and that they were ready to return the same such that the arguments on longer occupation and use by the respondents was rendered superfluous.

3. That, the District Land and Housing Tribunal for Singida erred in law in holding that the other grounds of appeal were merely complaints and had no any legal base as such the same will not be considered. At the hearing of the appeal, Mr. Kidumage, learned advocate for Kidumage & Associates (Advocate) appeared to represent the appellant while the respondents appeared in person, unrepresented. For the 1st ground, Mr. Kidumage argued that at Ward Tribunal there was cross examination made by the appellant but the Ward Tribunal ignored to record it. He said the cross examination was about a document which the appellant wanted to tender but the Ward Tribunal declined to accept it. Mr. Kidumage

argued that section 116 of the Evidence Act, Cap. 6 provides for cross examination hence cross examination is very important as it gives the appellants court an opportunity to assess the credibility of the witnesses. For the second ground he argued that the District Land and Housing Tribunal refused to accept the document that the appellant wanted to tender. He said since the records are incomplete then it is not reflected in the proceedings. For the third ground, he submitted that the appellant lodged five grounds of appeal at the District Land and Housing Tribunal but not all the grounds were considered. He said only one ground was adjudicated upon leaving other grounds undetermined. The first respondent generally replied that their statement made at the Ward Tribunal will be the same if even the Ward Tribunal did not indicate it in its proceedings. He also said he never heard or saw the appellant praying to tender any document at the Ward Tribunal. The second respondent replied that the appellant did not have any question at the Ward Tribunal. I will combine grounds number one and two because they both boil down to one issue as to whether the Ward Tribunal omitted to record some important evidence especially cross examination and tendering of a document. I have gone through the Ward Tribunal records and noted that the appellant and the respondents gave their testimonies and their witnesses also testified. Their testimonies are recorded in a narration form. The records do not indicate whether these witnesses were questioned either by the other side or by members of the Ward Tribunal. There being no record then it is difficult for this second appellant court to know whether there were any questions. Mr. Kidumage complained that this omission occasioned a miscarriage of justice because they were questions fronted by the appellant to the respondents. He said cross examination made by the appellant was in compliance of Section 116 of the Evidence Act, Cap. 6 and non-compliance is highly irregular. While I agree with Mr. Kidumage that cross-examination is very important in assessing the witness's credibility but the Ward Tribunal is not bound by any rules of evidence or procedure. It has to regulate its own procedure. (see Section 15 (1) and (2) of the Ward Tribunal Act, Cap. 206). Upon receipt of a complaint, the secretary of the Ward Tribunal is required to issue summons to the parties involved in a complaint requiring them to attend before the Ward Tribunal, for the complaint to be investigated and determined (Section 12 of the Ward Tribunal Act, Cap. 206). On the date fixed, parties are required to attend in person before the Ward Tribunal and give their evidence and answer all questions put to them by any member of the Ward Tribunal (see Section 13(1) of the Ward Tribunal Act, Cap. 206). Applying this position of the law to the present matter it was expected that after parties gave their evidences then questions had to be put to them by Tribunal member and answers to those questions to have been reflected in the records. If there were no questions, the records should indicate that Tribunal members had no questions. Unfortunately the records are silent. Since this was not done then it is obvious that the Ward Tribunal did not comply with the provisions of Section 13(1) of the Ward Tribunal Act, Cap. 206. Failure to comply renders the decision to be unjust such that occasioned a miscarriage of justice. I, therefore find merit on the appellant's complaint on grounds number one and two. For the third ground, I have gone through the District Land and Housing Tribunal's decision and noted that the Hon. Chairman of the District Land and Housing Tribunal did consider all the

grounds raised by the appellant in Land Appeal No. 97 of 2014. In dealing with the grounds, the Honorable Chairman stated:- while other grounds of appeal raised by appellant are without legal base lacks evidence to work upon them as are a mere complain." Further, the Honorable Chairman went into detail as to why he considered the grounds lacking evidence. This is reflected at pages 2 and 3 of the judgement. This being the position then I find ground number three to have no merit. At the end the appeal is partly allowed by quashing the proceedings of the Ward Tribunal and set aside its decision for failure to comply with Section 13(1) of the Ward Tribunal Act, Cap.206. Since the decision of the District Land and Housing Tribunal is based on a nullity decision then the same is hereby set aside. I leave it to the parties liberty to start the dispute afresh if they so wish, subject to limitation period. It is so ordered. iL Wlry , Nx JUDGE 1 18th October, 2016 7

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