

TANZANIA / JUDGMENT

LAMECK JAPHET Vs

COURT
TANZLIIDECIDED
7 August 2024

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IN THE HIGH COURT OF TANZANIA (DODOMA SUB REGISTRY) AT DODOMA LAND APPEAL NO. 109 OF 2023 (Originating from the decision of the District Land and Housing Tribunal for Dodoma at Dodoma in Land Application No. 107 of 2023 dated 24/11/2023) LAMECK JAPHET.....APPELLANT Versus FRANK DICKSON CHALO.....RESPONDENT

JUDGMENT

Date of last order: 07th August, 2024. Date of Judgment: 30th August, 2024. E.E. KAKOLAKI, J. The appellant herein unsuccessfully sued the respondent before the District Land and Housing Tribunal for Dodoma in Land Application No. 107 of 2023, as his prayers for being declared as lawful owner of Plot No. 157 Block "DD" Medeli East within Dodoma City and the restriction of Respondent from interfering with the suit land were dismissed for want of proof of ownership of the suit land. Not amused he knocked doors of this Court by way of appeal fronting his grievances in three grounds of appeal which for the purposes of this ruling I don't find is imperative to reproduce them. Briefly the appellant sued the respondent over the suit land above mentioned in which as per the pleadings claimed to have been in possession of since 1998 before its survey by CDA whereby two plots were produced out of it as Plot No. 157 Block "DD" Medeli East was allocated to him while Plot No. 158 Block "DD" Medeli East given to one Julius Maile. And that, respondent's 1 father who was allocated another plot at Nara area did not want to go there instead he re-claimed the said Plot No. 157 Block "DD" Medeli East while ably aware of the same to belong to him. It appears the respondent failed to file his defence as a result hearing of the matter proceeded ex-parte against him. During hearing of his case the appellant testified against his own pleadings when told the Tribunal that, after survey of the land by CDA the said disputed plot was allocated to one Dickson Matulaa (deceased) whom he conspired with the respondent to dispossess him of the said land but later on the latter turned hostile before he approached Dodoma City Council for allocation of the said plot and allowed to effect payments for legal acquisition of the said suit land as failure to do so would lead to its allocation to another person. That, when he visited the suit land found the respondent therein who claimed its ownership hence a decision to sue him. During clarification questions from the assessors the appellant admitted that, it is the late Dickson Matulaa who was allocated that plot first as he was asked to be allocated alternative plot at Nala on her side. Having analysed the evidence adduced by the appellant the trial Tribunal was convinced, satisfied and held in its judgment dated 24/11/2023

that, he had failed to establish ownership of the said land hence dismissal of his application. It is from that decision which displeased the appellant this appeal is preferred. At the hearing of this appeal the appellant appeared represented by Ms. Isabela Mwalurefu, learned advocate while the respondent appeared in 2 person unrepresented and both parties were heard viva voce. Having heard both parties' submission and in particular respondent's contention that, the said disputed land belongs to his father who cleared the virgin land since 1960's the Court suo motu raised an issue and invited parties to address it as to whether the respondent was properly sued before the Tribunal. Addressing the Court on the said issue Ms. Mwalurefu conceded that, it was improper for the appellant to sue the respondent who had no interest on the land as any order of the Tribunal against him would not be executable hence redundant. She therefore implored the court to find the proceedings before the Tribunal were null and void and proceed to quash them and set aside the decision thereof while directing the appellant to institute the case against the proper person. On his side the respondent conceded to the appellant's prayers without more. I have carefully considered the submission by the parties and revisited the pleadings filed by the appellant before the trial Tribunal. The law under Order I Rule 3 of the Civil Procedure Code, [Cap. 33 R.E 2019](the CPC) dictates that, any person against whom any right arising out of complained of act(s) or transaction(s) can be sued or joined in a suit as defendant or Respondent in case of an application. The said Order I Rule 3 of the CPC reads:

3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative where, 3 if separate suits were brought against such persons, any common question of law or fact would arise. From the above exposition of the law the issue is whether there was justification in this matter for the appellant to sue the respondent. Having glanced at the pleaded facts in the application filed by the appellant before the Tribunal in particular paragraph 6 on the cause of action or brief statement of facts constituting the claim, I am unable to unveil any fact justifying the joining of respondent in the said suit, as it is his father who is alleged to have once occupied that suit land and continued to claim the same without any justification. In view of that uncontroverted facts I unreservedly have no reason not to agree with both parties' submission that, the respondent was wrongly sued in this matter. Had the learned trial chairman directed his mind on such important fact in the pleadings despite of proceedings ex-parte against the respondent he would have discovered that, he was wrongly sued hence find the application incompetent before the trial. As the Tribunal proceeded with trial to the finally I have no difficulties in arriving to the findings that, the whole proceedings before the Tribunal were nullity and the subsequent decision thereof. This issue sufficiently disposes this appeal, thus I will not deal with grounds of appeal as raised by the appellant. In view of the above findings and glaring irregularities in the proceedings the only remedy is to invoke the revisionary powers conferred to this Court 4 under the provisions of section 43(1)(b) of the Land Disputes Courts Act, [Cap. 216 R.E 2019] by quash the proceedings of the Tribunal in Application and set aside its judgment dated 24/11/2023 dismissing appellant's application. The appellant is directed to institute a fresh suit if so wishes by joining the

proper party. The appeal is allowed to that extent. As the issue disposing of this appeal was raised suo motu by the court, I order each party to bear own costs. It is so ordered. Dated at Dodoma this 30th of August, 2024. E. E. KAKOLAKI JUGDE 30/08/2024. Court: The Judgment has been delivered at Dodoma today on 30th day of August, 2024, in the presence of Ms. Isabela Mwalurefu, Advocate for the Appellant and Respondent in person and Ms. Veradina Matikila, Court clerk. Right of appeal explained. E. E. KAKOLAKI JUGDE 30/08/2024. 5

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