

TANZANIA / JUDGMENT

19800626 TZHC Bukoba

COURT
TZHCDECIDED
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'I OF Tfl.NZkiJi T BUIWBA . -.' t APPELJ.4TE JURISDIcTIQN-< . (?O) CIVIt.PPL NO. 54 OF-1979 (Prorn the •d ciio of th Di•trict Court of Bukoba isriaL >a ifl Civil appeal 'T'6,42 of 1978.- Bfors wami,. Es.Seni trate and Ndwanilo Primary Court Original Civil Cae'Nog 7'3of 19.76) MA.ANZO.TjIv B.I. . , 6 C;. . . • 4. . . .APPhL1.,A1T Versus ICH.kLID PONDENT •. JUD.GME.N. ., JBkNA, J. The respondent - plaintiff sued the appellant - defendant over clan land which he stated had been bought by his sister from one Asha in 1969, The appellant was alleged to have taken no step aainst this stat of affair until 1976 when he óhased the respondent - plaintiff from the disluted shamba stating that the shamba was hot Asha's to sell but his (appellan-. defendant). The trial court found-'fl'the appellant - defendant, On appeal,..his decision was reversed, . . The first appellate opurt seems to have missed the point.. It moved to consider the issue of redemption of the shamba in dispute - whether the appellant - defendant could be allowed to redeem the disputed shaMba said to have been sold in;1969 with the knowled6a of the appellant -defendant and the said appellant - defendant taking up the case in .97 6 . This the issue for determination. The appell3nt - defendant's case was that e shamba in dispute ias willed to him in 1930 and that the alleed vendor of the shamba had no title to pass to the vendee secondly the alleged vendor's conduct following the "sale" was inconsistent with the alleged sale. She continued to live on the shamba from 199 to 1976 when she died and all 018, time behaved as the owner of the said shamba. This vendor had authority to use the shamba up till her death0 The trial court delioately dealt wi%h these

issues

It is important to bear in mini what was stated by the Lael African Court of Appeal in David Shisia Okeno v R. ZACA Crimi ial itppeal No.7 5 of 1971 regarding one of the duties of a first appellate court, It was stated : it in appellant on a first appeal is entitled to expect the evidence as a whole to be submitted, to a fresh ad exhaustive examination (Pana v,R (1 957) FA 336) and to the appellatos court's own deoisioi on the evidence 0 The first appellatc court must weigh conflicting evidence and draw its own conclusions (Shantilal M. Ruwalav. R (1957) E.A.50.) It is not the function of a first appellate couri merely to scrutinise the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions0 Only then can it decide. whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact, that the trial court has had the

advantage of hearing and seeing the witnesses, see *Peters v. Sunday Post*

(1958) 424." The 1st appellate court did neither of what has been stated above even when dealing or .haxid.ling the facts or issues as it saw them0 Going through the record, the appellate courts judgment can not be supported on the facts as correctly found by the trial court0 The appellate court's findings of fact are faulty. He states for example that the shamba in dispute was willed to sba -, then one alleged to have sold the shamba to the sister of the respondent!.. This shamba by the quoted will was actually willed to the appellant - defendant

- the said Asha was to use the fruits of the shamba only in her life time, - . The judgment of the trial court on the other hand is supported on the facts as correctly found by it0 But even if one were to accept that the said Asha had sold the shamba to the thaxini- nothodati nbnhabet o negises who possesses not) is here applicable0 She could not have passed any title to the respondent as the purchaser for she (Asha) had no title to pass 0 In conclusion therefore, allow this appeal with costs. and all its orders set aside0 The judgment of the trial court is hereby restored with all its orders0 -!..... 5_ YAHYARUA
- ~ 6/6180 . : \< . . ; ; : J : J / JUDGE. 4 _ . S. : _ : 4. .

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