

TANZANIA / JUDGMENT

19981127 TZHC Mbeya

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TZHCDECIDED
27 November 1998

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IN THE HIGH COURT OF TANZANIA AT MBEYA (PCO CIVIL APP.i 7 OF 1997 (From D/C Mbeya Civ~ App. No. :1-~) . . . , ' -~ ~ . i . ' . . . VERSVS JUMANNE MAS.EL!:.~. a • e e :0 0 :t. . O 8 0 0 • Q D t O t ; . . . ~-~ANT .1.; ~-?: , _ J U D • G E M'E N i1 MWIPOPO, J~ The appellant Maimuna dlt Abdallah had a ~a.n. ..e~. .Hu? \lma s/o Kosamu who , •;..• died in ,February 199~. while ~ PJison on 1~/1996, Before he died he sold a house on !/6/94 . t~'the~. respapdent . '• Jumanne f, \asale~ , . 'Ehe s~e 'house is claimed by the appellant t~ ha'll"e been built by the appellant ano. sold illegally by her son _ •,, ' Huruma to the respondent. The appellant iS: reprei5ented' by the learned Mr. Mbise (Advocate) 'tW.ereas. th~ 're.s~ctent i!s r<:::preeented by~ the learned Mr. Mushokorwa ,.. • . I . , . (Advocate) l The~ evidence of DW2. ~p~,,ard Mwesandu~e th.e ten cell leader and DW3 "" . ::,,-~,,,- . :"" : •• . -4. • .. ~ _; ; .. • ~ Paul Songo that the deceaaed Huruma_ the irendor of the houae bought the plot from . . ; : . . ~;" . one Ndaga ~ mere~ hearSQY :fo: a tpe same Ndaga if existent did not testify to that 4 •• - • ' effect and the dec~e<l • himself Huruma diea.befor~ telling anybody so and he did , , : ' "" "i; ; , ..!...:- ... t1-ot indicate S<l in his sale agreement. , J The ~arne cief~e.wifn~e's ""JJvJ2 and D\tr.1 t.estitied to"1.ta'e seen the late Huruma when he built the ho1:5~< in iE.put.er, At the ,same J~tme :i?tf1 _testified to the contrary to have built it many •• ,,- ,earo ~o •.She wa.,s,s.u.ppo~e<l ltJ ~~ taiti s/o Mwanjisi and #' • ;~.. • . • • ' . • , • Pd3 Ambakisy~ K:iienge to have lieen ~the;owner of. that h ~ for many years after ' . ' . • .. • . :...:~ J . ~\ • ;it • ..• she got help from !nether ~on he:rq :µ1 buil-d.ing that hous,e. 1 : - • , - , - ~-~_~,, , . " . As to wha was telling the truth behieel;t ?1.11 and IW2 and DW3 about the person who built the house being the., -. _!11~.ther _Maimuna_ -ar the ~on Huruma it appears that ~- \ . . -... --. • II • . f it was the mother who was more cred:i,ble beo.a 11 ~ ~pport-&d. by independent -, .. ;,,Pt - -' .. . witnesses .":..... who testified as N2 who was the r~levant. ten cell leader at the during ' , . of building t~e house where as DW2 and DW3 became ten cell leaders only in 1993 .. , , after the house had already been built long time ago. Moreover DW2 and DW3 are interested party all out to vindi,?ate their actiOI), of witnessing the sale ag~e.rnent of the house bet\lPeerl~ the dec~e<l Huruma and th; respor:dento The third sale agreement witness Jailos Hayaweza (in the .sale agreement) did not sign it and he did not testify in court. ~ • . . . Furthermore, 1M2 gav-e different stories to P.v1 to~ whom he agreed,~ to have . ~• witnessed the sale f"ff the house because the deceased told him that his mother had bought it for him (the de~;~ed) tha_t..:~loas wb¥ it',~ his~hous~ which be could •• , , • , , , ""c~,' • , sell, where as in court- he testified •differently that the deceased built it himself

- a rpf\ Tu! ? +h, ~ , ; , , , , m · o · "Pl, T'l c, n · , , ~ , ~ , - , - , . { · . r,
- 2 - · · , 4, . in dealing with the problem of the sale of this house · (?nap:iga chenga). There is orie'-DW4 Ezekiel, El.ia . iiC:b.c.; is the one who had employed the deceased for three years from 1988 - 1990 who knew the deceased as a person who had no house and who was a .t~'it~d ... ~ · , : ~ . · did ~ot . know. that ... ho. the deceased had ever built ~ a house. This being a witness for the respondent as a defendant then his evJ4en·e \ ' ~- is contrary and contradict the stories of DW2 and l)W2 about the deceased Huruma having ever built a house of his own. Testimony of PW1 as appellant is quite more veridical than the respondents witnesses that she built that house and later on allowed her son Huruhlato live there while she w~ living-in another housef")f h~ in Chimalq_ where she used to cultivate. Her .witneSS€S Pw2 and Fw3 gi:ve a:cre~ble account of the life · \ , _ l t.- -b . of the deceased until wh~n-she got imp:risoned. ~ ~ assaulting k/i~·wife and died in prison. · , V · ... ~ The decision of the · · · 1~t c;lppellate court that(th,e~ of the appellant in Usangu' fa~ 5 Jiea.r= was a long time for t)e:r ~; to ~ve iecided to sell the house was against the bond fo~ 'tlie:r~' should hav-i b~en M elapse~;f '12 years before , . ~ . ' such on inference could be drawn/and the appelThnt used to come often to visit her son who lived' in" the eame hQuse. so, h'e kept her' control · of the house some how by her visits~ The firift appellate court· aleo . ~r'l'ed to hol'd' tbiit'the appellant ne'l'er challenged the sale· of the h~uee. Sl.\e did by .filling this suit. Before that she challenged-the te.spondent lmd the ten cell-lea~r.why they negotiated the sale with her son instead~ heraelf the owner of· the house. The buyer of the""hauee· hi.rnEwlf ~eemt. ~ · ha~e ~en aware .of the take ownership of ,)101JSe 6.; belonging to the appellant for lw i.s a:tso a' nei'ghbour living just in l.he 5th .houae fr~ th~ app.elJ,.,witft -". ~N1e'Pe~ appears to have been a conspiracy to· bu; , t)le h.o«Ja~ behind the ·'bscl¢ of the a.ppel~ant. The owner of the house was est~ifhe_d t~ Qe that af,;1the appellant. The late Huruma Kosamu " therefore had ~ ~ n i p ~ title. rig~. ~.a.Gill to the respondent over a house which was not his, , . ; , , . The holding of th~ learned Mr. Roma.n7;ika (R-1) that the appellant should redeem the house for.~== p r e s ~ ~ that the appellant had the original
- ownership rights over the house. If she~ ~:Letary rights over the house she cannot have any right to redeem it lati~ <lil· The judgement of the trial court was proper for each gentlemen assessors Nkosole and Musa unanimously eigned against his ·verdk. · al:x>llt_t:ilhe ownership of . · the house having prope:r'-ly belonged to the appel:lant tlie magistrate too learned Mrs. Mtikita (PPGH) signed her own verdict. ~he tie~ision of the PCT. was quite proper. In is. rtlnstated. The decision of the D.O.·T. ~.:- 1st appeal was erroneous, it ~it; ~u~hed. · The house belongs to the appellzult Maimuna s/6 1 Abdallah. The decased Huruma s/ :> Kosarm;i. hM no l'ightl"l of' ownership of thl'tiou..s'e to sell to the
- . µ . respondent. ~ The sale·was.null an~vai.£i. ~ The p. ~ price of shs.85,000/= shall ~
- 3 - be refunded by the appellant to the respondent for she was her own son who . wrongly sold it and used the money for benefit.. She shall refund the 85,000/= purchase price within 90 days from today to 28/2/1999 in default of which the deemed respondent is allowed to be given first prioility to buy the house from the appellant at the previously appellants offered

price of shs4200,000/= be paid within 90 days inclusive the shs. 85,000/= he will be entitled to set off from the same shs.200,000/= so that he pays only shs.115,000/= within the said 90 days from 28/2/1999 up to 29/4/1999 in default of which the appellant shall take custody of and take permanently her ownership of the house and the respondent shall execute his entitlement of the shs.85,000/= refund through the normal execution of this court's decree. This appeal is allowed with costs. E., L.K. MWIPOPO JUDGE 27/11/1998 Date: 27/11/98 Coram: Hon. J. E. LoK, Mwipopo, J. For appellant: Mx. Mbise Advocate present Maimuna Abdallah absent - in person Respondent: Absent. Jumanne Masele absent in person. B/c. Kosam: 'Mr. Mbise: Also holding the brief for the learned Mr. Mushokorwa advocate for the respondent. Gou. rt., Judgment delivered. Learned Mr. Mbise to inform learned Mr., Mushokorwa accordingly. MWIPOPO JUDGE 27/11/1998 the original Judgment.,

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