

TANZANIA / JUDGMENT

19851007 TZCA Dar es Salaam

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7 October 1985

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ti., , ~ -:}; 0 IN THE CO!.JRT Op APPEAL Op TANZANIA I CORAM; MUSTAfA, J oA.,;
MA.KAME°::L J .o ~'; And KISANGA J.oA. CIVJ;L APPEAL NOo 21: OF 1983 BETWEEN MA.RIA d/o
SHEYO,; • o O • 0 ANb i NDELE s/o MLOZr e • • O C it O O RESPO ENT (Appeal f.r,om the Judgment
of' thE> High Court of Tanzania at Mbeya). (Mroso, Jo) dated the 21st day of May, 1982 . (,,.~. ~ =15
_);i.Vil .- - ~- : : : ,__ ,. l. JUDGMENT Op TH}~ COURT I :u) 198] \ -~-----~--~ ffl!,STAF/, _Jo~.;;
This matter f"J)r)cer:ning a hui: on la pie ;e Of \ nd arose in a Primary Court, w.ent on appeal tc a
District to the High Court. .And now from the and th.en judgment 9f t e High Court an appeal has
been preferred \ : i.s courto ,1 Ndele. was the plaintiff in t 11e Pt;;Lmary Cour,to Ndele _alleged
that he had purchased a.n unsurvey.ed plo,t in MwanJel a area Mbera frem ◇ne Tembo
Mwangos1, and in 1955 Ndele built a mall hut on it. Tem,t,o corroborated Ndele on this matter.,
and

- t Witnesses also gave tes_timony in sc:ppor~. (., othe+ I I ,. Ndele alleged ~at the husbac,l of
Maria, the d fondant at the Primary Court and the appellanC in this. appeal, as ill • 1 'I •
sometime in 1976 a~ • s a l l - d by ~e1• to stay in that hut free•of Charge, 'lhj_s piece of
evidence ,:,as conFi,,:ne by Tembo. Ndele Was a police Officer on.active duty anci was se .ing
outside Mbeya. When he returned to Mbeya, in 1978 he iscovered that Maria's husband had
died and w;cen he asked Maria to vacate his hut, Maria refused and told Nde.Ce that the hut
ha beJ,onged to her late husband. Ndele had to 'eave Mbeya aga:j_n ••n the couqe ,•c.o_ao/
•,• , , 2 ; i 'I 'il of his official duties and when' he returned in 1 he found 1t '1 that the thatched
roof of his hut has I been . remo and corrugated iron sheets were put'. on inst!;:lad .. I(,i
Eventually Ndele brought 'a case against 1 Primary Court which found in fa vour of Ndele. I
JI . • it !: Maria appealed from the Primary Court judg to the . • II District court which allowed
Maria's;appeal. ,) , , As Court judge (Mroso, J.) rightly rema kect, the rict Court ' 11! ; "leaned
over backwards and questioned the author Tembo I !l , MwangOsi to allocate building plots
in ,1 the " area". The High Court reviewed the evidence and' came ::;to,, the concl sion that ,
II the decision of the Primary Court was right, and estored its

judgment.

,, That should have been the! end ~f the matter However Maria obtained leave from the High
cdurt (Samatta, Jo) to . n appeal to this court. Leave was granted on the g ound: whether I , . ! the
High Court "was right in law in dot•consideri g the question I 11 :1 for the improvements the

applicant (Maria) allegedly made to the plot on which the house stands; it is clear that Maria had put up the corrugated iron sheets on the hut and the plot belonged to Ndele and there is no question that Maria should get compensation for improvements in the circumstances; so However we will order that Maria would be at liberty, at her own expense, to remove the corrugated iron sheets and whatever other material she might

- that / have expended on the hut or on the land. Maria's right to remove such material expires on 31, December, 1985 or two months from the date she is informed of the contents of this order, whichever is later. The appeal is dismissed. As neither party appeared, before us by counsel or in person, we will make an order as to costs. DATED; at DAR ES SALAAM this 7th day of October, 1985. I, MUSTAFA JIJUSTICE OF APPEAL. I, MAKAME JIJUSTICE OF APPEAL. I, R. H. KI SANGA; JUSTICE OF APPEAL. I certify that this is a true copy of the original. Signed: SENIOR DEPUTY REGISTRAR.

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