

TANZANIA / JUDGMENT

19760305 TZHC Mwanza

COURT
TZHCDECIDED
5 March 1976

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Li il iaH CCJILJ üi H AT bIANZA. (PJ)oIvIL:pp T0 153 02 975 (on the dcciiion of the District Cúu.r t of Bukoba at Jukoba in Civil Appeal No'. 199 of 1974 -Before: C.H. Iati Esq D.. Ii & 1Tshba 1rinary Court Civil Case ilo. 160 of 1974). TIICHJELMtJR0NG0 0• ,..... ,.....APEEEIANT ANDREA 1JRU:FG0 & IUS0LIE 1JE0NG0 , ...RESRTDEIIT JUDGMLN T LUGiENGIRA AG-, J.: This appeal arises from axi unuceessf'ul clam fo± two pieces or parcels ofT ond. The parties arebrbthers. The wrangle centres on 6ieces of land netsuring 25 by 56 and 47 by 106 stops, respectively, which Oeen to border on the appellants shanba. The two pieces hitherto vacant 'zd 9 have alreadr been developed or substantially developed by the respondents withpexraanent orbfs c'ad builidin'gs the first piece by Andrea and the other by Lisolt. But it has been the appellant s contention that the two pièces were part of his inheritance which had been grabbed by the respcndents The partiest father died while thO appellant was aged about nine years He was brought up by his elder brothers, notably Andrea When he became of age Andrea gave the appellant his &.:are of inheritance according to thsir fathe rt s o±I Wil1 It is the namer Andrea went about this that the appellant c1allcngc He called witnesses who appeired to suppt his c13iLf Andrea' o.lso called witness who included his mother s who is also the appellant t nother, and she supported Andrea The Primary COUrt found against the appellant — as diclthe District Court on appeal — hence the appellant brought the present appeal I think the Lower Courts were justified in the decision they reachêd in view of the evidence of the partiest own mother', Melensiaa w/o T.rongo It is evident that the appellant' a wituesses did not state pecifically whether the 'appellant was bequeathed the two pieces of land, which were then virn 1 find, but seen to have so assumed because these pieces happen to be on' the ttupperfl side of the deceased' a shanba which side was bequeathed to the appellant' It is also not without significarethat as late as 1970 Andrea' woO developing his portion while the appe|lant looked on without comp1cdnt I think it must be by sono unusually acquisitive instinct that the appellant has suddenly remenbered that the eces of land are his property after they have been productively developed. I would therefore thLnk that his claim is baseless and was rightly rejected by the courts below. What I found disquieting in the proceedings is the positigç the second respondent Mwsolini. This man has never appeared in andt any stage - of the proceedings and there has never been an explanation for the defeuJt' But the records of the Courts below are also not entirely free from blcme It does not appear that 1b,isolini was ever served with a sunioAs to appear in the Primary Court and answer any dolL'. In the DistriCt Court, on the other hand it does not appear that any person was ever served. I do not know h those who turned up knew the date when they vore required.' What transpires generally

is that in the Courts below this suit was treated as between the appellant and Andrea, for himself si'id as executor of the late iYk.rongo's Will, although Lu.Colini' s name was retained In the proceedings and referred to in the judgements. Before this Court, Musolini was served but indicated that he did not wish to be present'. I also note that the reply to the inemorndun of appeal is a joint venture but it is doubtful whether 1Vsolini a"

- 2 - ersaally siaod it It would then app&r thatJsolini has in fact been in the crthrouiout and has readed the deeions as touching on bin and his estate. In that evat he WAY be regded as haying attended the pToceodiflgs as did the appellant and ndrca I have aLroady cenclucec \$hat the clean was baseless. I will then dieniss the appeal vjth OOSGS. HI VIZA K. S. K. 5TH MJ'PLCH 1976 AG. JUDGE. I L

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