

TANZANIA / JUDGMENT

mohamed makuno vs ismail nyele

2016 tzhc 2140 25 october 2016

COURT
TZHCDECIDED
25 October 2016

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AT DODOMA LAND APPEAL NO. 7 OF 2015 (From the Decision of the District Land and Housing Tribunal of DODOMA District at Dodoma In Land Case No. 33 of 2014) MOHAMED MAKUNO APPELLANT VERSUS ISMAIL NYELE RESPONDENT
3/10/2016 & 25/10/2016

JUDGMENT

SEHEL, J. This is a very interesting appeal. The appellant is the lawful owner of Plot No. 4 Block Q Chang'ombe area and the respondent is the neighbor of the appellant. The respondent also legally owns Plot No. 3 Block Q Chang'ombe Area. The appellant sued the respondent at the District Land and Housing Tribunal alleging that the respondent trespassed into his plot by uprooting the beacons, extended his Plot and constructed a house therein. The respondent denied the claim and said the area which the appellant alleges that it is his, it is a road area and does not belong to the appellant. He also said he did not encroach that road access. The District Land and Housing Tribunal visited the area in dispute and noted that each party is legally occupying his/her land and the disputed area is a public area because it is a street road. It also noted that all the beacons are intact. Therefore the case was dismissed for lacking merit. It further ordered for each party to respect beacons. Aggrieved by this decision, the appellant through the services of Njulumu and Company Advocates lodged an appeal to this court with two grounds of appeal; namely;-

1. That, the Chairman erred in law and fact by holding against the weight of evidence by the Appellant that the disputed portion land is part and parcel of the street hence belongs to public at large.
2. That, the Chairman erred in law and fact by visiting the locus in quo without the presence of the officer from the Capital Development Authority as allocating authority for the purpose of identifying the boundaries. At the hearing of the appeal Ms. Maniche, learned advocate from Njulumu and Company Advocates appeared to argue the appeal on behalf of her client, the appellant. The respondent appeared in person, unrepresented. Ms. Maniche combined the grounds of appeal by stating that the area in dispute is a boundary area which is a road services and it is not part of Plot No. 3 Block Q as claimed by the respondent. She

said since the disputed area is about boundary then officers from Capital Development Authority ought to be summoned as they are better versed with the beacons. She argued the respondent expanded his area by encroaching the road such that denied the appellant's right to fully enjoy his property. It was her submission that the beacon was removed by the respondent but the District Land and Housing Tribunal said no beacon was removed. For these reasons, she prayed for the appeal to be allowed with costs. The respondent replied that he has his own area and the appellant has his own area. There is a road access which he did not encroach and that he has not removed any beacon. He said may be the people who came to put water pipes removed his beacon. He also said the appellant's plot is fenced with "minyaa" hence there is no way he could encroach or disturb the appellant. Ms. Maniche, rejoined that it is true the appellant's plot is fenced with "minyaa" but the respondent encroached the road area. In this appeal both parties accept that the Tribunal made a visit at the locus in quo. The visit according to the Tribunal's decision reveal that each party is legally occupying his area and all beacons are intact. Further the proceedings also show that the appellant himself when asked by assessors, said his area is fenced with "Minyaa" which are still intact. This means that the appellant's area is clearly demarcated with minyaa such that no one will be able to encroach it. For this reason, I do not see any merit on the appellant's complaint to this court that Capital Development Authority ought to be called as witnesses because they are best vened with boundaries. The boundary of the appellant's are is clearly established by "minyaa" which fact is also conceded by the appellant. Further from the submission of the appellant's counsel the area in dispute is a street road area. This means that the area is a public area. B.M.A. Sehel JUDGE 25 /10/2016

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