

TANZANIA / JUDGMENT

20130215 TZHC Dar es Salaam

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TZHCDECIDED
15 February 2013

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC. LAND CASE APPEAL NO. 11 OF 2010 {From the Decision of the District Land and Housing Tribunal of TEMEKE District in Land Case Appeal No. 150 of 2008. Originating from MTONI Ward Tribunal in Application Nos. 30 of 2005 and 21Bof2007} PETER KAYAGAMBE ■■■

..... A.PPELLANT I VERSUS ABRAHAM MPEMA

RESPONDENT ·JUDGMENT . A.F. Ngwala,l. This is an appeal from the decision of the District Land and Housing Tribunal of Temeke District in Application No. 150 of 2008, in respect of the Order by the said tribunal that Dismissed his application for a wrongful attachment of his property and Demolition Order in execution of the decisions of the Mtoni Ward Tribunal in Cases No. 30 of 2005 and 218 of 2007. The appellant is contending that "A// the decisions given from the Ward up to the District Tribunal are one sided decisions, because there was no any visit done so we could have showed our boundaries each one of us. And the witness of the respondent here is a stranger to that place, 1 as I was there since 1966, Father of the respondent came his house on 1982, so he does not know the boundaries well" It is on record that on· 24/11/2009, this Court struck out the appellant's appeal in Land Appeal No. 62/2009 on grounds that the Appeal should be filed before a Court of competent jurisdiction. Because the same had been filed under the provisions of Section 41 of the Land Disputes Courts Act, [Cap. 33 R.E. 2002]. Consequently on 02/02/2010 this appeal was filed as Misc. Land Appeal No. 11 of 2009 under the provisions of Section 24 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations GN. No. 174 of 2003 which reads as follows:- '4ny party who is aggrieved by the decision of the Tribunal shall subject to the provisions of the Act, have the right to Appeal to High Court {Land Division) provided that, an appeal shall not in any be a bar to execution of decree or Order of Tribunal." Upon hearing the Appellant, perusal of the proceedings in records, and visiting the "locus in quo" the Honourable gentlemen Assessors who sat with me at the hearing of the appeal in accordance with the provisions of section 39 of the Land Disputes Court Act No. 216/2002, were of the considered unanimous view that this appeal has merit because the decision of the Ward Tribunal cannot be executed without the District Land and Housing Tribunal revising the proceedings of the tribunal on clear irregularities. I see no reason to differ with their opinion, because after 2 visiting the disputed land, we decided that Peter Kayagambe the Appellant, should construct a wall that joins his house, and that he should leave three steps (Hatua tatu) for the pathway or "Uchochoro"~ We arrived at this decision because this narrow passage gives an opportunity for accessibility because the disputed area is unsurveyed. The Order to break the

wall that was erected by the appellant did not lead to a sustainable solution. The Mtoni Ward Tribunal disregarded the claims by the appellant that the respondent had trespassed into his land. Those earlier claims by the appellant in Civil dispute No. 30 of 2005 were wrongly dismissed. The Ward tribunal wrongly ordered the Appellant to demolish the wall within two days without considering the evidence that there was an oral agreement between the late father of the Respondent and the Appellant. In such unsurveyed area, like the disputed area at the Mtoni Squatter area; the Ward tribunal had a primary role to ensure that peace and harmony in the area for Which it is established is maintained. This is in accordance with the provisions of Section 13, Specifically section 13(1) of the Land Disputes Court's Act, [Cap. 216 R.E. 2002] which reads as follows;- '13(1) Subject to the provisions of subsection (1) of Section 8 of the Ward Tribunal, 1985, the primary function of each Tribunal shall be to secure peace and harmony in the area for which it is establishe~ by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter concerning land within its jurisdiction" 3 For the foregoing reasons in all the circumstances of this case, I consider that this is a proper case for the exercise of both the appellate and inherent powers of the High Court in Order to ensure that real and substantial justice is done. I therefore make the following orders:-

1. That the decision of the two lower tribunals, are set aside.
2. The appeal is allowed with costs, with the result that the Appellant is allowed to construct a fence wall that joins his house and leaves three steps (Hatua tatu) estimated at three feet for the narrow passage (uchochoro) for the passerby. Order Accordingly. ~ A.F. Ngwala, JUDGE, 14/03/2013. Delivered in Court this, 14th day of February, 2013. A.F. Ngwala, JUDGE, 14/02/2013. 4 15/02/2013 Coram A.F Ngwala,J. For Appellant Present in person. For Respondent Absent B/c: Jane. Assessors : Mr. Kimaro. Mr. Kimatare. Court: Judgment delivered in Court in the presence of the appellant and in the absence of the Respondent. Court: Right of Appeal to the Court of Appeal of Tanzania explained. Court: Respondent to be notified accordingly. , #° A.F. Ngwala, JUDGE, 15/02/2013. 5

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