

TANZANIA / JUDGMENT

philipo j soah versus mchungaji zacharia nahumu 2024 tzhc 596 12 february 2024

COURT
TZHCDECIDED
12 February 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SHINYANGA SUB REGISTRY AT SHINYANGA LAND APPEAL NO. 17 of 2023 (Originated from Application No. 87 of 2022 at the District Land and Housing Tribunal of Kahama before Hon. Paulos L. S. Lekamoi) PHILIPO J. SOAHI.I APPELLANT VERSUS MCHUNGAJI ZACHARIA NAHUMU RESPONDENT

JUDGMENT

29th November 2023 & 12th February, 2024 MASSAM, J.: Dissatisfied with the decision of the District Land and Housing Tribunal for Kahama, the appellant has filed this appeal with a total of two grounds of appeal namely:

1. That, the trial Chairman erred in law and fact to rule in favour of the respondent who failed to prove its claim on the balance of probabilities.
2. That, the trial Chairman erred in law and fact to grant reliefs not prayed by the respondent. Page 1 of 7 Before going to the merit of the appeal, it is apposite to briefly state the background-giving rise to this appeal. Basically, the respondent filed an application at Kahama DLHT claiming that he is a lawful owner of the land measured 1 1/4 acres and that the appellant herein is just a trespasser. The said disputed land had three plots including plot No. 586 Plot 'N' Sokola Street, Majengo ward within the District of Kahama. The respondent gave one of his plots to the church (TAG) and they build a house in 2019. On the same year he gave one of the plots to the appellant to use it for business activities until he gets his own plot as he was invaded to the house which he was rented. However, when he asked him to vacate the area, he refused that's why the respondent preferred the present application before the DLHT. At the tribunal the appellant refused to file a written statement of defence and failed to enter appearance without having any valid reasons, thus the matter proceeded ex-parte against him. After evaluation of evidence from both parties, the trial tribunal gave its judgment in favour of the respondent stating that, he was able to prove his claim on the balance of probabilities. It also ordered the appellant to vacate from the disputed land immediately. Being Page 2 of 7 aggrieved, the appellant preferred the present appeal armed with the two grounds as submitted herein above. When the matter was called on for hearing, advocate Dennis Frank Machui represented the appellants from Rwangobe & Co.

Advocates, on the other hand, the respondent enjoyed legal services from advocate Zena Anthony Kazimoto from Simba Ngwilimi and Associate Advocates who was engaged only for drawing. In disposing this appeal and by the consent of the parties the appeal was argued by way of written

submissions.

Submitting in support of the appeal, Mr. Machui complained that Hon. Chairman erred in law and fact to declare the respondent as the owner of plot no. 586 Block "A" Sokola Majengo while he did not submit "hati ya mauzo" and a certificate of occupancy. Also he was of the view that the respondent failed to prove his claim as required by Section 112 of the Law of Evidence Act, Cap 6 R. E 2019. He supported his argument with the case of Anthony M. Masanga v. Penina (Mama Mgesi) and Another, Civil Appeal No. 118 of 2014 (Unreported). Submitting in respect of the 2nd ground of appeal, Mr. Machui submitted that it was wrong for the trial tribunal to grant relief which was not prayed for by the parties. He stated further that the order of the trial court that the appellant herein was a trespasser was not among the Page 3 of 7 prayer of the respondent at the trial tribunal. He referred this court to several cases including the case of Anania Kamala v. Tryphone Kaijunga, Mise. Land Appeal No. 61 of 2021, which insisted for the court to grant the prayers specifically pleaded by the parties not otherwise. In the end he prayed for appeal to be allowed with costs. Strongly opposing the appeal, on the 1st ground the respondent replied that it is not mandatory for the ownership of the land to be proved by a written contract or a right of occupancy. He added that the respondent did prove that he is the owner of the disputed property, after bought it from one Esta clement. His evidence was supported with one Esta Clement (5M2) who informed the tribunal that she was the owner of that disputed land before she sold the same to the respondent the year 2005 for the price of Tsh 150,000/= the land which was estimated to be one acre. It was his further submission that since the appellant opted not to reply anything at the tribunal, he is barred to challenge the same at this stage. He referred this court to number of cases including the case of Barella Karangirangi v. Asteria Nyalwamba, Land Appeal No. 237 of 2017 (Unreported). Responding to the 2nd ground of appeal, the respondent argued that at the trial tribunal among the prayers of the respondent was as follows: Page 4 of 7 "2. Tsmkokuwa Mjibu maombi ni mvamizi

3. Amri ya mvamizi kuondolewa katika eneo lenye Mgogoro
6. Nafuu nyingine yoyote ambayo Baraza litaona inafaa kutolewa kwa muombaji. Therefore, he was of the view that Hon. Chairman granted what was prayed for by the respondent and not as alleged by the appellant. For those reasons, he prayed for the appeal to be dismissed with costs. Having heard the submission in support and against the appeal, this court will now determine if the appeal is meritorious. It is trite law and indeed straightforward, that he who alleges carries the burden to prove as stipulated in Section 110 of the Evidence Act, Cap 6, R.E 2019. In respect of the first ground of appeal, the appellant alleged that the respondent failed to prove his claim by its failure to submit a certificate of occupancy and sale contract from 5M2. Thus, it was wrong for the DLHT to declare him as the lawful owner of the

disputed property. I have revisited the records of trial tribunal and noted that this claim was determined ex-parte due to the failure of appellant to file his written statement of defence within 14 days as ordered by the tribunal Page 5 of 7 and he never entered appearance since 16/12/2023. On his side, the respondent alleged that the appellant was just an invitee to the disputed land and then he asked him to leave but he refused to vacate. He added that he bought the said land in 2005 from Esta Clement at the tune of Tsh. 150,000/= measured 1 1/4 acres. The same was proved by 5M2 (Esta Clement) who was the one who sold the disputed land to the respondent herein. Thus, based on the said evidence it is clear that the respondent proved his ownership over the disputed land. See the case of Africarriers Limited Vs Millennium Logistics Limited, Civil Appeal No. 185 OF 2018 (CAT at Dar es Salaam).so this ground has no merit. Regarding to the second ground of appeal, that chairman granted the reliefs which was not granted, this court noted that the prayer of the respondent at the DLHT were as follows:

1. Tamko kwamba Mwombaji ni mmi/iki ha/a/i wa eneo /enye mgogoro.
2. Tamkokuwa mjibu maombi ni mvemisi.
3. Amri ya mvamizi kuondoka katika eneo /enye mgogoro.
4. Fidia ya hasara inayotokana na uvamizi Pamoja na usumbufu.
5. Gharamaza maombi haya. Thus, based on the mentioned reliefs prayed above the order of the DLHT that "Mjibu maombi anatangazwa kuwa ni mvamizi katika eneo hilo na kwakuwa ni mvamizi anaelekezwa kuondoka mara mote na kuacha kumbuguzi Mwombaji katika eneo hilo lake' was right as the said order came from the reliefs prayed for by the respondent and not arises from nowhere as alleged by the appellant herein. Thus, this ground too is found with no merit. That said and done, the appeal is found with no merit and the same is dismissed with costs. It is so ordered. R.B. Massam JUDGE 12/2/2024 Page 7 of 7

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