

TANZANIA / JUDGMENT

20000710 TZCA Dar es Salaam

COURT
TZCADECIDED
10 July 2000

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM ,,_ (.£.O,~: ™1?...~L~!!..0~
__1,UB,Y\TA, J .A., And LUGA_K.INGIRA, J .A.) CIVIL APPEAL NO• 88 OF 1998 BETWEEN VICIDR
ANDREA o•oooooe•ooooe6coooooooo•••• APPELLANT AND

1. SENIOR DISTRI-0'1' VJ\GLS.'TRM'E I/C 1ST RESPONDENT (Appeal from the decision of the High Court of Tanzania at Meshi) (Munuo, ~) dated the 16th day of June, 1994 in j· JUDGMENT OF THE COURT Michael .Je.hl\, the ~econd rea:pondent, filed ~ suit in t.he Ward Tribunal at South Machame reclaiming a clan land. His father, it was said, had entrusted the land to one Philomena who later turned if over as a gift to her nephew, Victor Andrea, the appellant, the son of Andrea August, who was the second defendant. The second respondent succeeded. Then the appellant suuccessfully appealed to the Primary Court of Hai Kati, in Hai District. This aggrieved the eee4nd respondent who appealed to the Di5trict Court of Hai and won. Consequently the appellant went to the High Court with an application !or certiorari to quash the decision of the District Court but MUNUO, J. dismissed it because it lacked meritso The appellant has Bow eome to us with this appeal. We gave time to the. parties to file their submissions. That was done. Heweever, on the day the appeal was called up, Mr. Kamba, learned Senior State Attorney, who appeared on behalf of the first respondent,
 - 0 •• /2
 - 2 - raised a technical issue. The learned Senier State Attorney drew the attention of the Court to the requirement ef including the Attorney General as a party in an application !or leave to· apply f~r pre- rogative ~Tits. He pointed out that that was not done. He submitted that oocause of that omissi<m the proe~ed.ings before the High Court were a nullity. We think that we better deal with this issue first. Section 17A (1) of the Law Reform (Fatal Accidents and Miscollanaous Provisions} Ordinance, (Cap. 360) provides .a.~ :follows: Where leave for the application·for an orde~ of mandamus, prohibition or certiorari is sought in any civil matter against the Govern- ment, the court shall order that the Attorney General be summoned to appear as a party to those proceedingss save that if the Attorney General does not appear before the court on the date specified in the summons, the court may direct that the application be heard ex parte. The summoning of the Attorney General is mandatory.

Therefore, we agree with Mr, Kamba that the failure to summon the Attorney General is fatal and the proceedings before MUNUO, J. were a nullity. We are now left with the proceedings before the District Court. There is no appeal, and indeed there could not be an appeal before us against the proceedings in the District Court. Equally, our revisional powers cannot find purchase since the necessary hook, that is the proceedings in the High Court, has been severed when we found the latter proceedings null and void ab initio. For the reasons given above, we quash the High Court proceedings and we dismiss this appeal in its entirety with costs.

- 0 ./3
- 3 - DA'JD at. 114! EB SW,IM thi.G . jbit~a!n¥100• .A.S.L. RAMADHAN! -- -JUST! CE OF APPEAL D. z. LUBUVA JUSTICE OF APPEAL K.SoKe LUGAKINGIRA. --~--~----- JUSTICE OF APPEAL I certify .that this is a true copy o! tile ~.iginaJ..

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/327166/source_file/c94a65edb35497bb/20000710_TZCA_Dar_es_Salaam.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/victor-andrea-certiorari-tzca-2000>

Prepared on 13 October 2026 · Esheria