

TANZANIA / JUDGMENT

19941108 TZHC Dar es Salaam 1

COURT
TZHCDECIDED
8 November 1994

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..... ~ U" LI 11 G, This niJ.ng has ate ;n d :from a preliminary point of law raised by Mr, luoga., Lea.med. Coun: a7 -:-. .t; ~ha,+. ,-.1-f;h<'Ugh l...,_ :-~=-.1-:-:-:-.~-+,0c_ the appellant at t:b.o Dhrt cl.et Cou:rt of Ilala it)lad not come to his (LJ.ogal-13) lnowledge that the a:ppcl: ant l)OSD8r,ooc~ a title de0d. conferring to him the right to occupy t~w diop-~;ted land. r.rhat as tho matter \re:rc insti tu.too in ~ho P;:ima.ry Oourt of Ilalr:, r-J.1i". ,~:1.e fact t:12.t the pe.rUo::: novor k:.low that a Primary Court has ~10 ju:ciGo.:i.cti 0:1 to >.oar a dispute 011 the :l.. ssuo of o-wncrsl:ip over a. registered la.r,l as sta.t0c~ w.lfror scci:i.cn 18 - (1) (a) (i) of tho Mag:lstratot s C, lurts \c-t, J.9L ·1 2.t is clear t;lat the procodj.ngs in the Pr.lma.ry Court and oubscqu<i'l:tl~ t~o 2;ppo~:..: to tho dist:ric-t court woro null voi~ The applceJ.1:f, supported . is obj cctim by sb.ovri.113 to ·t:10 court the ori.ginal certificato of title as ;w:i.dci.100.!" a photostatic copy of tho aamo dooument ha'3 beei.1 ti.loc1. with the c.,urt for identification purposor.- Tb.o l:eSpond.cnt Shomari Salum also showo) to t:1c court a lctJGer ·of offer roa:Pocting the ea.mo landed property, tho effect of ·02ese docuents uas nothing but a positive cmfIJIJ1r.ti.on that th0 .la,;1<~ in _1.i.aputc is a ro[;istoroc~ lan~- I hav'O ta.ken advantage ·r,,. olosaly G'J'auino t~1e 1') .~ht of occum:panoy and certificate of title issued to tho appollc.:!lt EJ.. ie~<J Jot·.°' 1/iboya ana. I am satisfied. that they were issuo~i to ~il in l;:;)l before tho yrcsc.nt suit cG11m~1ced in tho Primary Court cf llala in ~ust; 1992-. Tho 1av, is vcrJ clear on matters rolatig to rc...iGtorcd land under ·c~J.o k~ffi Rei... ~f:R-!iTIC'I ORDI.~,~;i:J C~ Oa:p 334. Undor tho Magi Jtr.:1.to's Court ..i.et 7 1~84:J Section ·-n - U) (a)(i.) oloal."1y stip.tl.atess "c-1>..... no pr.L:la;r;r cou:cf; ;~hall havt> .ju1· ocliction in cny procod.ings a~f Jcting the ti tl c to or CIW i..11torost in l ·ld XQ:;,"1.rrhyr,,"!" ·u~c=Lor the tho Land ~k;cistraton Or~1a11c0'. I

- 2 · I have 1-ov.d tho :procc0ru.ngo before thG rnma.ry Court ~.nd district . -----~--cou~ but. no nl10ro this uncllallengod m,-idenco of rci?-Gt:t'c'tion of the land in disp\lto was cwor mentioned, or referred in a.t1J1way. Elven tllo m~orandum of appeal to tho district court never r,1cntionocl the o.:ir.oolla11t 'a title dcecl it was discloaad to Mr. luogo. cvon after he had takoo up-a,p-poa1 to this court. li.s bot;J. 11a.rtios-11a.ve tllocumonts collfi.xmin6 that t;:10 land. ill dispute is a rogistrod. l;:,i.1cl it ;ocs without fu:.ct'.~cr proof, unless otl~.c:rnise stated, that tho :primar3r court of Ilala 1:.r,J. no ju.:isdicticn to entertain the suit. The suit boforo 1 t was thoroform. incorapotou:t for lack of jurisdiction. The ·proceedil1.3s a.ncl jwlgom0nt wore tllof ore a nullity, The 0011sequon.t appeal to tho Di;;;trl.ot_ Court wae:: also L1comJ1ctcnt, honco tho r.1.ccision or jud.gomont of that firrJt

appella.to c,)urt _was also 2. nullity• 41,tq.~f,it.: follows that th0 appeal to this court is .incompoto11t a.1~1 is acco:roingly atrucle out. ·JJ.l the ord.orca of -'Gl10 lower courts a:ro accoJ.. '0.i.n~y eot asiclo. A. C. tiilJl;li., JU.l)G:i.J 0.1.IDI1.ta J.lo order as to. costs. The pe,:rt.ios \$t.a.t.us quo to bo maJltained uritil a ap:propr.i.ato action is tako.'l by -tllo party ldlo boliovos that ho is the lQG'i tir.la;l:..o o-wnor o:c- ooou:pior of tho suit la11d. Delivered at 'Dar es SD.12,ar.io Mro W.O;Si?., for tl:e ap)ollant, pro:30;.1.t. Shooa.rl Salum, :present in person (rosponden:G}; ~. c. v~ JuJ)CrLJ !..t Dar es Sala.om,1 Date& 8/11(192~

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