

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: RAMADHANI, Ag. C.J., MFALILA, J.A., And SAMATTA, J.A.)

CIVIL APPEAL NO. 53 OF 1996

BETWEEN

MOHAMMED SHABANI APPELLANT

AND

ZAHARANI MOHAMMED RESPONDENT

(Appeal from the decision of the High
Court of Tanzania at Dar es Salaam)

(Bahati, J.)

dated the 10th July, 1990

in

Civil Appeal No. 5 of 1988

J U D G M E N T

RAMADHANI, Ag. C.J.:

This is a protracted matter having started in the Primary Court of Mvomero, Morogoro, some time in 1986. The judgment of the High Court was delivered on 10/7/1990. The respondent, Zaharani, successfully sued the appellant, Mohammed, for trespassing on a piece of land given to him under an offer of a right of occupancy No.264730 of 11/11/1983. On appeal to the District Court by Mohammed, that decision was reversed. However, the High Court, on a second appeal, reinstated the judgment of the Primary Court and hence this appeal.

The appellant was represented by Mr. MKate, learned advocate, while the respondent appeared in person. Mr. MKate had two grounds of appeal but we think that the fate of the appeal hinges on the first ground:

That the Primary Court of Mvomero, had no jurisdiction to entertain the case on the grounds that the suit land was held on a right of occupancy granted by the Morogoro

Land Authorities under the Land Ordinance
under Hati No. 264730 of 11/11/1983.

Mr. Mkate cited to us sections 18 and 63 of the Magistrates Courts Act, 1984, as his authority for the proposition contained in that ground. The respondent, being a layman, did not advance any legal arguments.

Now, section 18 provides:

18.-(1) A primary court shall have and
exercise jurisdiction -

(a) in all proceedings of a civil
nature -

(i) where the law applicable
is customary law or
Islamic law:

Provided that no primary court
shall have jurisdiction in any
proceedings affecting the title
to or any interest in land
registered under the Land
Registration Ordinance; (emphasis
is ours).

Again section 63(1) of the same Act provides:

Subject to the provisions of any law for the
time being in force where jurisdiction in
respect of the same proceedings is conferred
on different courts, each court shall have a
concurrent jurisdiction therein.

Provided that no civil proceedings in respect
of marriage, guardianship or inheritance
under customary law, or the incidents thereof,
and no civil proceedings in respect of
immovable property, other than proceedings

relating to land held on a Government lease or a right of occupancy granted under the Land Ordinance or proceedings under section 22 or 23 of the Land Ordinance shall be commenced in any court other than a primary court unless the Republic is a party thereto or unless the High Court gives leave for such proceedings to be commenced in some other court.

It is palpably clear from the two provisos quoted above that primary courts do not have jurisdiction to conduct proceedings on immovable property registered under the Land Registration Ordinance or held on a Government lease or a right of occupancy under the Land Ordinance. In the present case the respondent has been granted an offer of a right of occupancy under the Land Ordinance since 11/11/1983.

No evidence has been adduced to show that the High Court has given leave to commence these proceedings in the Primary Court. Therefore, we agree with Mr. Mkatte that these proceedings were started in a wrong forum and they are thus a nullity. We hereby quash them. Whoever, is desirous of filing fresh proceedings may do so, in a proper venue. Each party is to bear its own costs.


DATED in DAR ES SALAAM this 31st day of August, 1999.

A.S.L. RAMADHANI
Ag. CHIEF JUSTICE

L. M. MFALILA
JUSTICE OF APPEAL

B. A. SAMATTA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


(A.G. MWARIJA)
DEPUTY REGISTRAR