

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 81 OF 2001
In the Matter of an intended Appeal
Between

ALEX MAGANGAAPPLICANT
AND
DIRECTOR MSIMBAZI CENTRE.....RESPONDENT

**(Application for leave to appeal to Court of
Appeal of Tanzania from the Ruling
of the High Court of Tanzania
at Dar es salaam)**

(Manento, PRM/Extended Jurisdiction)

dated the 2nd day of June, 1998
in
Civil Appeal No. 76 of 1997

RULING

MROSO, J.A.

The applicant owned a Plot No. 203 in Kunduchi Area, Dar es salaam City. In September, 1996 he agreed to sell it to the Director, Msimbazi Centre, an institution of the Catholic Archdiocese of Dar es salaam. The agreed sale price was T.Shs. 23,000,000/-. Half of the sale price that is T.Shs. 11.5 million, was paid at the signing of the sale agreement. The remaining T.Shs. 11.5million was to be paid upon the consent for the transfer of the title of ownership to the respondent being obtained. The applicant was to facilitate the process of obtaining the consent of the Commissioner for Lands for the transfer of title.

It would appear however, and it is not disputed by the applicant, that subsequently his title to the plot was revoked. The Registered Trustees of the Archdiocese of Dar es salaam then applied to the Commissioner for Lands to be allocated the plot after the applicant's title was revoked. The Registered Trustees of the Archdiocese of Dar es salaam was duly granted a right of occupancy on part of what used to be the applicant's plot. When the applicant found out that the Registered Trustees of the Archdiocese of Dar es salaam, the juridical person of the Church which could own real property on behalf of the Catholic Church in Dar es salaam, already had title on what used to be part of his Plot No. 203 Kunduchi Beach, he considered that he was then entitled to get from the Church the balance of the sale price, that is T.Shs. 11.5 million. He demanded for such payment but the Church declined to pay. He believed the Church in the name of the Director of Msimbazi Centre with whom the sale agreement was entered, had acted in breach of the sale agreement. He therefore filed a case in the Court of Resident Magistrate, Kisutu seeking among other relief's a temporary injunction to restrain the Director, his agents, servants and attorneys (sic) whatsoever from constructing any buildings, entering on doing anything on Plot no. 203 Kunduchi Beach Dar es salaam.

The Court of Resident magistrate declined to grant the order sought and in an appeal which was heard by A. R. Manento, PRM with Extended Jurisdiction as he then was, the applicant was again unsuccessful. He sought to appeal against the decision of the Court of Resident magistrate with Extended

Jurisdiction and, therefore, duly filed a notice of appeal. Since such an appeal to the Court of Appeal would be a second appeal, he sought in the High Court leave to appeal in conformity with section 5 (1) (c) of the Appellate Jurisdiction Act, 1979. The High Court, Chipeta, J., dismissed the application although on a misconceived preliminary objection. The applicant has now come before a single judge of this Court to seek leave to appeal.

The applicant said he had three reasons (actually only two) for the intended appeal. First, he alleges that a counter-affidavit which the respondent filed on the Court of Resident Magistrate was defective and ought not to have been acted upon by the court. Secondly, that since the respondent in the name of the Registered Trustees, Archdiocese of Dar es Salaam had already obtained title to the plot, he, the applicant was entitled to be paid the second and final installment of the purchase price.

As was correctly observed by Mr. Mbuya, learned advocate for the respondent, an application for a temporary injunction presupposes an eventual permanent injunction would be obtained. The question is whether in the factual position obtaining in the matter an eventual permanent injunction is possible. If the applicant's title to the plot was revoked the legal position is that he had nothing to pass on to the respondent. At the time the respondent was given title to the plot the applicant no longer had title to it.

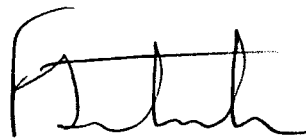
The applicant alleges that there was conspiracy between the respondent and the ministry of Lands authorities to defraud him of his plot by revoking his title and then grant title to the respondent. If that was the case the applicant may wish to prove that by suing the people he believes defrauded him. But until he succeeds to prove that in a court of law, the legal position remains that he never transferred title to the respondent and, therefore, there would be no basis for a court to grant the temporary injunction which he sought. It follows that it would be futile for this Court to grant him leave to appeal against the order refusing him a temporary injunction against the respondent.

This application is dismissed with costs.

Dated at Dar es salaam this 10th day of September, 2003

J. A. Mroso
JUSTICE OF APPEAL

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


F. L. K. Wambali,
DEPUTY REGISTRAR
COURT OF APPEAL