

**IN THE COURT OF APPEAL OF TANZANIA  
AT MWANZA**

**(CORAM: MZIRAY, J.A. MWAMBEGELE, J.A. And KWARIKO, J.A)**

**CIVIL APPEAL NO. 229 OF 2017**

**MASUMBUKO SENGHEREMA**

**(Administrator of the estate of the late**

**Makungu Sengerema) ..... APPELLANT**

**VERSUS**

**THE REGISTERED TRUSTEES,**

**ISLAMIYA EDUCATION FOUNDATION..... RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania at Mwanza)**

**(Mwangesi, J.)**

**dated the 5<sup>th</sup> day of August, 2014**

**in**

**Land Appeal No. 4 of 2010**

.....

**JUDGMENT OF THE COURT**

8<sup>th</sup> April & 11<sup>th</sup> 2019

**MZIRAY, J.A.:**

The appellant, acting as the administrator of the estate of the late Makungu Sengerema, is challenging the decision of the High Court of Tanzania at Mwanza (Mwangesi, J. as he then was) in Land Appeal No. 04 of 2010 delivered on 5<sup>th</sup> day of August, 2014. The suit commenced as Application No. 31 of 2007, in the District Land and Housing Tribunal for Mwanza at Mwanza, wherein the respondent, the Registered Trustees of Islamiya Education Foundation, allegedly owner of plot No 585 Block KK

Nyakato, Mwanza City (the plot in dispute) sued Makungu Sengerema for an eviction order and that the structures erected thereon be demolished. The appellant filed his defence resisting the claim. In addition to that, he filed a counter-claim, claiming ownership of the plot in dispute alleging that the plot in dispute belonged to him and that he had not been paid compensation on the same. He claimed for the re-possession of the plot and/or as a lawful owner of the said plot be compensated for the same as well as the two tombs, plants, four houses on the plot and he be paid transport allowance.

After a full trial, the District Land and Housing Tribunal dismissed the counter-claim and upon being satisfied that after the valuation, the appellant was duly compensated then, the case was decided in favour of the respondent. Dissatisfied, the appellant lodged Land Appeal No. 04 of 2010 in the High Court to challenge the decision of the District Land and Housing Tribunal. The High Court dismissed the appeal for want of merit. Still dissatisfied, the appellant as hinted earlier on, acting as an administrator of the estate of the late Makungu Sengerema, filed this second appeal.

In his memorandum of appeal, the appellant through the services of Mr. Matiku, learned advocate, from Matiku & Associates Advocates lodged two grounds of appeal thus:

- 1. That the first appellate court erred in law for failure to see that there was no legally recognized valuation done on behalf of the appellant on the dispute land.*
- 2. The second appellate court erred in law when failed to hold that the purported compensation was unlawful.*

When the matter came up for hearing, Mr. Serapian Matiku, learned advocate, represented the appellant whereas, Mr. Salum Amani Magongo, learned counsel, appeared and argued the appeal for the respondent.

Both learned counsel filed written submissions in support and against the appeal. In his submission to support the first ground of appeal, Mr. Matiku faulted the decision of the first appellate court for failure to see that there was no legally recognized valuation report done on behalf of the appellant in respect of the land in dispute. He argued that the valuation report was not in accordance with the principles of law. Firstly, he said compensation was done out of the prescribed time. He pointed out that the valuation report was prepared in 1998 and the compensation was paid in

2003. He asserted therefore that the compensation was not prompt as was effected after elapse of six months from the date the valuation report was made. Secondly, that the effected compensation was incomplete. He submitted that only plants were compensated. The tombs and four houses on the plot were not compensated. Since the appellant was not fully compensated for the unexhausted improvements on the plot, then, the compensation was not valid as it contravened the provision of section 14 (b) of the Land Ordinance, he argued. To buttress his argument, he referred this Court to the case of **Lalata Msangawale v. Henry Mwamlima** [1979] L.R.T. 3.

With regards to the second ground, the learned counsel submitted that since the compensation was paid to Makungu Sengerema, who was not by then, an administrator of the estate of the late Madiba Sengerema, then, it cannot be said that the late Madiba Sengerema was duly and legally compensated.

Mr. Magongo, learned advocate, on his part, supported the decision of the High Court. He opposed the first ground of appeal stating that the same is baseless and unfounded in the sense that the failure to pay compensation promptly was a result of the demise of the person in

occupation and therefore, the payment had to await the appointment of the administrator of his estate. He submitted that, in terms of section 14 (b) of the Land Ordinance, the respondent was duty bound to pay compensation for all unexhausted improvements and that was exactly what the respondent did. The respondent paid all what was contained in the valuation report including the plants and the structures erected on the plot as testified by PW1, PW2, PW3 and clearly shown in Exh. P2 and P10.

As to the second ground, the learned counsel submitted that the complaint to that effect is of no merit at all. He submitted that the appellant was the one who received the compensation as such therefore, he ought to have remitted the same to the estate of the late Madiba Sengerema, the estate on which, he had been appointed to administer. He pointed out that the appellant's action of coming to court claiming compensation which he had been paid is nothing but a clear cut of ill motive to have unfair enrichment.

We have carefully considered the evidence on record, the exhibits tendered as well as the arguments both in support and against the appeal. There is ample evidence from Sadick Mnamo (PW1), Hawa Paulo (PW2), Jonas Shilangila (PW3) and Wilbard Mugoya (PW4); a valuer from the City

Council that the valuation report was made in 1998 and that the appellant was compensated in 2003. The appellant however did not dispute the fact that payment to compensate the land in dispute was made and effected in 2003. The cause for the delay in effecting payment was obvious and explained that the person in occupation demised, as a result, the payment had to await the appointment of the administrator of his estate who was appointed in 2004. Looking at the valuation report, the evidence of PW1, PW2, PW3 and PW4, it is obvious that compensation was paid in respect of the plants and the structures erected thereon.

Having considered such evidence and the valuation report, we are of the settled view that the delay in effecting payment was with sound reason and the fact that compensation was paid for all unexhausted improvements, then, this ground of appeal must fail.

As to the second ground of appeal, we are in agreement with the submission of Mr. Magongo that it is the appellant who received the compensation. Since he was the one who received the compensation and the one duly appointed to administer the estate of the late Madiba Sengerema, he was duty bound to have remitted the money he received as

compensation to the deceased's estate. On that basis therefore, this ground of appeal is without merit.

In the light of the above, this appeal is bound to fail. We therefore dismiss it with costs.

**DATED at MWANZA** this 10<sup>th</sup> day of April, 2019.

R. E. S. MZIRAY  
**JUSTICE OF APPEAL**

J. C. M. MWAMBEGELE  
**JUSTICE OF APPEAL**

M. A. KWARIKO  
**JUSTICE OF APPEAL**

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



  
B. A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**