

IN THE HIGH COURT OF TANZANIA

AT MWAZA

(LAND DIVISION)

LAND APPEAL NO. 18 OF 2008

(Appeal from the decision of the District Land and Housing Tribunal for Mara at
Musoma in Land Application no. 43 of 2006)

IBRAHIM MUJORA.....APPELLANT

VERSUS

MKIRYA MAHIMBO.....RESPONDENT

JUDGEMENT

L. Mansoor, J.

This is an appeal from the decision of the District Land and Housing Tribunal for Mara at Musoma in Land Application No. 43/2006.

The factual background of this matter is that, the Respondent Mkiryah Mahimbo purchased the business premises “banda” located at Plot no. 45, Nyerere Road Musoma Mjini, from one Mugeta Gamaka. The sale agreement between Mugeta Gamaka and the Respondent was witnessed by the Appellant. This Agreement reads as follows:

21/06/1998

YAH: MAUZIANO YA BANDA LA BIASHARA YA MGAHAWA

Mimi Mugeta Gamata, kwa hiari yangu nimeamua kumuuzia Ndg. Mkirya Mahimbo banda langu la biashara lililopo nyumba No. 45 Nyerere Road kwa thamani ya T.shs 350,000/= (laki tatu na hamsini elfu).

Nimepokea taslimu sh. 300,000/= (laki tatu)

Baki sh. 50,000/= (elfu hamsini)

Makubaliano haya yamefanyika chini ya mashahidi wafuatao

Muuzaji: Mugeta Kamaka

Mnunuzi: Mkirya Mahimba

Mashahidi: 1. signature of Ibrahim Mujora

2. Hamisi Hamisi

The land belongs to the family of the Appellant, and it was the Appellant who constructed the banda and later he sold this banda to Mugeta Gamata, who in turn sold the banda to the Respondent. He was the witness to the sale agreement as shown in the sale agreement reproduced herein above.

The Respondent states that he demolished the banda and constructed the new one, he installed the electricity and water and the business flourished. The Appellant states that since the land belongs to his family, the Respondent was told by Mugeta Gamaka that he should be paying rent to the Appellant. The Respondent has been paying rent to the Appellant as asked. The rent in the first years was Tshs 8,000 per month in the year 1998, in 2002 the rent was increased to Tshs 10,000 per month, and in the year 2003, the rent was increased to Tshs 13,000 per month. In 2004, the rent was increased to Tshs 30,000. The Respondent refused to pay the increased amount, the Appellant filed a case No. 5/2004 at the Regional Housing Tribunal of Mara at Musoma. In the judgment of this case the Respondent agreed that he was the tenant of the

banda, and he was contesting the arbitrary increment of rent from Tshs 13,000 per month to Tshs 30,000 per month;

I shall reproduce the contents of paragraph 4 of the judgment of Rent Application no. 5/2004, where the Respondent said, and I quote:

“the respondent testified that, he is the tenant to the premises, and he pays rent to the applicant, since 1998, he paid Tshs 8000/= per month, then Tshs 10,000 per month in March 2003, he raised rent to 13,000/= per month, and he electrified the premises by his own costs, and he asked the applicant who uses electricity and other beneficiaries to contribute to the payments of electricity bills, he was aggrieved and raised rent to 30,000/= and when he refused to pay, he asked him to vacate”

The Tribunal refused to confirm the increased rent and ordered that the rent of Tshs 13,000 per month should subsist. Aggrieved by this decision, the Appellant appealed to the Housing Appeals Tribunal, Housing Appeal No. 50/2005, in this Appeal, the Judge had said the following:

“We also observe that after the respondent had purchased the suit banda from Mugeta Gamata on the 21.06.1998 at a price of Tshs 350,000, the appellant had no right to claim for any rent for the banda or land rent from the respondent. The appellant who was merely appointed by his clan to look after the property of their deceased father but failed to apply to court of law for his appointment as an administrator has no locus to any property that was left in the estate of the late father of the appellant. He is enjoined to follow the law....”

(emphasis mine)

The appeal was dismissed with costs.

In the above cited case, the banda was already declared to be the property of the Respondent, and that he was not supposed to pay any rent to the Appellant. The Appellant was declared as having no locus to sue on behalf of his late father without proper letters of administration. The decision of this case remained unchallenged, as the Appellant did not appeal. The decision of the Appellate Housing

The meeting of the elders of the village cannot invalidate the decision of the Courts; hence the attempted mediation was null and void.


The Respondent was however right in demanding compensation for loss of his properties, and the District Land Housing Tribunal was right to order that Ibrahim Mujora to pay the Respondent Tshs 3,430,000 as damages for breaking the banda which was lawfully owned by the Respondent as declared by the Competent Tribunal. The Trial Tribunal was also correct in ordering that Ibrahim Mujora and the Musoma Municipal Council to pay the respondent a daily profit of Tshs 25,000 per day from July 25, 2006 up to the date of judgment of the District Land and Housing Tribunal. The District Land and Housing Tribunal was also correct in ordering that Ibrahim Mujora and the Musoma Municipal Council to pay the costs of the suit.

grounds of appeal raised by the Appellant in this case should have been the grounds of Appeal for Housing Appeal No. 50/2005 had the Appellant preferred an Appeal. This Court had no jurisdiction to reverse the judgment and orders of the Housing Appeal Tribunal passed in Housing Appeal No. 50/2005.

Accordingly, this appeal is dismissed with costs.

Appeal dismissed.




Latifa Mansoor,
JUDGE
24 October 2012