

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

**AT TABORA**

LAND APPEAL NO. 22 OF 2012

(ORIGINAL LAND APPLICATION NO. 65/2011 TABORA DLHT)

BONIPHACE LUGARI .....APPELLANT

VERSUS

THE CHAIRMAN KALIUA VILLAGE COUNCIL .....RESPONDENT

**JUDGMENT**

03<sup>rd</sup> Dec and 06<sup>th</sup> Feb 2014

**S.M.RUMANYIKA, J**

Boniface Lugale (appellant) contests, through the services of Mr. Katabazi learned advocate, the 12 – 03 – 2012 judgment and decree of the district land and housing tribunal Tabora (DLHT). Having upheld, and this is its background, that the decision of Kaliua ward tribunal took no cognizance of the Kaliua ward development council. Having allocated the disputed land to the present appellant. The reason being, as will demonstrate shortly herein after, that the ward authority had no legal mandate of allocating any village land to anybody.

There is a lengthy nine (9) – ground amended petition of appeal. However, but without missing a point, I think it could be condensed to only four (4) grounds of them. Namely:-

- (i) Failure by the DLHT not holding that the trial tribunal was not properly constituted. As the impugned decision was actually not made by the Chair who tried the dispute.
- (ii) Failure by the DLHT, not holding and find that the disputed land belonged since 1960, to the Ward Executive officer. And therefore properly allocated by them to the appellant.
- (iii) Error by the DLHT whereby too, the respondents had blessed the disposition. Therefore ought be estopped from denying the truth.
- (iv) Failure by the DLHT to evaluate the evidence on record properly.

As said, Mr. E.G. Katabazi learned counsel represents the appellant. Mr. Abass Haruna, Chairman of the respondents appears on that behalf.

The parties submitted at the hearing as follows: Mr. Katabazi contends that having commenced the proceedings, Mr. Madua R. Matawalo should have concluded the matter. Not by Mr. Bambo M.K.Mayengo, a mere member of the trial tribunal who simply

presided over at a later stage. Not even duly appointed by authority (the District Council). His decision was null and void.

That the appellant's 8 year undisturbed occupation of the disputed land could not be shaken now. The suit plot, then owned by the respondents was sold by duly floated tenders by the Ward. Consented to and approved by the respondents. That such land according to the villages Act, 1975 belongs to the village. But the disputed one was already allocated to the ward.

Moreover, Mr. Katabazi cited authority in the case of Amin Rajab Jumla V. Thomas Amri (1990) TLR 58. In that the village council may allocate land to people. But had no powers to simply take it away and re – allocate it just like that.

Counsel asked me to allow the appeal, or in the alternative order a refund to the appellant of shs. 960,000/= being the allocation fee ever paid by him, and compensation.

On his part Mr. Abass Haruna submitted that the records spoke loudly. That as long as the disputed land belonged to the respondents, the ward development council was not entitled to decide otherwise. Nor had his predecessor in office ever blessed the disposition/sale. No authentic documentaries except the purported letter by the juniour VEO that were available.

Examined by court, Mr. Abass Haruna admitted, saying that at the material meeting, he consented to the disposition reluctantly though. That is it.

It is quite evident, and therefore not disputed, that the disputed land was sold, and the appellant occupied it effective from 31.12.2003. The Kaliua Ward being the allocator. Whether or not the respondents approved it/consented to the transaction is immaterial. Much as the latter disown the story. I will come back to this point just at a later stage.

On ground one – whether the trial tribunal was properly constituted. Indeed it was! The said Bambo M.K. Mayengo did hear the case only partly. Also Madua R. Matawalo heard the remaining part of it. There are no letters of appointment of the two as chairmen. Mr. Madua R. Malawalo could be one yes! So that whatever was done by Bambo M.K. Mayengo is a nullity. But even by expunging such portion of the proceedings, yet still, the evidence will remain as I am about to demonstrate, that the Kaliua Ward authority abused the powers of allocating the village land. Which point suffices to dispose the appeal. For that reason the ground fails.

I will add also, that every public powers must have a lawful trace. A Self appointed judge can, in the real sense of the word, not be a judge. However good judgment one might have made.

Now the issue is whether the ward authority (WDC) had a land to allocate the appellant. In fact it had nothing. The law (S.8 (1) Act No. 5 of 1999, cap. 114 R.E 2002 cuts a long story short:

The village council shall, subject to the provisions of this Act, be responsible for the management of all village land.

In other words therefore, any land other than a surveyed land located in a village, belongs to the respective village. No body else can take it away or otherwise dispose it. Or else the reallocation if any, will be a nullity. In effect the appellant had no land allocated to him. As the WDC had nothing to give. It is the village council that is mandated to allocate it. Subject to approval of course by the material village general meeting.

There could be evidence to show that at times, the respondents and the world at large, recognized the appellant being owner of the disputed land yes! But that one alone, can not per-se, prove ownership. Needless to say about the respondents' consent on the purported reallocation of the land by the said WDC. It is cardinal principle, and I don't think for me, it is compelling to cite any authority, that the doctrine of estoppel cannot operate against the law.

However, being a bonafide land allocatee, it is my order, that the appellant is entitled to refund, as suggested by Mr. Katabazi, of

shs. 960,000/=. Being fee for the purported allocation. Leave alone compensation for such an exhaustive improvements one might have effected on the disputed land. Up to the time the dispute arose. Appeal dismissed to such extent. With no order for costs. It is so ordered.

R/A explained.

**S.M.RUMANYIKA**

**JUDGE**

**24/1/2014**

Delivered under my hand and seal of this court in Chambers this 6/2/2014. In the presence of Mr. A.G. Katabazi. The respondents are absent.

**S.M.RUMANYIKA**

**JUDGE**

**06/2/2014**