

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT TABORA

LAND APPEAL NO. 32 OF 2012

(Arising from Tabora DLHT Land Application No. 46/2010)

HAMIDU MRISHOAPPELLANT

VERSUS

TABORA MUNICIPAL COUNCIL.....RESPONDENT

JUDGMENT

18th Feb & 5th May 2014

S.M.RUMANYIKA, J

Hamidu Mrisho (the Appellant) had his application dismissed. It was for a declaratory order that plot No. 120 "P" Minazi Mikinda area belongs to him, the respondents Tabora Municipal Council be compelled to issue him the respective letter of offer costs of the case and as usual, the usual alternative reliefs. He challenges the judgment and orders of the District land and housing tribunal – Tabora (DLHT) dated 23 – 02 – 012. He appears in person Mr. G Mwambage learned defence counsel appears for the Respondents.

The grounds of appeal are mainly two (2).

- (1) Error in law and in fact by the trial learned chair. Having held that plot No. 59 Block "E" Zaramo street never existed.
- (2) Error in law and in fact by the learned trial chair. Having failed to evaluate the evidence adduced properly.

The Appellant, when the appeal was called on for hearing made no submissions. Mr. Mwambage submitted that it was clearly witnessed that plot No. 59 "E" Zaramo street never existed, and if anything, it was allocated to him by the District Commissioner Tabora. That it was dictates of the practice that land be allocated in writing. Not orally as urged, as the Appellant would like this court take it, and trust. Insisted Mr. Mwambage .

In his response, the Appellant submitted that the 1st two plots allocated to him earlier on were not free from encumbrances. But the disputed one, for which the Respondents the then District land officers' successors in office withheld the letter of allocation.

The pivotal issue is whether the disputed plot was duly allocated to the Appellant. Whether or not allocated by the District Commissioner is immaterial. This I will explain shortly herein after.

It is evident that whereas the Appellant claims to have the disputed plot allocated to him orally by the District Commissioner's land office, in lieu of the 1st two plots which turned out as having

some encumbrances, the Respondents refute the allegations entirely and deny any liabilities whatsoever.

The sub issue follows thus – whether the Respondents as custodians of land in the locality can step in the shoes of the District Commissioner. As successors in office. The answer is simple! It is common knowledge, and this one the learned trial chair had it mind, that before the local government (the Respondents for that matter) came in, and this fact Mr. Mwambage never disputes much, all land affairs used to be governed by the District land office under the respective District Commissioners as custodians. This function then, though still under the Regional administration and local government, got shifted to the Respondents. It follows therefore, that the moment the Respondents took over, the latter should have also assumed the function, assets and the existing liabilities.

Land officers are the sole custodians, of land registers. It cannot be a duty of an individual newly allocated to prove physical and actual existence of a plot. Once one pleads, and has shown the genuine documentary evidence allocating him the plot, he is "home and dry". Only the land officer is entitled to verify it and physically allocate the same. Whether or not the plot was non-existent or improperly sort of revoked and reallocated to else body notwithstanding! The right of a subject to any plot subsequent to revocation is disquise accrues from the moment he is allocated if any, the non-existent plot.

Nevertheless, the Appellant did not have, and on this one the trial court hinged its decision, any documentary evidence it being for the non-existent, or at all, in respect of such plots allegedly double allocated by the Respondents. The Appellant did not tender any copy of letter of application in evidence. Leave alone any material correspondences between him and the respondents/ predecessors thereof. As Dw1 testified that the Appellant had applied for, and no plot was allocated to him.

At best there were, only attached to the application/complaint, the three: (1) Letter of offer in respect of plot No. 59 Block "E" Zaramo street – Tabora Municipality issued on 14/09/1981 (2) Some Exchequer receipts related to the said Plot No. 59 and (3) Copy of notice of intention by him to commence legal proceedings dated 25/01/2010. That is it. Pleadings or annexures thereto are, in effect no evidence unless it is duly tendered, tested by way of cross examination in court, and it is admitted as such or court otherwise makes a ruling on that one. Indeed this was not done. I will hold as hereby do, that in effect, the appellant lead no evidence, and if anything, it was not taken by the trial tribunal.

I will, in a nutshell, nullify the proceedings in particular from where the prosecution case started. The Appellant has, if so wishes, to tender the documentary evidence, then the court do all the

needful. The impugned decision is quashed and orders set aside. The appeal having been so disposed of, I will make no order for costs.

R/A explained.

S.M.RUMANYIKA

JUDGE

04/05/2014

Delivered under my hand and seal of the court in open court this 05/05/2014. In the presence of Mr. G.Mwambage and the Appellant.

S.M.RUMANYIKA

JUDGE

05/05/2014