

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

LAND APPEAL NO. 41 OF 2013

(Original Kigoma DLHT Land Application No. 17/2005)

HURUMA SHIRIMAAPPELLANT

VERSUS

PILI SHABANIRESPONDENT

JUDGMENT

9th May & 9th June, 2014

S.M.RUMANYIKA, J

Huruma Shirima (the Appellant), lost the battle on 12.11.2007, at the District land and housing tribunal – Kigoma (the DLHT). Over Plot No. 329 Mwasenga area Kigoma Municipality (the disputed plot). Pili Shaban got it. He is not happy. Here he is, with six (6) grounds of appeal.

1. The trial chairman having entertained a time barred suit (the 12 years limit rule).
2. The trial chairman having misdirected himself that the Appellant's title had been revoked. While, it is only Mahoho Msibas that was ever revoked.

3. The trial chairman, erroneous findings that the Respondents' suit house was in the middle of the road.
4. The trial Chairman having held that the Respondent owned the disputed plot under customary tenure. While it had been so long occupied by the Appellant's father. And now registered in the Appellants' name.
5. That the trial Chairman's order condemning the Appellant for the costs was erroneous.
6. That the decision of the DLHT and the weight of evidence on records were at variance.

Mr. Method R.G. Kabuguzi learned counsel appears for the Appellant. The Respondent is represented by Mr. Katabazi Advocate.

The parties having agreed at the hearing, and court blessed it on 9th May, 2014 they argued the appeal by way of written submissions.

Mr. Kabuguzi abandoned ground numbers 1, 3 and 4. He argued the remaining ones combined.

That the trial chair never ever evaluated the evidence on record properly. Much as the disputed plot was duly and formerly allocated by authorities to the Appellant way back 20/07/1998 in which case any Land Officers' evidence (like Pw4) to the contrary was fishy. And so was the Respondent's and witnesses' flimsy evidence.

That the Respondent had no **locus standi**. But if anything, only one Abdul Sakamba. Nevertheless, the Respondent's claims just six (6) years later, was both afterthought and doubtful.

Mr. Katabazi submitted that the Respondent's evidence was credible. Having the authorities disowned the Appellant's title thereon. Hence failure to prove title on the balance of probabilities, by the Appellant. The name of Mahoho Msiba in the letter of allocation notwithstanding. Only the plot number counted. And the material land allocating authorities (Pw4), offered the corroborative evidence on this one. In which case the trial chair was justified in condemning the Appellant for costs of the suit. Submitted the learned counsel.

Now the central issue is whether the disputed plot belonged to the Respondent.

In fact, and the findings of the DLHT will show that the Respondent owned the disputed plot customarily. Before the same was allocated formerly, fraudulently though, by authorities to the Respondent (evidence of Pw4). All this is a matter of factual findings that can not, unless under special circumstances be reversed by appeal court. I just cannot see such peculiar circumstances under which to alter the lower court's findings. And this is trite law.

On the issue of **locus standi**; the letter of Revocation of title over the disputed plot might have been addressed to else body. Other than

the Appellant. Yes! But for the same plot. Provided it is only that was intended by the material land office (Pw4). Mr. Kabuguzi does not tell that not only the name of the allocatee, but also the Plot number, for whose allocation, and now the title being revoked, was one and the same. On this one, Mr. Katabazi was right. As such the Land Officer's evidence corroborates the Respondent's, quite squarey.

After all the said revocation having been not otherwise challenged, the present claims by the Appellant can not have the legs upon which to stand. Ground 2 fails.

As of the issue of the DLHT condemning the Appellant for the costs. This point needs not to detain me. Costs are, as a general rule, awardable against the loser. Save for special circumstances, whereby reasons not to, were to be recorded by the court. Mr. Kabuguzi never demonstrates any special circumstances under which the judgment debtor (Appellant) should not have been condemned for the costs. Ground 5 of appeal fails.

The entire appeal falls short of merits, it is dismissed with costs. Decision of the DLHT and orders upheld.

R/A explained.

S.M.RUMANYIKA

JUDGE

5/06/2014