

**IN THE HIGH COURT FOR ZANZIBAR  
HELD AT CHAKE CHAKE-PEMBA  
CIVIL APPEAL NO. 20 OF 2013  
FROM ORIGINAL IN CASE NO.15 OF 2011  
OF THE LAND TRIBUNAL AT MACHOMANNE  
CHAKE CHAKE- PEMBA**

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|------------------------------------|---|-------------------|
| <b>AFWA SAID SULEIMAN</b>          | } |                   |
| <b>AKIS.NA:- ABDALLA MOHD SAID</b> | } | <b>APPELLANT</b>  |
| <b>V/S</b>                         |   |                   |
| <b>HATOR ALI ABDALLA</b>           | } | <b>RESPONDENT</b> |

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**JUDGEMNT**

**Mwampashi, J.**

The appellant Afwa Said Suleiman successfully sued the respondent Khato Ali Abdalla for trespass in the Land Tribunal at Machomanne Chake Chake. The appellant's case before the Land Tribunal was that part of her plot of land situated at Gombani Korea had been encroached upon by the respondent who had built a house foundation upon it. In its judgment the Tribunal rightly found that the plot of land in disputed belonged to the appellant as the same

had properly been granted to her by the Government. The Tribunal did also find and hold that the respondent is a trespasser and therefore that he had to vacate and remove his foundation from the plot in dispute. Although the Tribunal declared the appellant the winner and the respondent a trespasser it however made an order that the appellant has to pay the respondent Tshs. 2,500,000/= as compensation for the foundation built by him upon the appellant's plot and also that the respondent would remove his foundation from the appellant's plot only after being paid the said compensation by the appellant. It is this order of compensation that has aggrieved the appellant hence this appeal.

Three grounds of appeal have been raised by the appellant but it is a considered view of this court that the three grounds boil to only one ground which is that the Land Tribunal did err in law in awarding compensation to the trespasser.

At the hearing of this appeal Mr. Abdalla Mohamed Said who represented the appellant as her recognized agent prayed for the appeal to be allowed and for the

compensation order made by the Land Tribunal to be set aside because it is unfair. He wondered how the Tribunal awarded compensation to the respondent who is a trespasser. He insisted that the winner must take all.

On his part the respondent prayed for the appeal to be dismissed. He argued that in fact he did not agree with the judgment of the Tribunal to adjudge the appellant the rightful owner of the plot of land in disputed but he could not appeal because the copies of the proceedings and judgment are yet to be supplied to him. The respondent did also submit that the Tribunal order for him to be compensated is justifiable because he built the foundation upon the plot believing that the plot belongs to him. He argued that he did not know that their shamba had been acquired by the Government, surveyed and granted to the appellant. He therefore prayed for the appeal to be dismissed. He also insisted that he is ready to remove his foundation from the plot in question only after being paid the amount ordered by the Tribunal.

According to the Tribunal record the order for compensation was made by the Tribunal after two

members of the Tribunal had opined that since the respondent had incurred costs in building the foundation upon the appellant's plot then Tshs.2,500,000/= has to be paid to him by the appellant as compensation. The Deputy Chairman, as the record show, reluctantly agreed with the two assessors because to his understanding<sup>ing</sup> he was bound to do so because under S.32 of the Land Tribunal Act, 1994 (Act No.7/1994) all decisions made by the Tribunal shall be made by majority vote of the three members of the panel. S.32 of the Land Tribunal Act, 1994 provides as follows:-

***'All decisions of the Tribunal, whether final judgment or interim matter shall be made by majority vote of the tree members of the panel, the Chairman, Deputy Chairman or Magistrate and two assessors. However, the Chairman, Deputy Chairman or Magistrate shall have a deciding vote in all questions of law'.***

In the matter at hand the two assessors had an opinion that despite the fact that the respondent is a trespasser and had built his foundation upon the appellant's plot illegally, still he was entitled to be compensated for his foundation because he had incurred costs in building the

foundation. The learned Deputy Chairman held that because the law under S. 32 of the Land Tribunal Act, 1994 requires that all decisions of the Tribunal shall be made by majority vote then he had no option but to agree with the two assessors. This is where the learned Deputy Chairman went wrong. The learned Deputy Chairman misdirected himself and failed to properly construe S. 32 of the Act. The provision gives him a deciding vote in all questions of law. It is a very settled view of this court that the issue whether a trespasser who illegally makes some developments upon a plot not belonging to him is entitled to compensation or not is a question of law. This issue is not a question of fact or evidence. It is a question of law. Once it is established that a party to a suit is a trespasser and that he has erected his structure upon a disputed land illegally an issue whether such a party is entitled to compensation or not becomes a question of law.

The question here is whether a wrong doer can be allowed to benefit from his wrong<sup>act</sup> at the expense of another innocent person. It is a settled view of this court that it was unfair and not justifiable for the appellant who had been denied the right to use and develop her plot and who had

been forced to institute the suit against the respondent in order to retain her plot to again be punished by being ordered to compensate the respondent who had been declared a trespasser. It is the appellant who did suffer the damage and who, under the circumstances of the case, was entitled to be compensated for the injury or damages suffered. It is more surprising that according to the Tribunal's order even after being paid the compensation by the appellant the respondent was to move out with his foundation. At least it would have been understandable if the appellant would have been allowed to keep the foundation after paying the compensation though still that would be unfair because it would be ~~to~~ forcing her to buy the foundation which might not be in the design of her choice.

For the above given reasons and observations, the order for compensation against the appellant as made by the Tribunal is hereby quashed for being illegal and unjustifiable. The appeal is hereby allowed. The respondent is ordered to remove his foundation from the appellant's plot on his own costs. The appellant is also awarded cost of this appeal and of the lower court.

SGD: ABRAHAM M.MWAMPASHI,J

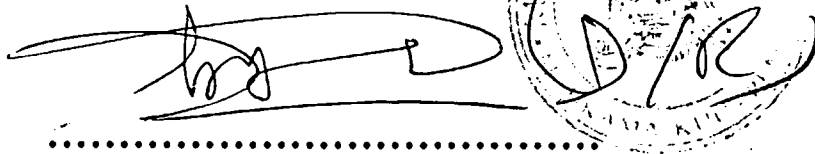
27/06/2014

Delivered in court this 27/06/2014 in the presence of the appellant's agent Mr. Abdalla Mohammed Said. The respondent who was dully notified of the judgment date has not turned up.

SGD: ABRAHAMM.MWAMPASHI,J

27/06/2014

**CERTIFIED COPY OF ORIGINAL.**

A handwritten signature in black ink is written over a circular court stamp. The stamp contains the text 'MAHAKAMA KUU' and 'PEMBA' around the perimeter, with 'D/R' in the center. The signature is a cursive script.

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**HAJI OMAR HAJI (D/R)**

**MAHAKAMA KUU**

**PEMBA**