

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC. CIVIL APPEAL NO. 30 OF 2017

(Arising from Musoma District Court Civil Revision No. 07 of 2015, originating from Nyambono Primary Court Civil Case No. 06/1992)

NYAWABURWA MAJURA KAEMA

(The Administrator of Estate of deceased

FURENGE KAEMA APPLICANT

VERSUS

STEPHEN SAILE RESPONDENT

JUDGMENT

20/09/2018 & 21/01/2019

RUMANYIKA, J.:

The 2nd appeal is against 09/07/2015 judgment and decree of the District Court – Musoma. Upon court overruling the primary Court of Nyambono (the trial court) on a decision arising out of 50 acres of land recovery claim by Steven Saile (the respondent) Nyawaburwa Majura Kaema (Administrator of the Estate of the deceased Furenge Kaema). The latter is aggrieved. Here he is:

The 4 grounds may boil down to two (2), but rephrased as hereunder:

1. that the 1st appeal court erred in law and fact not holding that case was from the very beginning time barred.

2. that the 1st appeal court erred in law and fact not holding that case should not have been instituted against Furenge Kaema (the deceased).

Mr. Chiyengele Wandole learned counsel appeared for the appellant. The respondent appeared in person.

Essentially, Mr. Chiyengele Wandole, but very briefly submitted; (a) that the District court entertained the revision 22 years later i.e. in April, 2015 against the 16th March, 1992 decision. Without extension of time sought and granted (contrary to **Section 22 (4) of the Magistrates Court Act Cap. 11 R.E. 2002**) "the MCA".

That the District court erroneously on 03/04/2015 determined application against a deceased party, and the applicant had the fact w.e.f. 08/03/1998 (see copy of the death certificate). Whereas such other persons interested in the estate should have been availed right to be heard (Section 22 (3) of the MCA). We pray that decision of the District court be quashed with costs. As application for revision was, but afterthought. Submitted the learned defence counsel.

Now with the impugned decision and order, in his own words the learned resident magistrate, rightly so in my considered opinion is on record to have said:-

The respondent in this revision has failed to prove by which legal means he got to the piece of land in question. He never said either he brought (sic) that land, he was gifted or he cleared it ... **The**

respondent only shows that shifted to that land after the death of Sagara in the year 1984 ... Sagara and respondent has no relationship to legalize the respondent ... Therefore the respondent is not the lawful owner of the land in question ... The applicant in other hand, led the relation with Saile who is his father who lived in the land ... and thereafter his brother MsendoSaile ... the applicant was the one automatically had the right upon that land and no one else ...

The issue is whether the disputed land belonged to the appellant. The answer is no! It is cardinal principle that in civil litigation, the degree of proof was only that of balance of probabilities. Whereas the appellant alleged that upon death of one Sagara, whose relationship didn't even establish, he just shifted onto, and occupied the disputed land but had no supporting evidence of one of the legal survivors (if any) of the late Sagara, the appellant would not have proved title. Leave alone balance of probabilities. The respondent on the other hand may have had only leased the disputed land to the appellant but, as alleged, the later resisted and instead claimed title. At least with evidence by respondent that his father (late Saile) owned it, his brother Msendo Saile took it over and now turned out hostile, unlike the appellant, the respondent may have had on the balance of probabilities proved his case.

With regard to the issue of locus standi, there was on record also Probate Cause No. 1 of 2016 of Nyambono Primary Court. Whereby the respondent was on 18/04/2016 appointed administrator and was granted letters of administrator with respect to Furenge Kaema (died on 08/03/1998). Ground 2 of appeal is dismissed.

Also there is on record Misc. Civil Application No. 30/2017. Extension of time having been sought and granted on 20/04/2017. Ground 1 is dismissed.

Yet there was another point that I would wish making. Judgment or a ruling being a result of revision proceedings? There is in the increase for magistrate using the names interchangeably. This could be considered a minor procedural illegality but in my considered opinion not. Originally judgments and rulings logically are not one and the same. Moreover I wondered how and why wasn't potentially the land matter instituted in appropriate tribunal ?

Decision and orders of the District court are upheld. Appeal is dismissed entirely with costs. Ordered accordingly.

Right of appeal explained.



S.M. RUMANYIKA
JUDGE
13/01/2019

Delivered under my hand and seal of the court in chambers this 21st day of January, 2019 in the presence of appellant together with his counsel Mr. Chiyengele Wandole, in the absence of the respondent.




M.A. Moyo
DEPUTY REGISTRAR
21/01/2019