IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC.CIVIL APPEAL NO. 80 OF 2017

(Originating from Magu District Civil Case No. 13 of 2017)

EZEKIEL DISMAS ..... APPELLANT

VERSUS

MAHUMA NGAGAJA ..... RESPONDENT

JUDGMENT

19/09/2018 &15/01/2019

RUMANYIKA, J.:

Appeal is against ruling and orders of 24/10/2017 of the district court Magu (the trial court). Having, on preliminary points of objection (the p. o) sort of struck out/rejected the plaint for want of cause of action and pecuniary jurisdiction.

The 3 grounds of appeal basically are vague and increasingly confusing such that I could not clearly apprehend what is it that the appellant intended to say. I think he intended to say:-

1. That the trial court denied him right to be heard.
2. That the trial court actually had jurisdiction.
3. That the trial court erred in law and fact in holding that there was a land dispute.

Ezekiel Dismas (the appellant) appeared in person. Mr. Rusasa learned counsel appeared for Mahuma Ngagoja (the respondent).

Mr. Rusasa submitted that as it was ordered and directed, properly so by the trial court, the appellant had no cause of action and that from the start, charges of criminal trespass were not tenable but only a land dispute. Save for the successful appeal No. 33 of 2017 in this court at the time pending. That even when there was cause of action, claims, subject to the 2016 amendments fell within jurisdiction of a primary court. That parties be advised to await for determination by this court of the pending criminal appeal. That his client had occupied and utilized it for 40 years. Nor was the case of a bill of costs.

The appellant only submitted that against all he owned the disputed land for 40 years.

The central issue is whether the appellant had cause of action. The answer is no! Whereas I am aware of a legal principle that in order for courts of law not short circuit cases, they should always not strike out case casually. At times causes of action was not established until at later stages. Yet am of the considered view that claims for specific and general damages allegedly frivolously and vexatiously instituted, the noble tortuous action in my considered view had no cause of action in the eyes of law. Unlike could be the case with respect to the commonly known tort of malicious prosecution. Like Mr. Rusasa learned counsel suggested, only a bill of costs should have served the purposes. The issue of denial of a right to be heard can not arise here. It does not mean however that the law bars such claims. Provided that the plaintiff instituted a case with probable and

reasonable cause (it was, for reasons that will shortly follow a "no case". Ground 1 of appeal is dismissed. So is ground 2 naturally.

With regard to ground 2 of appeal, and, without running risks of pre – empting the said Criminal Appeal No. 33 of 2017 herein the court pending, the fact that the appellant insisted having owned the land, and respondent, on the other hand alleged to have been owning the same for forty (40) years previously, I will now hold that with the obvious reasons, and between them a land dispute, charges of criminal trespass should not have been entertained in the first place. It was incumbent upon them to go to a competent land tribunal with a view to it establishing issue of ownership. Ground 3 of appeal also fails. Parties are once again advised to hold on until the said criminal appeal was finally determined.

The purported appeal is dismissed with costs, here and at the court bellow. Decision and orders of the trial court are, for avoidance of doubts upheld. Ordered accordingly.

Right of appeal explained.

S.M. RUMANYIKA
JUDGE
09/01/2019

Delivered under my hand and seal of the court in chambers this 15th day of January, 2019 in the presence of the respondent and in the absence of the appellant.

THE HIGH COURT OF TANZANIA * MWANZA *

M.A. Moyo
DR
15/01/2019