

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

LAND APPEAL NO. 25 OF 2018

(From the decision of the District Land and Housing Tribunal of Musoma at Mara in Land
Application No. 86 of 2017)

SIMON MACHABA MONGATE APPELLANT

VERSUS

SANKEY BONIPHACE MWAKALOBO RESPONDENT

JUDGMENT

26/09/2018 & 24/01/2019

RUMANYIKA, J.:

Appeal is against the 19/02/2018 decree of the District Land and Housing Tribunal for Mara at Musoma (the DLHT) in a nutshell having ruled, that, as against Simon Machaba Mongate (the appellant) and Sankey Boniphace Mwakalobo (the respondent) lawfully owned Plot No. 56 Block "K" of Magereza Mimitu Area, Mugumu/Serengeti (the disputed plot).

The above named appellant is not happy. Here he is.

The five (5) grounds of appeal essentially around three (3) points as follows:

1. That erroneously the respondent was declared lawful owner of the disputed plot.
2. that the DLHT improperly evaluated the evidence available.

3. that the DLHT erred in not holding that the disputed land was acquired on account of the respondent's failure to develop it.

Parties appeared in person. Additional to his memorandum of appeal, appellant submitted that he had it and never defaulted payment of any land rents and dues. That the bare land had been declared developed. No rent was ever paid by the respondent. That is it.

The respondent submitted that the appellant had been blackmailed. That before was allocated, one should have verified would be third party rights and interests.

Questioned by court for further and better clarification, appellant basically stated that he wasn't sure if any one of the outgoing occupiers was paid compensation.

Evidence on record said that having been, by the local Mugumu Village council allocated to respondent, it was, upon survey divided into 4 plots. Appellant got the disputed land on a ground that it hadn't been developed.

Now, the issue is whether the appellant had proved on balance of probabilities of his case. The answer is, for one main reason no; it is not clear whether for good cause (land not developed) the respondent's title was, on that basis revoked or upon being declared developed and on survey was now allocated to the appellant. In any case therefore, there should have been a set of terms and conditions on occupancy between them stated, a breach of which by respondent giving raise to authorities

revoking and allocate the land to the appellant or, as case may be, upon survey plot(s) accordingly allocated. Subject of course to prompt and adequate compensation (which was not the case) to the outgoing occupier (respondent).

Like the trial chair argued, precisely so in my considered opinion, the appellant may have been allocated the plot yes! But the respondent's title (deemed or granted) right of occupancy should not have been extinguished under the circumstances. Whether or not out of the 4 plots the outgoing occupier retained two (2) is immaterial in my considered view. Much as no single officer from the said Mugumu land allocation authorities appeared in the DLHT to tell it so. Nor did the register say anything about it. It is very unfortunate that like allocators, the appellant bothered not to search for any existing encumbrances.

When all is attempted and said, decision and orders of the DLHT are upheld. Appeal is dismissed with costs. Ordered accordingly.

Right of appeal explained.


S. M. RUMANYIKA
JUDGE
18/01/2019

Delivered under my hand and seal of the court in chambers this 24th day of January, 2019 in the presence of both parties in person.


O.H. Kingwele
DEPUTY REGISTRAR
24/01/2019