

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**LAND APPEAL NO. 06 OF 2020**

(Originating from Land Application No. 41/2013 in Mwanza District Land and Housing Tribunal)

**BALOLE KISUNUNA ..... APPELLANT**

**VERSUS**

**ALOYCE K. MCHILI ..... 1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF MWANZA CITY COUNCIL ..... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR ILEMELA**

**MUNICIPAL COUNCIL ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**09 & 25/06/2020**

**RUMANYIKA, J.:**

It is against judgment and decree of 14/02/2020 of the District Land and Housing Tribunal for Mwanza (the DLHT) with respect to Farm No. 4 of Bwiru Ziواني (the disputed plot) on which Balole Kisununa (the appellant) partly claimed and partly claimed for his deceased mother and brother.

Rephrased, the 6 ground memorandum of appeal revolves around two (2) points: (a) that the DLHT chair improperly evaluated the evidence (b) that the DLHT chair's decision was contradictory as he found that the

1<sup>st</sup> respondent was in breach of agreement but at the same time he found one the lawful owner of the disputed plot.

Whereas the appellant appeared in person, Messrs. J. Wangubo, George Michael and L. Ringia learned counsel appeared for Aloyce K. Mchili, the Director of Mwanza City Council and The Director of Ilemela Municipal Council (the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents), respectively.

Following global outbreak of the CORONA Virus pandemic and pursuant to my order of 14/05/2020 the parties were present online they were heard by way of audio teleconferencing (mobile numbers 0753525195, 0759433246, 0786888610 and 07699560460) respectively.

Additional to his memorandum of appeal the appellant submitted that neither his mother nor brother and himself were compensated else the respondents prove it otherwise.

Mr. J. Wangubo learned counsel submitted; **(1)** that there was nothing to fault the DLHT chair given the 1<sup>st</sup> respondent's non contradicted evidence **(2)** that if anything, Exhibit PE1 was not executed between the appellant and 1<sup>st</sup> respondent although out of it the latter benefited therefore was not privy to the contract **(3)** that the 1<sup>st</sup> respondent's evidence weighed heavier than that of the appellant. That the issue of improper evaluation of evidence inclusive of the letter of the Commissioner for Lands shouldn't have raised **(4)** that the parties were all heard and therefore the case was meritoriously determined **(5)** the compensatory Plot No. 364 at Kangaye was undisputed there.

Mr. George Michael learned counsel chose to reply generally and submitted that the 2<sup>nd</sup> respondent was a stranger therefore wrongly impleaded because she was such an entity independent of the 3<sup>rd</sup> respondent and the disputed land belonged to Ilemela Municipal Council as the two municipal councils were way back year 2013 two separate entities.

Mr. L. Ringia learned counsel also chose to, and he replied generally that initially the disputed land had been allocated to one Kottecha in 1986 then the 1<sup>st</sup> respondent got it from the former now the appellant, the latter's mother and brother having been duly compensated for un exhaustive improvements. That the 1<sup>st</sup> respondent's attempt and promise to compensate them was only good will not legal obligation much as also, the appellant wasn't legal representative of the alleged mother and brother. That is all.

A brief account of the evidence on record reads thus:-

The applicant testified that he inherited the disputed land from deceased father, then in writing on 25/06/2009 the 1<sup>st</sup> respondent offered to take it in exchange of a plot worth shs. 6.0 million plus a 3 room house on Plot No. 394 "B" at Kangaye area but the former did not honor the agreement instead the 1<sup>st</sup> respondent claimed title that he had been allocated the same by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, copy of the letter of the Commissioner for Lands (Exhibit PE2) in the appellant's favor notwithstanding. Mawazo Andrew (Pw2) in effect he supported Pw1's evidence.

Dw1 Frank Peter Kimbokia a business assistant of the 1<sup>st</sup> respondent stated that the disputed land belonged to the 1<sup>st</sup> respondent as for and on behalf of the latter he used to paying land rent therefor, the 1<sup>st</sup> respondent having had compensated all the outgoing occupiers but except the appellant who refused the Kangaye house for that purposes built by the 1<sup>st</sup> respondent for him.

Dw2 John Kusenga Mchili brother of the 1<sup>st</sup> respondent stated that his brother purchased the disputed land (with a small house of the appellant's family) in 2005 from Kotecha. That following an agreement the 1<sup>st</sup> respondent built them (appellants' mother and brother) a house at Buswelu in which they lived except the appellant who, contrary to agreement refused a house at Kangaye.

Essentially the issue is not whether the appellant was lawful owner of the disputed house but whether he was compensated as outgoing occupier.

Like Assessor Methusela and partly Lusato who took cognizance of the 1<sup>st</sup> respondent who had promised to compensate the appellant for the disputed plot but for reasons known to himself later on the 1<sup>st</sup> respondent changed mind, the learned chair also had it in mind but for his paradigm u- turn therefore the contradictory decision. I will quote the chair in part and **verbatim**;

"..... I partly concur with the opinion of my comrade assessors. **This tribunal declares that the 1<sup>st</sup> respondent is the lawful owner of the suit plot No. 4**

**Bwiru, the 1<sup>st</sup> respondent is hereby ordered to immediately perform what he had agreed with the applicant, the applicant to immediately demolish all the developments in the suit plot and vacate the suit plot and the same be handled over to the 1<sup>st</sup> respondent”.**

From the quotation above therefore, having declared one the lawful owner of the disputed plot the DLHT Chair he should not have ordered the 1<sup>st</sup> respondent to promptly compensate the outgoing occupier namely appellant for unexhaustive improvements but at the same time ordered the latter to demolish the existing structure(s). In other words the DLHT chair also took cognizance of letter of the Commissioner for Lands (Exhibit PE2) the prima facie evidence that initially the appellant owned the disputed land therefore before giving vacant possession one deserved right of compensation. The 1<sup>st</sup> and 3<sup>rd</sup> respondents may have had long ago compensated the appellant and company and they were done yes, but although the two were duty bound to, they didn't prove it sufficiently that indeed the appellant was promptly and adequately compensated. With the cumulative effect of all the above said, the issue of the 1<sup>st</sup> respondent's promise to compensate the appellant being optional and a mere good will it was neither here nor there. The issue of the appellant's **locus standi** with respect to plots of the appellant's mother and brother needs not to detain me. Obviously with exception to his own plot, as it now stood, the appellant had no locus standi with respect to the mother's and brother's plots.

In the upshot the appeal is allowed with costs. Like the DLHT ordered, the 1<sup>st</sup> respondent is once again ordered within six (6) months of this judgment to compensate the appellant adequately short of which on expiry of the grace period the transfer of the title to the 1<sup>st</sup> respondent shall be inoperative and of no legal consequences. It is ordered accordingly.

Right of appeal explained.



**S. M. RUMANYIKA**

**JUDGE**

**21/06/2020**

Judgment delivered under my hand and seal of the court in chambers this 25/06/2020 in absence of the parties with notice.



**S. M. RUMANYIKA**

**JUDGE**

**25/06/2020**