IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT TANGA

LAND CASE APPEAL NO. 84 OF 2008

(From the Decision of the District Land and Housing Tribunal of Tanga District at Tanga in Land Case No. 15 of 2007)

AVUNILWA SILAS MAKONO .. .. APPELLANT

VERSUS

1.TANGA CITY COUNCIL .. .. 1ST RESPONDENT
2.MWANSITI AMIRI .. .. 2ND RESPONDENT

J U D G M E N T

PIKIRINI, J:

Aggrieved by the Tanga District Land and Housing Tribunal's decision, Avunilwa Makono appealed to this court. The appellant had two grounds of appeal, which were argued together. The two grounds of appeal were:

1. *That the tribunal erred in law and facts when it decided for the appellant to be compensated and*

be given an alternative plot while he had been in the said land longer than the 2nd respondent.

2. *That the tribunal's decision was against the preponderance of the evidence adduced.*

The appeal was sternly contested by the respondents and Mrs. Kabwanga argued the appeal on behalf of the appellant. Besides, praying for the adoption of both grounds, Mrs. Kabwanga's main argument was that the appellant had been in the suit land longer than the 2nd respondent, therefore the tribunal was wrong ordering for his eviction from the suit land and compensation. According to her, the 2nd respondent was the one to demolish her house erected in the suit land and be moved to another place. She further argued that since that fact was not disputed by the parties as well as the tribunal it was thus wrong for the tribunal to decide otherwise. Moreover, the chairman visited the locus in quo and therefore saw the actual situation.

Furthermore, Mrs. Kabwanga argued that the 1st respondent who is the custodian of all the plots ought

to have found that fact out first before they allocated the 2nd respondent with the said plot and in actual fact the offer issued to the 2nd respondent by the 1st respondent was illegal and invalid. To support her case she cited the case: ***Partman Industries vs Tanzania Manufacturing Ltd [1981] TLR 303*** and ***Frank Safari Mchuma vs Shaibu Ally Shemdolwa [1998] TLR 278.***

Responding to the above submission both respondents refuted that the tribunal erred. They further argued that the rearrangement occurred after upgrading which resulted into people being moved, reallocated or otherwise. The appellant happened to be the victim. However, he was given an alternative plot and was to be compensated. The 1st respondent referred the court to page 4 last paragraph of the tribunal's judgment. It was thus his position that the tribunal's judgment was proper and that the grounds of appeal raised have no merits and they deserve a dismissal.

As for the cited cases, it was his position that they were distinguishable as they do not speak or have

bearing to the case at hand. Taking up from the 1st respondent, the 2nd respondent honing home the 1st respondent's submission, stated that the appellant was victim to the upgrading as he was squeezed between plots number 346 and 344, and since what remained of his plot was not much, he was thus asked to move out by being given an alternative plot which he rejected. The 2nd respondent maintained that the upgrading was Magaoni people wish and all were aware that there would be consequences to the upgrading and they were ready for the outcome that people might be moved, evicted and reallocated. It was therefore her position that the tribunal's decision was proper and need not be upset.

In a brief rejoinder, Mrs. Kabwanga reiterated her submission and prayers but as well asked the court to ignore the 2nd respondent's submission because it came with new issues and evidence which was not adduced before the tribunal hence not part of the record. She maintained her prayer that this appeal has merit and prayed for it to be allowed with costs.

Careful examination of the tribunal record, it was not disputed that the appellant was the first one to be in the area after buying his plot in 1990 while the 2nd respondent came later and bought a piece of land adjacent to that of the appellant in 2002. The chairman was thus correct in concluding that the appellant was there first.

It seems both parties each at their own time applied for proper documents. Without the appellant's knowledge and perhaps the 2nd respondent, since there was no evidence if she was aware of what was going on or was at all a party to it, the 1st respondent divided the supposedly to be one plot into two. The 1st respondent has not disputed that and even if the 1st respondent would, it would not have made sense, they being the custodian of all plots in Tanga Municipal. However, the subdivision carried regardless of the reasons advanced was unlawful. This is because the area subdivided was small and hence the plots created were equally small. From that small-subdivided plot, the 2nd respondent erected a permanent structure

which compelled the appellant to ask for a place in a neighboring plot to put up his latrine.

In my view the 1st respondent opted to maintain squatters while the residents in the area were in for upgrading their area by having it surveyed and mapped. A meeting was convened and all the resident of Magaoni were appraised of the upgrading/survey and its consequences. From the record they seem to have agreed to the consequences that some of the resident's will be moved from one plot to next, completely from the area and be given alternative plots and so forth. Agreeing to that the resident paid for the survey fees and the survey was conducted.

The results of the survey found the appellant to have been squeezed between the 2nd respondent and Michael Hashim occupant of plot no. 346. From the drawings the appellant was indeed squeezed, as he was only ¼ into his original plot while the 2nd respondent was about ¾ and the remaining part was with Michael Hashim. The 1st respondent proceeded to allocate the plot to the 2nd respondent and the

appellant who was the first in the area was moved to be given an alternative plot. The appellant is challenging this decision. His basis being he had been on the said land prior to the 2nd respondent so if its title, he had good title over her.

Without a doubt in my mind, the 1st respondent unlawfully allocated the plot no. 344 to the 2nd respondent who came later in the area. The two cited cases by Mrs. Kabwanga that of ***Patman*** and ***Mchuma*** (supra) were right on the point that;

""An offer made subsequent to the acceptance of a previous offer is invalid and cannot give rise to a title; as the offer to the plaintiff was accepted long before the subsequent offer to the defendant, this subsequent offer was incapable of acceptance giving rise to a valid title"

Though in this situation there were no offer and acceptance per se as was the situation in the above cited cases but the fact that the appellant was there first and the 2nd respondent came later, the fact which

all three conceded to, in my view places the appellant in a similar situation, that he was the one deserving to be allocated the plot and the 2nd respondent be moved and given an alternative plot and not as it is presently. The 1st respondent had in my view unlawfully allocated the plot no. 344 to the 2nd respondent and unjustly moved the appellant from his legally owned property.

Besides, the 1st respondent's move did not appear to me as decision taken wisely as submitted by Mr. Rutengwe in his submission before the tribunal. I am saying so based on the reasoning of the chairman on page 4 of the tribunal's judgment, first, the chairman's review of the situation was that the subdivision had turned the plot into squatter and second, according to the chairman that has defeated the whole purpose of upgrading intended. Third, both the appellant and the 2nd respondent must have not been happy with the situation. And this might be so for the rest of their lives.

Despite the above position and based on the evidence on record, it is evident that the 2nd respondent had

erected a permanent structure and upon visit by the chairman the situation on the ground seem to be more favourable to the 2nd respondent compared to the appellant. This is because what the appellant was left with was too small for any decent undertaking in terms of size and lay out. More so, even without the allocation of the said plot to the 2nd respondent still the appellant would have been in awkward situation, because both plots 345 and 346 had an effect on the appellant's plot after the survey. And this would have still compelled him to demolish his structure so that the re-arrangement and survey conducted could have effective results.

In addition, it would not be prudent and judicious to just order the demolition of the 2nd respondent's house since the appellant was the one supposed to stay behind had the policy to be followed was that of the one first in the area had good title over the one who came later, but there are two reasons why that would not apply in this case; first, the 2nd respondent had already erected a permanent structure. Second, demolition of the 2nd respondent's house would still

not give the appellant his plot back as his plot was gone from the re-arrangement and survey.

The best remedy the appellant could take is to accept the alternative plot allocated and the 1st respondent has to make sure that happens. Additionally, the appellant deserves compensation for the unexhausted improvement in the said plot. This apart from being my sincere position regarding the situation on the ground, it is as well an alternative suggested by the appellant in his pleadings before the tribunal. I thus find myself comfortable and safe ordering so.

In light of the above, I thus dismiss this appeal with costs. It is so ordered.

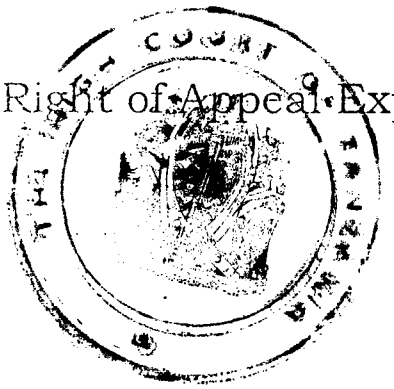
Judgment Delivered this 1st day of November 2012 in the presence of Mrs. A.W. Kabwanga for the Appellant and the Appellant himself and Mr. Rutengwe for the 1st Respondent and 2nd Respondent present in person.

P.S. FIKIRINI

J U D G E

1st November, 2012

Right of Appeal Explained.



P.S. FIKIRINI

J U D G E

1ST NOVEMBER, 2012