

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

LAND APPEAL NO. 5 OF 2006

(From the Decision of the District Land and Housing Tribunal of KIGOMA District at KIGOMA in Land Case No. 8 of 2005)

AHMEDNOOR MOHAMED ALLYAPPELLANT

VERSUS

CHRISTOPHER H. LUGIKORESPONDENT

JUDGMENT

19/8 & 15/10/2013

S.M.RUMANYIKA, J.

This appeal arises from the judgment and decree of the district land and housing tribunal – Kigoma (DLHT) vide application No.8 of 2005. Whereby Ahmed noor Mohamed Ally (the appellant) sued Chrisostom H. Lugiko (the respondent) for orders:-

- (1) The respondent give vacant possession of house No. 73A, Kaya Road – Kigoma (suit house).
- (2) Payment by the respondent to the appellant of shs. 100,000/= monthly being mesne profit.
- (3) Costs and as usual, such other alternative reliefs.

Whereas the DLHT was satisfied in evidence that the appellant had fully purchased the suit house from the government of the united republic of Tanzania, (the government) save for formal transfer of title, which process was perhaps under way, the learned chairman, only on that basis disallowed the appellant's application whereby declaring non of them a winner. In deed it is by all standards a very strange decision. The appellant is not satisfied. Hence this five ground/ petition of appeal.

In fact it all revolves around a single issue ie. on evaluation of evidence. Namely the DLHT learned Chairman erred in law and in fact. Having found that although the appellant had legally purchased the suit house, no title had been passed on him by the vendor. So that now, one gets entitled to vacant possession of the respondent.

Messrs M.R.G. Kabuguzi and Peter Kibatala learned counsel appear for the appellant and respondent respectively.

When matter was called up for hearing, counsel were agreed and they went about it by way of written submissions.

Briefly but without reproducing the evidence on record Mr. Kabuguzi, in his submissions in chief submitted that in his capacity as a civil servant, the appellant had undisputedly purchased the suit house. In which case therefore title passed on him. Incompletion of the formal transfer not withstanding. In that at that stage, the respondent was obliged to giving entitled to vacant possession as

requested. That no way should have the mere complaints by the respondent invalidate the sale. Much as the vendor government so recognizing the appellant was not made a party to the suit. Whereby one would have been expected to justify the sale to none other than the appellant.

That being a trespasser thereon the respondent was liable to give vacant possession and pay the mesne profits claimed. Counsel prayed the impugned decision be quashed and orders set aside with costs.

In his reply submissions, Mr. Kibatala submits like saying, if I got him right that this matter is *res judicata*. Having been ever concluded, vide application No. 25/2007 by the DLHT. Without getting into any details of what was its nexus and therefore its legal effects on this appeal any way.

On the substantive aspect of it Counsel submitted that the appellant had even no *locus standi*. Having according to express terms of the sale, not acquired title on the suit house. That no mesne profits should have been even claimed. That the appeal was only an abuse of court process amounting to forum shopping. Therefore liable for being dismissed with costs. Counsel submitted.

Now the pivotal issues are (1) whether land application No. 25 of 2007 and No. 8 of 2005 earlier on lodged by the appellant and finally determined by the DLHT in favour of the respondent bar any appeal

by the appellant to this court. Indeed they do not! Provided that as correctly argued by Mr. Kabuguzi such orders of the DLHT are appealable. In other words as I said, Mr. Kibatala does not tell, if at this stage, and this one being an appeal court, the doctrine of res judicata can really apply under the circumstances. In fact there is no ground upon which to nullify whatever was done in the said two applications.

On the substantive part of the appeal I will only say that the appellant, having undoubtedly purchased the suit house, he had such exclusive rights against the rest of the world except in accordance with such express terms and conditions of the sale agreement, the vendor government. Therefore the condition of official transfer of title did bind only the parties to the contract not the stranger respondent or at all. The appellant therefore had full legal capacity to sue and or evict any trespassers the respondent inclusive. Much as the vendor government took no cognizance of him (respondent).

I will also add like the DLHT once did, that whether the suit house was improperly sold to the appellant or not, and whereas the vendor was not joined to the suit, this court will only say that the vendor was at liberty as it did, to sell it to any person of own choice.

Finally, as said, how strange was the DLHT decision? Our adversarial system of dispute processing requires in the end, express declarations by judges as to who are the winners/losers. In this case

who was owner of the suit house. The learned chair did not adhere to this fundamental requirement. Only the appellant was and still is the owner of the suit house. It is now accordingly ordered:-

(1) The respondent give vacant possession of the same immediately and unconditionally.

(2) The respondent to pay mesne profits of shs. 100,000 monthly to the appellant from the date of filling the application in the DLHT to the date full vacant possession will be given by the respondent, his agents, assigns or any other person claiming title under him. (3) Appeal allowed with costs here and at the tribunal below.

R/A explained.

**S.M.RUMANYIKA
JUDGE
12/10/2013**

Delivered under my hand and seal of this court in chambers, this 15/10/2012. In the presence of Mr. Rweyamamu Kagashe learned advocate (for Mr. Kabuguzi) only.

**S.M.RUMANYIKA
JUDGE
15/10/2013**