

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

MISCELLANEOUS LAND CASE APPEAL NO. 34 OF 2012

CLEMENT NKANGAAPPELLANT

VERSUS

MANHYAKENDE MBINZAGULILERESPONDENT

JUDGMENT

04th Dec 2013 and 10th Feb 2014

S.M.RUMANYIKA, J

It is all against the 29.2.2012 order of the District Land and Housing Tribunal Shinyanga (DLHT) dismissing the appeal, based solely on the finding that one had appealed against a wrong, but also a stranger Manhyakende Mbinzagulile (the present respondent).

By number, the grounds are three (3). But in essence it is only one! Namely: error by the learned chair of the DLHT holding that the appellant Clement Nkanga had appealed against a person stranger to the proceedings.

Mr. Musyani learned advocate appears for the appellant, whereas the respondent appears non represented.

However, for me, it is not late to state right here, that when this matter was called for hearing, the respondent was absent duly served. This court thus dispensed with his appearance.

It is evident and therefore born out, quite clearly from the records, that the parties at the trial Bulige Ward tribunal were one Manhyakende s/o Nkanga (applicant) and Clement s/o Nkanga (respondent). Eventually, the trial tribunal found, and indeed made a half – half judgment. Each one of them to take half of the suit land. The said Clement was not satisfied. On appeal, the DLHT dismissed it on the ground as said, that one had appealed against a person not a party to the proceedings. That instead, one should have appealed against Kubilu Mbinzagulile.

Mr. Musyani briefly submitted that the parties to the case were the same throughout. Same persons, same names ie. Clement and Manhyakenda. That the case of Stanley Kalema Maliki V. Chihiyo Kwisiha and Another (1981) TLR 143 cited by the learned DLHT Chair was quite distinguishable and inapplicable in the circumstances. As in this case the appeal was filed by the aggrieved party. Against a proper and necessary respondent.

The learned counsel prayed the matter to be heard de novo. Had this appeal been allowed.

I had ample time. My several and repeated critical glance on all the four of the records will always reveal that there is nobody else, other than the same Clement s/o Nkanga and Manhyakende/Manyanda s/o Mbinzagulile, who took part in this land dispute in the two tribunals below. In fact the 28/10/2011 decision of trial tribunal makes it glaringly clear. Quoted **verbatim** in part it reads thus:

Ndugu MANYAKENDA MBINZAGULILE alifika kwenye Balaza la ardhi Kata Bulige akiwa anamlalamikia ndugu Clement Nkanga kwa kuvamia eneo lake..... Hivyo basi Balaza linatamka RASMI kwamba eneo ambalo linazozaniwa kati ya MANHYAKENDA MBINZAGULILE na CLEMENT NKANGA liwekewe mipaka mipya na kugawiwa kila mtu apate NUSU

From the quotation above it cannot be said, by any stretch of imagination, that the evidence and or the trial tribunal's findings entertains any spot of ambiguity(s). As to who were the parties. Unless the circumstances dictate otherwise, Kubilu Mbinzagulile, as suggested, with due respect very wrongly by the learned Chairman, could not be a party to the appeal. The DLHT does not even attempt to give reason why should the said Manhyakenda not take part therein any more. Infact the later is, and cannot, as argued very

precisely by Mr. Musyani, be an alien to the proceedings. It follows therefore, that once a person is made a party to the case, he can not, unless application is duly made and court decides on it, be alienated for whatever reasons. The DLHT was respectfully in error. Appeal allowed entirely with costs. For avoidance of doubts, the DLHT, but before another competent learned chair other than Mr. A. Constantine, to hear the appeal a fresh.

R/A explained.

S.M.RUMANYIKA

JUDGE

10/2/2014

Delivered under my hand and seal of this court in Chambers this 10/2/2014.

In the presence of Mr. Musyani and the appellant only.

S.M.RUMANYIKA

JUDGE

10/2/2014