

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT SUMBAWANGA

LAND APPEAL NO. 10 OF 2020

(Originating from the Decision of the District Land and Housing Tribunal of Rukwa District at Sumbawanga in Land Application 39 of 2017)

PETER RICHARD APPELLANT

VERSUS

MASAU BUJUNGU RESPONDENT

Date of last Order: 07/01/2021

Date of Judgment: 22/02/2021

JUDGMENT

C.P. MKEHA, J

The present appeal traces its origin from Land Application No. 39 of 2017 of the District Land and Housing Tribunal of Rukwa at Sumbawanga. Before the trial tribunal, the appellant sued the respondent for trespass. The actual complaint was that the respondent, did trespass over the appellant's plot and demolished a house which was being built thereon without the appellant's knowledge and thereafter, the respondent erected another building thereon. Therefore, before the trial tribunal, the appellant prayed to be declared the lawful and legal occupier of the suit premises, to be awarded special damages for demolished house at TZS. 40,000,000/=, general damages at TZS.

10,000,000/= and that, the respondent be ordered to give vacant possession of the suit premises to the appellant/applicant.

The facts leading to the present case can briefly be stated as follows: Sometimes in 1997, the appellant was allocated the suitland by the relevant Land Allocating Authority. He then commenced a construction project of his house in 1998. He did not manage to accomplish the building in 1998. Sometimes later, when the appellant was not in Sumbawanga, one Mr. Richard Sinkonde approached the Land Allocating Authorities informing them that Peter Richard (the appellant) had passed on and that, he (Richard Sinkonde) had been appointed the administrator of the appellant's estates. In that way, the said Richard Sinkonde managed to effect transfer of right of occupancy which afterwards eased sale of the appellant's property over plot No. 360 Block "00" (HD), to the respondent.

In view of the trial Chairperson, given the circumstances into which the cause of action happened, the vendor of the disputed property as well as the respective Land Authority were necessary parties whose non joinder was fatal. The learned Chairperson finally dismissed the application. It is the said decision, that prompted the present appeal.

In this appeal, Mr. Kampakasa learned advocate represented the appellant. On the other hand, Mr. Mathias Budodi learned advocate represented the respondent.

Although the Memorandum of Appeal consists of six grounds of appeal, only the sixth ground of appeal is considered determinative. As such, the present appeal will be determined through deciding the said ground of appeal. The ground of appeal runs as hereunder:

That, the Honourable Chairman misdirected herself in dismissing the application for what she regarded as non- joinder of necessary parties which was not applicable in this case.

It was the appellant's stance that, in any case, the appellant's case ought not be defeated for a reason of non- joinder of parties and that, the tribunal ought to have dealt with the parties who actually appeared before it. Reference was made to Order I Rules 9 and 13 of the Civil Procedure Code. The learned advocate for the appellant insisted that as a matter of principle, objections concerning non joinder of parties ought to be raised at the earliest moment when the case commenced and not at the judgment stage.

The learned advocate for the respondent insisted that, the issue of non-joinder of necessary parties was fundamental in the sense that, it was already a good law that whenever there is a claim for obtaining a title fraudulently the land allocating authority and those who are alleged to cause fraudulence must be joined as parties. In view of the learned advocate for the respondent, the appellant's advocate did not assign any justifiable reason as to why the trial tribunal ought not to follow the decision in **Juma B. Kadala vs. Laurent Mnkande (1983) TLR 103.**

There is no denial that the appellant's case before the trial court and this court is that, the respondent fraudulently obtained title over the disputed plot. And that, one Mr. Richard Sinkonde and the Land Allocating Authority were involved in blessing the said illicit transaction. That being the case, **the issue is whether an effective decree could be passed in the absence of the said persons.**


The position insisted by the learned advocate for the appellant that, the tribunal ought to have dealt with the parties who actually appeared before it is not in accord with the position of the Court of Appeal of Tanzania in interpreting Order I Rule 9 of the Civil Procedure Code. In the case of **ABDULLATIF MOHAMED HAMIS vs. MEHBOOB YUSUF OSMAN AND ANOTHER, CIVIL REVISION NO. 6 OF 2017**, the Court held that, " **upon reason and prudence, there is no gainsaying the fact that the presence of a necessary party is, just as well, imperatively required in our jurisprudence to enable the courts to adjudicate and pass effective and complete decrees. Viewed from that perspective, we take the position that Rule 9 of Order 1 only holds good with respect to the misjoinder and non – joinder of non - necessary parties. On the contrary, in the absence of necessary parties, the court may fail to deal with the suit, as it shall eventually, not be able to pass an effective decree. It would be idle for a court, so to say, to pass a decree which would be of no practical utility to the plaintiff**".

The above quoted decision, endorsed the decision in **Juma B. Kadala vs. Laurent Mnkande (Supra)**. It also laid down, the current position regarding non-joinder of necessary parties, that, it is fatal, since, in the absence of necessary parties, no effective decree can be passed. Equally, in this case, from the pleadings and evidence on record, no effective decree could be passed in the absence of the vendor of the disputed land and Land Allocating Authority as necessary parties in the suit.

It is for the foregoing reasons I find no justification of faulting the trial Chairperson's holding that the suit before the tribunal was bad for a reason of non-joinder of necessary parties. I however substitute the tribunal's dismissal order with that of striking out the application. Subject to limitation, the appellant is advised to start afresh thereby joining the necessary parties to make the suit a meaningful one. I otherwise dismiss the appeal for want of merit. I make no order as to costs.

Dated at **SUMBAWANGA** this 22nd day of February, 2021.




C.P. MKEHA
JUDGE
22/02/2021

Court: Judgment is delivered in the presence of Mr. Kampakasa learned advocate for the appellant and Mr. Kipsha learned advocate for respondent.

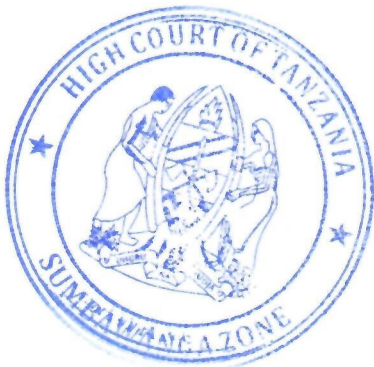


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Court: Right of further appeal to the Court of Appeal of Tanzania is explained.



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JUDGE

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