

IN THE HIGH COURT OF TANZANIA

AT MWARA

(PC) CIVIL APPEAL NO. 35 OF 1986

(From the decision of the District Court of Mbinga
District in Civil Appeal No. 8 of 1986
Original Urban Court Civil Case No. 104/85

ATANAS B. SANGANA APPELLANT

Versus

1. HADRIAN NDUNGURU }
2. Kandidus Ndunguru }..... RESPONDENT

J U D G E M E N T

Rubama, J.


This is a second appeal by Atanas B. Sangana against concurrent findings of fact by Mbinga Urban Primary Court and Mbinga District Court. Both these courts have found that the land in dispute had been properly granted by the Village authorities to Hadrian Ndunguru and Kandidus Ndunguru of Uzena village, Mbinga and that the appellant appeared not to have had any claim to the land in dispute.

The trial court had rejected Atanas Sangana's evidence that his father had obtained the land in dispute in 1971 and that he had been cultivating some part of this land. Accepting that the two respondents had been granted lands in dispute in 1984 and in 1985, both the trial court and the first appellate court had found the land in dispute as having been too big for the needs of the appellant. The record does not give the total area of the land in dispute nor does it show from what the two lower tribunals had inferred this rather controversial finding.

The appeal against concurrent findings of fact by the Mbinga Urban Primary Court and Mbinga District Court has merit. Both the lower courts have in their judgments referred to the granting of the land in dispute to the two respondents by the Village authorities which according to the first appellate Court judgment owned all the land in that vicinity. There is however,

no evidence that the two respondents were members of the village that had **allocated the lands in dispute** nor is there evidence to show that the decision to allocate the lands in dispute was that of the Village Government and not of an individual. There is evidence that the two respondents had been to the Chairman of the Uzena Village and the Chairman of the Village on his own had directed the Chairman of one of the committees of the village to go in search of land in the vicinity and grant to the respondents. There is no evidence that the two respondents had been accepted by the village authorities to be members of the Uzena Village nor is there any evidence that an appropriate committee of the Uzena Village had sat and determined the particular land to be given to the respondents. The evidence shows that the officer that had granted the land to the respondents had without being armed with the appropriate village authority gone in search of land that had appeared to him not to have been owned by any person. No search of ownership of the land that had appeared to him to be without an owner was done by him. He took the respondents and settled them on the lands whose ownership he did not know nor care to find out. That a member of a Village owns what appears to others a big piece of land is no reason to take it from him and grant it to another person without any preliminaries or formalities the least of which is to inform him that some of that land was needed by a landless person! That one is told by an officer of a village to go and give land to other people, does not mean that the directive of that particular officer was the directive of the Village Government. Before the authority of the Village Government can be stamped on directives, proper formalities have to be observed. Election to some village post does not make that person synonymous with the office that person had been elected into i.e. the Village Chairman need not be taken to be giving Village Governments pronouncements even when those pronouncements had not been endorsed by the Village Government.

Neither the trial court nor the District Court had subjected the evidence by the parties to any meaningful analysis. Both judgments contains high faluting words and very little substance. I see no merit in them. This appeal is therefore allowed with costs. The judgment of the Primary Court which was upheld by the District Court is hereby quashed. The land in dispute said to have been acquired by the father of the appellant in 1971 and which testimony was confirmed by independent evidence of SM.4 Innocent Madenge and which had not been alluded to at all by any of the lower tribunals is hereby declared as belonging to Atanas Sangana.


Yahya Rubama

Judge

3/9/87