

IN THE HIGH COURT OF TANZANIA
AT TABORA

DC.CIVIL APPEAL NO. 20/2004
(Arising from Tabora RM'S Court Civil Case No. 4/1997)

HARUNA s/o MOHAMED SATO.....APPELLANT

Versus

JUMA HUSSEIN KAYOKARESPONDENT

JUDGMENT

10th Feb, 05 & 8th May, 07

MUJULIZI, J.

This is an appeal from judgment and decree of the Resident Magistrate's Court of Tabora, dated 2/11/2004, and 25/11/2004 respectively.

Before the Resident Magistrate's Court, the Appellant had sued the Respondent claiming the sum of Tshs. 9, 620,480/= being damages for alleged breach of a contract of sale of a house situate on Plot No. 348 Block "A" Isevya, within Tabora Municipality.

By clause 5, of the Deed of Conveyance dated 14/12/1995, it was expressly covenanted that "the deed and transfer shall be subject to parties obtaining all the necessary consents to the

transfer, failing which, the parties hereto shall revert to their original position.” Part of the consideration (Price) was transfer of a Plot No. 32, Usagara Street, within Tabora Municipality valued at Tshs.1,000,000/= to the seller, the Appellant herein. There was therefore part payment in the sum of Tshs. 2,000,000. The balance was to be paid within a period not exceeding six (6) months from the date of the conveyance deed.

It was common ground that the consent to the transfer had never been obtained at all material times. However, the trial proceeded on the issue that performance of the contract had been frustrated consequent to a suit filed by the Appellant’s wife in the Primary Court to challenge the sale on ground that it was matrimonial property. Further, that by deed and conduct, the appellant had breached the contract.

In his defence to the suit, the Respondent had raised a counterclaim against the appellant claiming for;

- 1) Refund of his Tshs. 1,200,000/=and his house and its documents comprised in plot No 32, Usagara Street and further claims rent arrears from the said house at the rate of Tshs. 10,000/= per months.

2) General damages in the sum of Tshs. 3,500,000/= for breach of contract.

At conclusion of the trial, the learned Resident Magistrate, entered judgment for the Respondent, dismissed the Appellant's claims and awarded the Respondent's counter-claim as specified above, save for rent and general damages.

Dissatisfied, the Appellant lodged a 10 point Memorandum of Appeal, which he filed in this Court on 8th December, 2004. When the matter was called for hearing before me on 22/02/2007 in the presence of Mr. Mtaki learned counsel for the appellant, and holding brief for Mr. Kayaga learned counsel for the Respondent, a consent order was granted to proceed with the matter by way of written submissions. Both parties complied.

However, before proceeding with determination of the matter on merit, I raised the issue suo motto as to whether this Court had jurisdiction to hear and determine the Appeal filed on 08/12/2004.

Both Counsel had proceeded in the matter on the basis that it was a case for breach of contract. But, as I have reiterated in the brief narrative and summary of the suit and counterclaim, the dispute revolves around the sale of landed property. The decree appealed from grants, albeit in the alternative, an order for return of the house which formed part of the consideration for the contract in the main suit which was dismissed.

I am of the considered judgment, that this is a land dispute as pure as any could be described.

That being the case, pursuant to section 167 of the Land Act, (Cap.113, R.E. 2002) read together with section 3 – (1) and (2) of the Courts (Land Disputes Settlements) Act No. 2 of 2002, this Court has no jurisdiction to determine this Appeal. Section 3(1) and (2) provides;

“3.-(1) Subject to section 167 of the Land Act, 1999, and section 62 of the Village Land Act, 1999, every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area.

2) The Courts of Jurisdiction under subsection (1) include;

a) The Village Land Council;

- b) The Ward Tribunal;***
- c) The District Land and Housing Tribunal;***
- d) The High Court (Land Division);***
- e) The Court of Appeal of Tanzania.”***

The named Courts have exclusive Jurisdiction. By G.N. No. 223/2003, the Courts (Land Disputes and Settlements) Act No. 2 of 2002 came into operation on 01/10/2003. Therefore, although the suit, judgment and decree of the Resident Magistrate's Court were saved by section 54 of the said Act, the Appeal against the same was filed in the wrong Court. It was filed long after the law divesting this Court of the jurisdiction on land disputes had already come into operation.

This appeal ought to have been filed in the Land Division of this Court. Under the Land Registries Rules, the Registry of this Court at Tabora is also the registry of the Land Division. Had the Registry Officers been careful enough, they would have redirected the Appeal to the appropriate Registry and advising the Appellant to amend his Memorandum of Appeal, accordingly.

I have taken into consideration the fact that the Appellant filed the appeal without the aid of the services of counsel. In the

premises, I will not dismiss the appeal but instead order that it be transferred to the Land Division of this Court for determination. Let it be removed from the Register of this Court and be re-registered and a new number be assigned to it from the land registry.

It is so ordered.


A.K. MUJULIZI

JUDGE

8/5/2007

Delivered in the presence of the parties this 8th day of May, 2007.


A.K. MUJULIZI

JUDGE

8/5/2007