

**IN THE COURT OF APPEAL OF TANZANIA
AT ZANZIBAR**

(CORAM: RAMADHANI, J.A., LUBUVA, J.A., AND MUNUO, J.A.)

CIVIL APPEAL NO. 20 OF 2003

BETWEEN

LAMSHORE LIMITED.....APPELLANT

AND

**1. PRINCIPAL SECRETARY,
MINISTRY OF WATER CONSTRUCTION,
ENERGY AND LAND.....1STRESPONDENT**

**2. DIRECTOR GENERAL,
ZANZIBAR FREE PORT AUTHORITY.....2ND RESPONDENT**

**(Appeal from part of the Ruling of the
High Court for Zanzibar at Vuga)**

(Oredola, DCJ.)

**dated the 7th day of October, 2002
in
Civil Case No. 13 of 1994**

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J U D G M E N T**

LUBUVA, J.A.:

This appeal arises from the decision of the High Court Zanzibar, in Civil Case No. 13 of 1994 (Oredola, D.C.J.). In this case, the appellant, Lamshore Limited, successfully sued BIZANJE for the sum of U\$ 700,000 as damages for breach of contract.

In execution of the decree against Bizanje, properties among which the building housing the headquarters of Bizanje and warehouses located at Saateni and Maruhubi, within the outskirts of Zanzibar Municipality, were attached. The first and second appellants, the Principal Secretary, Ministry of Water, Construction, Energy and Land and Director General, Zanzibar Free Port Authority, first and second appellants respectively, objected to the attachment and sale of the properties. That pertained to Miscellaneous Application No. 8 of 2001.

The case for the applicants, the respondents in this appeal, was that the properties attached in execution of the decree against the judgment debtor, Bizanje, belonged to them. Therefore they sought the release of the properties from the attachment. The learned Deputy Chief Justice granted the application. He held that it had not been established that the properties attached had vested in the appellant. The judge was satisfied that the respondents had proved their claim to the properties. Accordingly, the judge ordered the properties to be released from the attachment. The appellant has preferred

this appeal against part of the decision, namely the release from the attachment of the building housing the headquarters of Bizanje and the godowns at Maruhubi

In this appeal, Mr. Mbwezeleni and Mr. Mnkonje, learned counsel, appeared for the appellant. The following grounds of appeal were filed:

1. That the learned Judge erred in law and fact in not holding that the instrument creating a Public Enterprises (sic) as an autonomous legal entity with power to own property and proclaiming her headquarters' building is an instrument vesting ownership for purposes of the Public Enterprise formation and ownership laws.
2. That the learned Judge erred in law when he contradicted himself by insisting and requiring an instrument of transfer of immovable property from the Government to her public enterprise (the Judgment Debtor) as

instrument of transfer of immovable property from the Government to the Second Respondent herein.

3. That the learned Judge erred in law in assuming that because the Government gave the Maruhubi

pointed out that since the revolution in 1964, the building in question among others, was owned by the government of Zanzibar. In the absence of any legal instrument vesting the building in Bizanje, Mr. Hassan urged that it belonged to the government, therefore there was no basis for attachment.

With respect, we do not agree with Mr. Mnkonje, learned counsel in his submission on this point. The central and indeed the only issue in this appeal is the ownership of the building. As correctly submitted by Mr. Ali Hassan, learned State Attorney, it is common knowledge that after the revolution of 1964 in Zanzibar and the enactment of Decree No. 8 of 1964, the building, subject of the attachment, among others, vested in the government of Zanzibar. So, Mr. Mnkonje's claim that the building belonged to Bizanje would be tenable only if evidence was adduced to prove that the property was transferred from the government to Bizanje. On this, the learned judge closely addressed and came to the conclusion that there was no such evidence. As the learned State Attorney observed, it is erroneous on the part of Mr, Mnkonje to assert that Bizanje was vested with the ownership

of the building, on the basis of the provisions of sections 2 of Legal Notice No. 12 of 1990 and 13 (1) of the Public Enterprises Decree 1966, which was repealed and replaced section 3 (1) of the Public Enterprises Decree, No. 4 of 1978.

On our part, upon a close reading of section 2 of Legal Notice No. 12 of 1990, together with section 3 (1) of the Public Enterprises Decree 1978, we are unable to accept Mr. Mnkonje's claim that the building vested in Bizanje by virtue of these sections. It is plain that section 2 of Legal Notice No. 12 of 1990 sets out that the head office of Bizanje shall be in house number 11617 at Mizingani. To read into this provision that the building housing the headquarters shall also be owned by Bizanje is to say the least, absurd. It is not there and it was not intended. It is not unusual that the headquarters of institutions, government ministries or departments to be housed in buildings which they do not own. In similar vein, section 3 (1) of the Public Enterprises Decree 1978, does not vest property in the building to Bizanje. Plainly, the section empowers Public Enterprises so established such as Bizanje to own and acquire property. It is

an enabling section for acquiring and owning property and not a vesting one.

Next, Mr. Mnkonje dealt with the godowns at Maruhubi. It was also his contention that these godowns belonged to Bizanje. The thrust of his argument was that Bizanje had acquired prescriptive ownership because it had been in possession of these godowns for many years. Furthermore, he submitted that analogous to his earlier submission regarding the building housing the headquarters of Bizanje, Legal Notice No. 11 of 2000 recognised Bizanje as the owner of the godowns at Maruhubi in Bizanje. In view of this, Mr. Mnkonje went on in his submission, Legal Notice No. 11 of 2000 vested the godowns at Maruhubi from Bizanje, the judgment debtor, to the Zanzibar Freeport Authority.

It is to be observed that the Legal Notice signed by the President of Zanzibar bears the number 61 of 2000. However, it was published as Legal Notice No. 11 of 2000. We are appreciative to Mr. Hassan, learned State Attorney's initiative to draw our attention to this fact. With due respect to Mr.

Mnkonje, again we think he is wrong in his interpretation and application of Legal Notice No. 11 of 2000. As Mr. Hassan submitted, Legal Notice No. 11 of 2000, only specifically declared the area as a Free Port Zone. The Legal Notice was made under section 25 of the Zanzibar Freeport Authority Act No. 9 of 1998. The section provides to the effect that the President may, by order published in the Gazette, declare any part of Zanzibar to be a Freeport Zone. Based on this section, Legal Notice No. 11 of 2000 was made. In part, it reads:

BIZANJE GODOWN (KIWANJA CHA
GHALA YA BIZANJE) Situate at
Maruhubi Zanzibar as prescribed in the
Site Plan No. S 138/91 Plot No. 48A
attached hereto.

These provisions are too clear to require any further clarification. As provided in section 25 of the principal legislation, the President declared the area in which the godowns at Maruhubi are situate, a Freeport Zone. The ownership of the godowns is not in any way covered under the Legal Notice. The argument that the Legal Notice recognises Bizanje as the owner of the godowns at Maruhubi is a

misconception and misapplication of the provisions of the Legal Notice. It was not intended to vest property in the area to the Zanzibar Freeport Authority.

In a further attempt to show that Bizanje owned the godowns at Maruhubi, Mr. Mnkonje referred to the handing over note Exh. D3. From this note, he submitted that Bizanje was recognised as the owner of the godowns which were being handed over to the Ministry of Finance. We wish to point out at once that the handing over note does not deal with vesting of property, it deals with administrative arrangement between the Ministries of Trade and Finance in so far as the use of the godowns at Maruhubi was concerned. The vesting of property in the godowns at Maruhubi cannot legally be derived from the handing over note as Mr. Mnkonje urged us to accept.

Finally, we wish to briefly observe on ownership by prescription. Mr. Mnkonje persistently maintained that because Bizanje had been in possession and use of the godowns at Maruhubi it had been vested with the property. Suffice it for us to repeat what has already been stated earlier

in this regard. There is no dispute about possession of the godowns by Bizanje for a long time. The issue pertains to the ownership of the godowns. As held by the learned judge, it is trite principle that possession is good title against anybody else except the owner. In this case, this principle does not apply because there is the owner of the property. As already shown, in the absence of any evidence to prove that property in the godowns at Maruhubi had transferred to Bizanje from the government, it goes without saying that the government is the owner of the godowns as held by the learned judge.

For the foregoing reasons, we are satisfied that the learned judge correctly ordered the release of the building housing the headquarters of Bizanje and the godowns at Maruhubi from attachment and sale in execution of the High Court judgment.

In the event, the appeal is dismissed with costs.

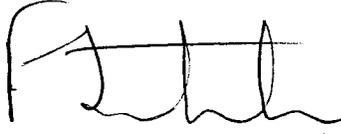
DATED at ZANZIBAR this 20th day of November, 2003

A.S.L. RAMADHANI
JUSTICE OF APPEAL

D.Z. LUBUVA
JUSTICE OF APPEAL

E.N. MUNUO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


(F.L.K. WAMBALI)
DEPUTY REGISTRAR