

IN THE HIGH COURT OF TANZANIA

AT MBEYA

MISC. CIVIL APPEAL NUMBER 13 OF 2001

(From the decision of the District Court of
Rungwe District at Tukuyu in Misc. Civil
Application No.8 of 2000)

EDSON JAMES MWANYINGILI.....APPELLANT

VERSUS

1. MOSES MWALWISI	}RESPONDENTS
2. ESSAU KIBONA		
3. ADAM MPALANO		
4. KAJELA JAILOS		
5. MWANYANGALA MWAKABOPELA		

JUDGMENT

MACKANJA, J.

This appeal traces its origin from a civil dispute over a parcel of land which was the subject matter in Civil Case No.12 of 1997 of the Masebe Primary Court in which the appellant sued Samsoni Mwambene for recovery of that land. The appellant succeeded and the latter was ordered to compensate the former a sum of shs.40,932,520.00 for unexhausted developments as a condition precedent for taking vacant possession of the suit land. The order for compensation was quashed in an appeal before the Rungwe District Court sitting at Tukuyu. Samsoni Mwambene lost in the second appeal before this Court.

In the meantime Samsoni Mwambene had suffered several people to occupy the suit parcel of land, that is to say, Moses Mwalwisi, Esai Kibona, Adam Mpalano, Kajela Jaiilos and Mwanyangila Mwakabopela. In order to recover the land from these people, who appear to have become squatters when their lessor lost the case, Edson Mwanyingili instituted an application before Rungwe

District Court for an order for vacant possession from the above people. What followed was a force in which the District Court tried the case all over again, calling witnesses and ended up by setting aside the decision of this Court by which it was declared that the suit parcel of land belonged to the appellant. In particular, this Court held, at page 3 of the typed copy of the judgment thus:-

"Let me pause here and say that the concurrent finding by both courts below that the land indispute was throughout the property of the father of the respondent which could pass on to the respondent in inheritance could not be faulted.... The appellant's claim, as demonstrated, was wholly unsubstantiated. It was a futile attempt to defraud the children of James, including the respondent, of the land in dispute...".

In spite of the above exposition of the factual position by the High Court the learned appellate District Magistrate strenuously tried to undo that decision by holding that the application for an order by which the respondents were to be evicted was barred by operation of the doctrine of res judicata. That, of course, was a misapplication of the doctrine because what the appellant instituted was not a suit; it was an application. In any case, since the respondents were demonstrably invitees of Samsoni Mwambene's, and the latter having been found to be a swindler by the High Court, he could not pass any good title to the respondents.

The appellant complains in the fourth ground of appeal that the District Court's ruling is contradictory inter se. I find a lot of merit in it because the learned Magistrate who made

this decision was the same person who upheld the appellant's rights in his court's Civil Appeal No.28 of 1998 in which he held that the suit parcel of land belonged to the appellant, observing that the respondent therein was an invitee because his only authority over the land was that of being a care-taker while the appellant was away in Zambia.

Mr. Mushokorwa, learned counsel, has made a brief submission on behalf of the respondents, contending that Samsoni Mwambene did not litigate on behalf of the respondents. I entirely agree with him that that was the position, and the reason is not far to fetch. As invitees of Samsoni Mwambene's the respondents had no locus because their rights were derived from Samsoni Mwambene's possession of land. Once he lost possession of the land, the rights of his invitees were automatically extinguished.

Upon the above observations the appeal succeeds and it is accordingly allowed with costs. It is directed that the respondents do give vacant possession to the appellant as prayed in his application.

Delivered.

sgd: J.M. MACKANJA

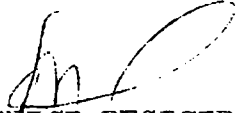
JUDGE

11/10/2002

Appellant: In Person

Respondents: In Person

Certified true copy of original.


DISTRICT REGISTRAR

MBEYA