

IN THE HIGH COURT OF TANZANIA

AT DODOMA

DC CIVIL APPEAL NO. 10 OF 2002

(ORIGINAL CIVIL CASE NO. 34 OF 2002 OF
THE DISTRICT COURT OF SINGIDA)



1. SINGIDA TOWN COUNCIL 1ST APPELLANT

2. KUDRA 2ND APPELLANT

versus

AMINA JUMA RESPONDENT

JUDGEMENT

KAIJAGE, J.

In Singida District Court Civil Case No.34/2000 the respondent, **AMINA D/O JUMA**, was a successful party in a suit she filed against the appellants namely; Singida Town Council (1st appellant) and one Kudra (2nd appellant). Consequently, the respondent was declared a rightful owner of the disputed Plot No. 24 BLOCK 'EE' situated in Singida Township and further obtained an order for eviction against the 2nd appellant. Both appellants were aggrieved, hence the present appeal.

Going by the record, it appears that a single fundamental issue which was framed and determined by the trial court and which, calls for consideration and determination by this court reads;

"To whom PLOT NO. 24 BLOCK ÉÉ'
was legally allocated."

Upon its evaluation and consideration of the evidence before it, the trial court found that the respondent had a better title over the disputed plot and that same was legally and properly allocated to her. The trial court further found that there was no cogent evidence to prove that the disputed plot was ever allocated to Fatuma Said, the wife of the 2nd appellant, and that the latter has no legal basis upon which to assert any right over that plot. The trial court rejected oral evidence of one John Ambrose, the then land officer with Singida Township who stated that the first allocatee of the disputed plot was the wife of the 2nd appellant, Fatuma Said (deceased).

In the course of trial, the 1st appellant led evidence to the effect that Fatuma Said (the deceased) was the first allocatee of the disputed plot and that following her death, the plot reverted into her estate and that her husband (2nd appellant) properly constructed the house foundation has been amplified in the written submissions filed on behalf of the appellants.

On the other hand, it has been submitted, on behalf of the respondent, that there is no documentary proof that the first appellant allocated the disputed plot to Fatuma Said, and that in the circumstances, it is the respondent who has a superior title to the plot in question because she tendered, in evidence, a certificate of Right of Occupancy for 99 years. It has been further submitted that the 2nd appellant developed the disputed plot at his own risk and that in any case he did not produce any document to show that he was the administrator of the estate of the late FATUMA SAID.

Citing the case of AGRO INDUSTRIES LTD. .V. ATTORNEY GENERAL (1994) TLR 43, Counsel for respondent further submitted that 1st appellant used a wrong procedure in revoking the respondent's title, the necessary notice to revoke the right of occupancy having not been issued to the respondent.

I have read through the proceedings and the judgement of the trial court. I have also carefully gone through the submissions filed on behalf of the parties in the present matter. I must state, at this stage, that the judgement of the trial court is sound, and I have found no cogent material upon which I can justifiably disturb that decision.

In the record of the trial court, there is certainly no cogent evidence to show that the disputed plot was allocated to FATUMA SAID (the deceased) in accordance with the laws of land. It cannot,

therefore, be said that the title to the disputed plot ever passed to her.

It has been contended, on behalf of the appellants, that in the course of trial, parties were in agreement that the disputed plot was firstly allocated to FATUMA SAID (the deceased) and that the respondent was allocated same after the first allocate had failed to develop it.

In the light of the issue as drawn by the trial court for its determination, parties should not have expected the court to take judicial notice of the existence or otherwise of the documents evidencing title to the disputed plot which the relevant Singida Town Council authorities might have given to FATUMA SAID. In this regard, I do not think that oral evidence of the Land Officer (DW1) and the respondent's admission could have constituted sufficient proof of a better title to Fatuma Said over the disputed plot. In any case, parties to a civil case cannot agree to be bound by an illegal act. Be that as it may, I find that there is no cogent evidence, on record, establishing that the disputed plot was ever legally allocated Fatuma Said. Thus, even the question of revoking the allocation of the disputed plot to Fatuma Said before it was re-allocated to the respondent could not have legally arisen. As matters stands, the disputed plot was properly and legally allocated to the respondent.

Indeed, I am in complete agreement with the finding of the trial court as amplified in the submissions filed on behalf of the respondent that the purported revocation of the respondent's Right of Occupancy by the Township authorities has no legal effect. The respondent, therefore, has a valid better title to the disputed plot. I am also prepared to associate myself with the finding of the trial court and as amplified in the submissions filed on behalf of the respondent that the 2nd appellant had no legal basis for making any development on the disputed plot. He may recover costs/compensation for such developments from the 1st appellant if he was allowed and/or encouraged by the latter too do what he did on the disputed plot.

On the basis of the foregoing, this appeal must fail. Accordingly, it is hereby dismissed. Costs should follow the event.




S.S. KAIJAGE

JUDGE

19.10.2005

Judgement delivered this 2nd day of December, 2005 in the presence of Mr. Nyabiri learned Counsel for the Appellants and Mr. Njulumu learned Counsel for the Respondents.

S.S. KAIJAGE
JUDGE
2.12.2005