IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND CASE APPEAL NO. 19 OF 2017

(Arising from the Decision of the District Land and Housing Tribunal of Tarime District at Tarime in Land Case Appeal No. 40 of 2015)

EDWARD AWINO AREGO ..... APPELLANT

VERSUS

THE REGISTERED TRUSTEE

OF THE DIOCESE OF MUSOMA..... RESPONDENT

EXPARTE JUDGMENT

20/09/2018 & 15/01/2019

RUMANYIKA, J.:

It is against the 14/09/2016 judgment and decree of the District Land and Housing Tribunal for Tarime at Tarime (the DLHT). Having reversed decision of Tai Ward Tribunal (the wt) and held that as the disputed 5 acres parcel of land were, accordingly by the respective village authorities allocated to the Registered Trustees of the Diocese of Musoma (the respondent) in 1990 year of the Lord, the latter lawfully owned the same.

The grounds of appeal may be rephrased to read as follows:-

1. That the DLHT erred in law and fact having declared strangers lawful owners of the disputed land.

2. That the DLHT improperly evaluated the evidence.

When the appeal was called on for hearing on 20/9/2018, none of the dully served respondents and counsel was in court. Pursuant to my reasons and order of 20/9/2018, their (respondents) appearance was dispensed with. Hence the exparte judgement.

The inperson appearing appellant had nothing to add to his memorandum of appeal and submitted as such.

The summary of evidence record reads as follows:-

PW1 (the respondents' representative) stated that on application, the Roman Catholic Church were accordingly in 1990, by the respective village authorities allocated five (5) acres parcel of land.

PW2 Joanes Ater Ongoro (a Village Council, member then) stated that upon application, the Christians in locality were duly allocated the said 5 acres of land in 1990.

PW3 Barton Nashon Nyando (the local village chair then) stated that upon application, the respondents' Magonga Parish Priest was accordingly allocated five (5) acres of parcel of land.

PW4 Elija Ochanga stated that having applied for the respondents, they were, with a number of exhibits allocated the 5 acres of land in 1990. but the dispute between them arose in 2006. That unlike respondents, the appellant had plain and oral statements.

The appellant (DW1 then) stated that indeed upon application, the local village government allocated the respondents, but an unspecified size

of a parcel of land. That as the respondents were desirous and needed some more, a neighbor Dorika Ngeta surrender an acre. That he surrendered $1^1/_2$ acres to the respondents. That then boundaries were put and accordingly established.

DW2 Samuel Agoo stated almost a replica of the appellant's. But additionally, that the respondent had occupied and utilized the disputed land for nineteen (19) years undisturbed. That is all.

It appears on balance of probabilities convinced, as said the DLHT's chair held in favor of the respondents.

The issue is whether the respondent had proved their case on the balance of probabilities. The answer is no.

Reasons are:-

One; the respondents may have had been allocated the disputed land in 1990 years! But why didn't the village land allocating authorities establish measurements and boundaries until as late as 2006 (say 16 years later) according to pw4. How was the 5 acres five in 1990? Leave alone the sketchmap which shows 140m x 175m only.

Two; the appellant also attended the 27/06/2006 boundary verifying meeting as No. 24 in the list but was identified and he signed the proceedings as owner of the disputed land. This one also left a million questions.

Three; only Christians (names not in the list /not the respondents) applied for the land on 13/10/1989.

Four; only the CCM office Shirati Branch allocated them the disputed land instead of a village council (as sanctioned by general village assembly) which had authority. It follows therefore that the CCM office had no legal mandate to allocate land. The latter had, and in fact they gave nothing irrespective of the party supremacy at the time. The respondents hadn't even applied for it from the CCM.

Five; even assuming that the disputed land was accordingly granted to the respondents (which is not the case), the 17.3.1990 building permit if at all for church, dispensary and a nursery school was issued by the village and CCM authorities on 25/1/1990. I know no law which gave mandate to the two or either authorities. Therefore even when building permits substantiated allocation, it was as good as no permit was ever issued to the respondents.

Six; like at times the appellant argued, authorities may have had allocated the respondents another and a different parcel of land not the disputed one.

In the fine, ground ONE of appeal is dismissed. Ground 2 succeeds. Decision of the wt is, for different reasons upheld. Appeal is, for avoidance of doubts allowed with costs. ordered accordingly.

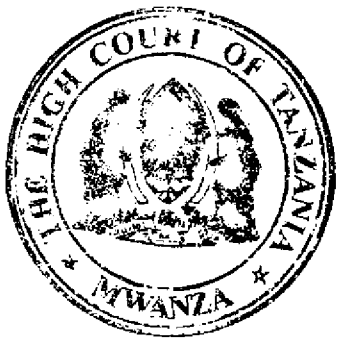
Right of appeal explained.

S.M. RUMANYIKA

JUDGE

06/01/2019

Judgment delivered under my hand and seal of the court in chambers this 15th day of January, 2019 in the presence of the appellant and in absence of the respondent.



O.H.KINGWELE

DR

15/01/2019