IN THE COURT OF APPEAL OF TANZANIA

AT IRINGA

(CORAM: LILA, J.A., KITUSI, J.A. And MWAMPASHI, J.A.)

CIVIL APPEAL NO. 168 OF 2020

IMANI MBUGI ..... APPELLANT

VERSUS

SONGEA MUNICIPAL COUNCIL..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania, at Songea)

(Arufani, J.)

dated 29th day of November, 2019
in
Land Case No. 08 of 2017
.....

JUDGMENT OF THE COURT

18th March, & 2nd May, 2022

LILA, JA:

The appellant Imani Mbugi unsuccessfully sued the respondent before the High Court (Songea Registry) seeking for a declaration that the demolition of his Guest House (lodge) situated at Miembeni Msamala area within Songea Municipality by the respondent was unlawful and for payment of compensation and various other reliefs arising therefrom. The High Court (Arufani, J.) found the claims not proved and dismissed the suit. He is now challenging that decision.

The essence of this appeal as was narrated by the appellant on whose evidence the claims mostly rested, may be traced thus. The appellant (PW1) resides at Miembeni Street within Msamala Ward and

he built a house in 1999 on a Plot which was given No. 3775 after a survey was conducted in that area which was formerly owned customarily. Initially, the house was being used as a hostel for VETA students but in the year 2015 he changed its use into a lodge. He built a wooden structure adjoining the house and drilled a bore water hole. He then sought and was granted a water quality certificate and an instruction form by Songea Water and Sewerage Authority (SOWASA) which were respectively tendered and admitted as exhibits P1 and P2. The Healthy Officer also gave him directions to be complied with. The more so, a team of seven persons comprising a Land Officer one Ndemfoo and a Town Planner one Edward Kandonga (DW1) visited the area and gave a go ahead to the appellant with his mission. The appellant sought and was issued with a business licence (exhibit P3) and the business commenced. No sooner had the business began, the team visited the area again and orally directed him to demolish the wooden structure which directive was later reduced into a letter dated 24/1/2017 (exhibit P4) which was served to him on that very date. He claimed to have had complied with the directive on 12/2/2017. Yet again, on 15/3/2017, he was served with another letter by DW1 on 15/3/2017 which was a notice requiring him to demolish the Guest House within five (5) days only (exhibit P5). Convinced that time given was not enough, he wrote to the Regional Commissioner (the RC) asking for

extension of time with no response but was directed to see the Municipal Director who told him that his business was interfering with a certain influential person's business and promised that he was to supervise the demolition exercise himself. Soon thereafter, he received a phone call from his brother informing him that the demolition process was on and was required so as to disconnect the electricity power. Upon his return to his business premises he found the demolition process going on and as he could not help witness that, he collapsed only to recover while in Songea Regional Hospital.

The summary of the appellant's substantial claims in the suit may be found at page 54 of the record where the appellant is recorded to have stated that: -

> *"I am objecting the demolishing done by the defendant because the time of five days given to me to demolish the building was very short, when I was required to demolish the timber hut I was given twenty-one days but to demolish a house of seventeen room (sic) was given five days.*
>
> *Another reason for objecting the demolition is that before demolishing my building the Municipal Council was required to pay me compensation. The issue of saying I built on a*

water source and I had no building permit that was known by the authority because about six groups came to inspect my area of business and said was proper.

There are another indigenous houses in that area which are about 42 houses and not my house alone. All are within sixty meters of (sic) the water source area. The Municipal Council knows all the houses in that area have no building permit.

In that Plot No. 3775 I have mentioned there are about four houses but only one house which I used for guest house was demolished and the rest of the houses including my house which I used for shop business was not demolished. *The houses (sic) of Ilonginus Komba which is in the same plot was not demolished.*

The houses which were doing business of guest were my house and that of Jenista Mhagama. The house of Jenista Mhagama was not touched. Demolition of my house has caused loss to me. ..."

Upon being cross-examined by Mr. Alto Liwolelu, the Municipal Solicitor, who represented the 2nd respondent (2nd defendant then), the appellant further said:-

*"**I have a document to show that the land was surveyed but I was not yet given right of occupancy. I agree the area is surveyed but many people we have no right of occupancy**. All the building were built customarily and it was upon the Municipal Council to give us right of occupancy. **I had no building permit**. I heard the street chairman saying pink pub was of Jenista Mhagama and is when I knew who was the owner of the guest house.*

*I didn't know the procedure and **I was not given permit to change the house from hostel into guest house.** The certificate of quality of water cannot give me a right of ownership on the plot of land. The Health Officer did not give me any document to show my building was fit for doing business...*

They were supposed to pay me compensation because they allowed me to do my business in that area. The officials who visited me saw where I was building my guest house..." (Emphasis added)

On her part, Regina Nungu (PW2) who seems to be the one who welcomed the appellant into the area which belonged to her and her husband and on which they lived right from the year 1968 stated that

people started building in that area since villagization exercise in 1974 and before the sixty meters' rule came into force. She said the area is surveyed and that the appellant's house was demolished for being built at the water source but there are other houses in that area built within sixty meters.

The appellant's claims were seriously refuted by the respondent through the evidence by three witnesses namely DW1, Furaha Mwanangakala (DW2) and Mackie Wilfred Mgue (DW3). DW1 stated that as Town planner, his duty was to plan the town and supervise development of the town. According to him land development is done according to approved plan and pursuant to issued building permit following application for it by the owner of the land. He said the appellant did not apply and granted building permit before building his buildings. Explaining why one has to obtain a building permit before erecting a building, he stated that:-

> *"**The effect of a person to build without getting permit is that he can build on the land which is not required to be built a house as it can be a road reserved area, market or river** or the area which do not belong to him. If a person has built on a land which has no permit and is not required to be built a house we used to give him a notice that*

he has built on area which is not required to be built. We also used to inform him is required to demolish his building.

The plaintiff built his house on water source. We gave him a notice and demanded him to demolish the structures he had built on the land which is source of water... "(Emphasis added)

DW1 Was further forthcoming that the appellant was issued with a letter requiring him to demolish his buildings built on the land which was water source (exhibit 4) in which he was given 21 days to do so before he was given another letter, not admitted as exhibit, dated 30/01/2017 giving him another 30 days to comply with the order. After the lapse of 21 days in exhibit P4, they issued to him another letter dated 15/03/2017 (exhibit P5) giving him five days from 15/03/2017 to 19/03/2017 making a total number of about 54 days to demolish the buildings but there was no compliance from the appellant, as a result on 20/03/2017 the respondent demolished the building erected on the water source. He further stated that the requirement to have building permit began with the enactment of Act No. 8 of 2007 but there were other laws in place governing land development prior to including environmental laws.

Responding to the question whether the demolition at such short notice without payment of compensation was influenced by the Regional Commissioner, DW1 stated at page 69 of the record that:-

> *"We had already gave (sic) the plaintiff a demolition notice even before the meeting of the Regional Commissioner as I gave him a notice for demolition on 24/01/2017. The notice of five days we gave to the plaintiff was reasonable because we had gave (sic) him another notice from 24/01/2017. He was not entitled to be paid any entitlement as he was not given permit to build on that area. We discovered the plaintiff was building his structure in 2017. The law I have mentioned was of 2007 and we discovered the building was under construction in 2017.*
>
> *The plaintiff has other building which is used for shop and we don't (sic) demolish that building. The business license given to him was for his business. Demolition of the plaintiff's building was not done discriminatively. We do our works according to the law and not because of any pressure from anybody."*

DW1 concluded by stating that the notice of 24/01/2017 required the plaintiff to demolish both the wooden and block structure and he was given enough time to do so.

Mr. Furaha Mwanangakala (DW2), a Trade Officer with Songea Municipal Council, apart from admitting that they issued a business licence to the appellant, he explained that issuance of business license has nothing to do with knowing whether the building in which business is to be done is lawfully built or not. On his part, Mackie Wilfred Mgue (DW3), a Land Surveyor in Songea Municipality, told the trial court that the land at Msamala Miembeni area was surveyed in 1990 and that the appellant built his house on the upper part and it extended down to the water source. He further stated that it was only the part which extended to the water source which was demolished for being built without permit. He added that only those who build on land allocated properly and have building permits are compensated if their houses are demolished. He insisted that the appellant had no building permit.

Before commencement of the hearing, the trial High Court framed these issues to guide it during trial and in the determination of the suit:-

> *"1. Whether the defendant is liable for trespass to property of the plaintiff.*
> *2. Whether the plaintiff indeed has a building which was demolished by the defendant.*
> *3. Whether the plaintiff has a building permit for the building which was demolished.*
> *4. Whether the defendant had a justifiable reason to*

demolish the plaintiff (sic) building.

5. *Whether the demolition exercise was conducted discriminatively.*
6. *What reliefs the parties are entitled."*

In his judgment, the learned judge was convinced that the appellant had not managed to prove the claims and, as earlier on shown, he dismissed the suit.

Before us, the appellant is faulting the learned judge's decision upon a five point memorandum of appeal. The points of grievances may be paraphrased thus:-

1. That, the trial court erred in law and fact to dismiss the suit on the ground that the appellant's house was built on water source without paying due regard to the fact that the laws protecting water sources came into effect after the appellant had already built his house.
2. That, the trial court erred in law and fact to decide that the demolished house was done due to lack of building Act (sic) without regard that the law that require building permit came into force on 2007 while the house was built on 1999.

3. That, the trial court erred in law and fact to hold that the demolished house was on water source without evidence to justify the same.
4. That, the trial court erred in law and fact for failure to hold that the demolition of the appellant's house was influenced by the Regional Commissioner of Ruvuma and other influential persons.
5. That, the trial court erred in law and fact for failure to hold that the 5 days' notice to demolish the house was unreasonable and not justified by any law.

The appellant appeared in person and without legal representation before us whereas the respondent had the services of a team of learned minds comprised of Mr. Deodatus Nyoni, learned Principal State Attorney, Ms. Egidy Mkolwe, Mr. Edwin Webiro and Mr. Alto Liwolelu, all learned State Attorneys.

We may not be doing justice to the appellant if we shall not at once acknowledge that notwithstanding the fact that he is a layperson and not acquainted with legal matters, he ably prosecuted his appeal before us. He was very clear, precise and focused when advancing his arguments and was able to take us through the relevant pages of the

record of appeal when he was arguing before us. For that, we commend him.

Having closely examined the evidence on record and the parties' submissions before the trial court and before us, it is clear to us and uncontroverted that the appellant owned a building at Miembeni Msamala Ward and that it was demolished by the respondent. The appellant's own evidence, PW2's and that of DW1 sufficiently established existence of the building and that it was demolished on 20/03/2017. The issue which is central in these grounds of appeal is therefore whether the demolition of the appellant's building was justifiable. We shall therefore determine the appeal on that basis and in the due course we shall address all the issues raised in each ground of appeal.

The appellant argued grounds one (1) and two (2) conjointly. In those grounds the appellant is challenging the respondent for demolishing his building based on laws which were enacted and came into force after the house was built. It was his submission that the law protecting water sources and the one requiring one to have a building permit before erecting a building, came into effect after he had built his house. The laws under reference were Urban Planning Act, No. 8 of 2007 (Act No. 8) and the environmental Management Act, No. 6 of 2004 (Act No. 6) referred to in exhibits P4 and P5. It was his contention that

since he built his house in 1999, those laws were inapplicable to the houses/building built prior to like his house. He distinguished the facts in the case of **Director of Moshi Municipal Council v Stanlenard Mnesi and Another**, Civil Appeal No. 246 of 2017 and **Director Moshi Municipal Council v John Ambrose Mwase**, Civil Appeal No. 245 of 2017 (both unreported) relied on by the respondent arguing that in those cases the violations were made when the laws were already in place.

Like the appellant, in response, Mr. Nyoni argued grounds one (1) and two (2) together. His first line of argument was that prior to the year 2015, the appellant used the building as a hostel for VETA students and in the year 2015 he changed use into a guest house by establishing a bore hole and taped water from the water source in compliance with the SOWASA instructions which act, in terms of the Urban Planning Act, No. 8 of 2007, amounted to development or erection of buildings on the land requiring a building permit. He referred us to section 2 of that Act which defines erection. As an elaboration on what is meant by erection, he also referred us to the Court's decision in the case of **Director Moshi Municipal Council v. John Ambrose Mwase** (supra).

Arguing in another angle, Mr. Nyoni impressed us to believe that there was no controversy that the land on which the appellant settled,

that is Msamala Ward, was surveyed in 1990. He stressed that once an area is declared a planning area, any development requires consent hence a need to have a building permit. To buttress his contention he referred us to the Court's decision in the case of **Director Moshi Municipal Council v. Stanlenard Mnesi and Another** (supra). Yet again, he contended that in paragraph 15 of the plaint, the appellant made it clear that the cause of action arose in Songea Municipality which is the appellant's own concession that the house was built within Songea Municipality. He added that it is established principle of law that a party is bound by his own pleadings. Mr. Nyoni was emphatic that, since DW1 at page 74 of the record of appeal told the trial court that that area was surveyed in the year 1990 and the appellant personally admitted at page 45 that he built his house in the year 1999, he was required to have a building permit, which he admitted he did not have.

Still responding to the appellant's complaint in grounds 1 and 2 of appeal, Mr. Nyoni further argued that apart from the above statutes, another law which was in existence before the appellant built his house is The Local Government (Urban Authorities) (Development Control) Regulations, GN No. 242 of 2008, which were made under sections 62 and 63 of the Local Government Urban authorities Act, No. 8 of 1982 Cap. 288 R. E. 2002 (now R. E. 2019) which, under Regulation 124(3),

imposed a duty to seek approval before making any modification or alterations in the existing building in the same manner approval was sought in the original plan. Any violation, Mr. Nyoni stressed, in terms of Regulation 139, subjects such person to being issued with a demolition notice which has no specific time. Time to be given, he added, is dependent upon the wisdom of the concerned authority.

As to whether the five days' notice to demolish the building was fair, Mr. Nyoni responded that, upon discovery that the appellant had built his house in the water source and without a building permit, DW1 is clear in his evidence that the respondent issued him with a 21 days' notice to demolish it before he was given another letter giving him thirty (30) days and lastly another letter giving him five days as exhibited in exhibit P4 making a total of about 54 days to comply with the order but to no avail, hence the respondent had no option but to exercise its mandate to demolish the building on 20/03/2017.

In sum, Mr. Nyoni impressed on us to follow the route taken by the trial court and hold that demolition of the appellant's building was justified.

In dealing with this issue which was issue No. 1, the High Court took the view that such issue could not be exhaustively determined

without first determining issues no. 2 to 5. It is noteworthy that the High Court relying on the appellant's own evidence and that of DW1 and DW3 positively found in issue No 1 that it was an undisputed fact that the appellant owned a building at Miembeni area within Msamala Ward within the Municipality of Songea which was demolished by the respondent. Similarly issue No. 3 was positively answered reliance being on the appellant's own testimony and that of DW1 and DW3 that the appellant did not seek and obtain a building permit before he constructed the building which was demolished. In respect of issue No. 4, the High Court, apart from finding the demolition notice issued on 15/03/2017 (exhibit P5) wanting in clarity as to whether it related to both wooden structures and a block structure, the said exhibit P5 referring to the demolition of the buildings (both wooden and blocks structures), it was of the view that the notice for demolition issued on 24/1/2017 (exhibit P4) was for demolition of the wooden structures only. Consequently, the court doubted that exhibit P5 which gave the appellant five days within which to demolish the buildings was issued under the influence of the RC. It was, however, satisfied that there was no proof that the time given was insufficient and that there were no efforts made to ask for more time from the RC and the Director of the Respondent as was claimed by the appellant. In the end, it dismissed

that complaint by the appellant. In concluding that discussion, the trial court at page 128 of the record of appeal stated that:-

> *"Since the plaintiff has not disputed his building was built in the water source area and he had no building permit from the authority concern (sic) and he was given notice to demolish the building but he failed to comply with the notice, the court has failed to see anything which can make it to find the defendant had no justifiable reason to demolish the plaintiff's building. The court has gone through exhibits P1, P2 and P3 which the plaintiff said were authorizing him to do the business of lodge in the building which was demolished but find as rightly stated by the defendant's witnesses and submitted in the defendant's final submission those exhibits cannot be used to establish the building of the plaintiff would have not been demolished as were not permit for building in the water source area..."*

We, on our part, have given a deserving consideration to the parties' arguments before us and also examined the evidence on record carefully. Much as we agree with the High Court's final conclusion that the appellant built in the water source and had no building permit from the respondent, the appellant's complaint before us in grounds 1 and 2

is echoed on what he referred to as the laws applied to demolish his buildings were inapplicable to him as they came after he had built the buildings demolished.

Before we proceed any further to deliberate on the appellant's complaint, we propose to pose here and interject certain facts which stem out clearly from the appellant's own evidence on the record of appeal. Such facts are crucial in the determination of this appeal. **One**, that the appellant built his house on the area in 1999. **Two**, although the appellant was not forthcoming exactly when, the area was surveyed and was given Plot No. 3775. **Three**, The appellant changed use of the house in 2015 from a hostel for VETA students to a guest house and thereafter effected some extensions by building wooden structures and drilling a water borehole for taping water from the river. **Four**, the appellant did not seek and obtain a building permit before effecting the changes by extending the building by erecting wooden structures. **Five**, the appellant was served with demolition notices (exhibits P4 and P5). **Six**, Not all the buildings were demolished but some were not demolished particularly that part used for shop business. In addition, according to PW2 at page 59 of the record, the appellant built in the water source. From the respondent's side, most of such facts as presented by the appellant and his witness save for the remedies

sought, were not disputed but, of essence, DW1 came out clearly that the respondent, on 20/03/2017, demolished the appellant's part of the house which was built in the water source without permit consequent upon his failure to comply with the demolition notices (exhibits P4 and P5) issued to him. Further, DW3 said the area was surveyed in the year 1990 and this was not controverted by the appellant. He added that the appellant built in the water source area without permit. Given these facts, we have no reason to disbelieve DW3 that the area the appellant erected his building the subject of demolition was surveyed in the year 1990, the building was built in the water source and without a building permit.

Having laid the foregoing foundation we now revert to the issue under discussion on the laws applied during demolition of the appellant's building. As our starting point, we take note that the demolition notices (exhibits P4 and P5) made reference to sections 7(1), 29(1), 74(1)(2) of "Sheria ya Mipango Miji Na. 8 ya Mwaka 2007". According to the appellant, that law (Act No. 8 of 2007) became operative after he had built his house in 1999 in that area identified as Miembeni Street within Msamala Ward within Songea Municipality. We further take note that the learned judge did not address himself on this pertinent legal issue the appellant has raised before us. All the same, he cannot be blamed for

that for the obvious reason that it was not brought to his attention or placed before him for determination. Luckily, the parties had, before us, ample opportunity to submit on it as shown above.

Our comprehensive examination of the evidence by both sides and even the arguments by the parties before us have led us to the conclusion that the underlying reason for the demolition of the appellant's building is that he made development on his land without permit and the development extended to the water source. Exhibits P4 and P5, contextually examined, support our finding. As hinted above, we are herein invited in grounds 1 and 2 to determine if such development could be done without permit. We cannot, to be sincere, proceed to exhaustively determine the points of grievances without commending the learned Principal State Attorney who ably highlighted the Court on various laws governing land developments in urban areas which made our work somehow easier. Without hesitation, in view of the evidence on record and the laws as we understand them to be, we entirely agree with the learned Principal State Attorney that the appellant's complaint is unmeritorious. We shall demonstrate.

Both sides are agreeable that Msamala Ward is a surveyed area, and in particular the area the appellant built his house was allocated Plot No. 3775. Only DW3 was able to tell and it was uncontroverted that

Msamala Ward was surveyed in the year 1990. This shall be our take off point.

We had ample time to peruse the various laws cited to us by Mr. Nyoni and we realized the following: - **first**; that, prior to the enactment of the Sheria ya Mipango Miji Na. 8 ya Mwaka 2007 (The Urban Planning Act, No. 8 of 2007), there was in existence of The Town and Country Planning Act, Cap. 355 (Cap. 355) which under section 13, it provided the manner or procedure of declaring an area a planning area to be that the Minister responsible for town and country planning in consultation with the local government authority concerned may, by order published in the Gazette declare an area to be a planning area. The relevant order is called Town and Country Planning (Planning Areas) Order. Under that authority, Songea Township was declared a planning area through G. N. No. 607 of 1994 and the areas covered were listed to be, we quote:-

> "16. ***Songea Township.***
>
> Misufini, Mfaranyaki, Lizaboni, Matarawe, Bombambili, Matogoro, Ruvuma, Subira, Ruhuwiko, Mshangano, Mletele, Mahenge, Chandamali, Kibulang'oma, **Msamala**, Mateka, Ruhila and Makambi." (Emphasis added)

Second; in terms of section 35 of Cap. 355, development in a planning area was restrictive and conditional in that it should be effected in accordance with and upon obtaining a consent of the planning authority established under section 36 of Cap. 355. The former section stated that:-

> *"35. No development in planning area without planning consent.*
>
> *Notwithstanding any other law to the contrary, no person shall develop any land within a planning area without planning consent or otherwise than in accordance with planning consent and any conditions specified therein."*

Third; Section 75 of Cap. 355 empowered the local government authority to issue notice on the owner of land who has developed it without consent and not in accordance with the planning consent requiring him to discontinue such development and to alter or pull down and remove any works or buildings comprised in such development.

In the event of non-compliance with the notice issued under section 75 above which is termed as enforcement notice, the local

government is authorized to demolish or pull down the effected development (see section 77 of Cap. 355).

Fourth; Cap. 355 was repealed and replaced by the Urban Planning Act, Act No. 8 of 2007 (Act No. 8 of 2007). That is in terms of section 80(1) of the latter Act which is referred to as "Sheria ya Mipango Miji Na. 8 ya Mwaka 2007" in exhibits P4 and P5.

Fifth; Act No. 8 of 2007 retained, in almost similar wordings, the procedure of declaring an area a planning area and the requirement to obtain consent before effecting any development on the land within the planning area (See sections 8 and 29, respectively).

As for the steps to be taken in the event of making any development on a planning area without obtaining a building permit (planning consent), section 74 of Act No. 8 of 2007 imposed a duty on the local government authority to issue an enforcement notice requiring the land owner to rescind development and demolish the same and on the lapse of the notice given, proceed to effect the demolition itself in the same manner Cap. 355 provided.

It is plain and, with respect, we agree with Mr. Nyoni, that conditions for development on planning area existed even before Act No. 8 of 2007 came into effect. Both Cap. 355 and Act No. 8 of 2007 made it

imperative upon the land owner to seek and obtain a planning consent now referred to as a building permit before making any development on the land in a planning area.

In the present case, even assuming that the appellant built his house in the year 1999 and changed use of the house which was accompanied with construction of the wooden structures in 2015 as he claimed, he was still required to have applied and obtained a building permit before effecting the development, as was rightly argued by Mr. Nyoni. That is for the obvious reason that Msamala Ward was declared part of Songea Township way back in 1994 vide G.N. 607 of 1994 and section 35 of the repealed Cap. 335 prohibited making development on land in townships without a building permit which the appellant admitted he did not have. That alone justified the respondent's issuance of enforcement notices which the appellant admitted being served with. Besides, as amply demonstrated above, Act No. 8 of 2007 which repealed Cap. 335, as shown above, applied with equal force in respect of the change of use and developments done on the appellant's plot in 2015. Luckily, there was concession by the appellant that he was served with enforcement notices well ahead of the demolition of his house as the law required. That said, there is no point for the appellant to contend

that the laws which were applied in demolition of his house came later after he had built his house.

Connected to the above issue is the appellant's complaint that he complied with the enforcement order by demolishing the wooden structures. That argument does not find any merit at all as section 35 of Cap. 335 and section 29 of Act No. 8 of 2007 forbid development on land on a planning area without a planning consent (Building permit). As shown above the whole of Msamala Ward was within Songea Township hence falls within the laws restricting development without a building permit. In actual fact, the appellant was required to apply and obtain a building permit (planning consent) before erecting any of his buildings on that plot let alone the extended wooden structures which were demolished since they are within the planning area. Worse still, he was clear in his testimony that he had no any building permit. The Court took the same stance in the recent decisions in **Director Moshi Municipal Council v John Ambrose Mwase** and **Director Moshi Municipal Council v Stanlenard Mnesi and Another** (supra) rightly cited by Mr. Nyoni where it was stressed that any development on a land in a planning area requires a planning consent (a building permit). Much as we agree with the appellant that the events that culminated in the demolition in these two cases occurred after Act No. 8 of 2007 was

already in place, the discussion therein centered on sections 29 and 74 of Act No. 8 of 2007 which are largely in *pari materia* with sections 35 and 75 of Cap. 355 which were already in place when the appellant built his house in the year 1999. In addition, as demonstrated earlier, the extension was made by the appellant in the year 2015 during which time Act No. 8 of 2007 was already operative. In both situations, the appellant's contention that the two cases are distinguishable crumbles. This discussion leads us to one conclusion that grounds 1 and 2 of appeal have no merits and we dismiss them.

Given the above standpoint, grounds 3 and 4 of appeal pose no difficult at all in deliberating them. In terms of section 35 of Cap. 355, section 29 of Act No. 8 of 2007 and the Court's two decisions above, whether the structures demolished were in the water source or not is immaterial. Much as we acknowledge that Regulation 8 of the Water Utilization (General) Regulations G. N. No. 370 of 1997 prohibits conduct of human activities within 200 meters of a river bank or within 500 meters of the shoreline of a natural lake (inland lake), dam or reservoir (water intake), as earlier intimated, the essence of the appellant's building being demolished is that he effected such development on that land without building permit. Proof that the building was built in a water

source or not, is ineffectual. This fact was appreciated by the learned Judge in his judgment when determining the third issue. He held that:-

> *"Coming to the third issue which states whether the plaintiff had a building permit the court has found as rightly submitted by the counsel for the plaintiff the answer to this issue is definitely supposed to be in negative.* ***The court has arrived to the above finding after seeing the piaintiff himself admitted in his testimony that, he had no permit issued to him by the authority concern to construct the building which was demolished. That testimony is strengthened further by evidence of DW1 and DW3 who told the court the plaintiff did not apply and issued with a permit by authority concern to construct the building which was demolished. In the premises the third issue is supposed to be answered in negative."*** (Emphasis added)

We entirely agree with the learned judge that, on the evidence on record, demolition was due to failure by the appellant to apply and obtain a building permit before effecting the development on a planning area. Provided that the land was a planning area it matters nothing whether or not the building was situated on the water source or not. A

building permit is of essence before making any development. Accordingly, the appellant's contention in ground 3 of appeal that there was no evidence establishing that the house was built in the water source, misses the point and is dismissed.

For convenience sake, we propose to deal with ground 5 of appeal first and defer consideration of ground 4 of appeal to a later stage of this judgment. The appellant's complaint is centered on the fairness of the time given to him to demolish the house. His argument was that if he was given 21 days to demolish the wooden structures (exhibit P4), how could he demolish the house within five days given to him (exhibit P5). He further contended that exhibit P5 has no any bearing with exhibit P4 as they referred to different buildings. Mr. Nyoni was of a completely different view. To him, exhibit P4 and P5 were talking about the same building in the sense that the wooden structure adjoined the block building in terms of exhibit P4. It seems clear from the trial court's judgment that the issue seriously taxed the learned judge's mind. However, upon his serious examination of exhibit P4 he was of the view that it was a notice to demolish the wooden structure only not the block house used as a lodge whereas exhibit P5 was a notice talking about demolition of both the wooden and block house (the buildings). That notwithstanding, he was unable to agree with the appellant's complaint

that five days granted to him to demolish the buildings was inadequate on account of his failure to propose what time would have been enough for him to comply with the notice.

It is settled law that a first appellate court such as what we are now has a duty to re-evaluate the entire evidence in an objective manner and arrive at its own finding of fact if necessary (See **Siza Patrice vs. Republic**, Criminal Appeal No. 19 of 2010 cited in **Kaimu Saidi v Republic**, Criminal Appeal No. 391 of 2019 (both unreported) and **PANDYA v R** (1957) EA 336). Although propounded in Criminal appeals, the principle enunciated equally applies in civil appeals. We will try to make our own evaluation of the evidence on record. Upon our examination of the trial court's judgment, it seems clear to us that the learned judge's view is that exhibits P4 and P5 gave conflicting and inconsistent explanations on which building was subject to the enforcement orders (demolition notices). We have revisited the evidence of the witnesses and both exhibits. Read contextually and comprehensively, we hasten to hold that we see nothing incompatible and irreconcilable in the two exhibits. We shall show.

We begin with exhibit P4, a letter Reference No. STC/25563/103 dated 24/01/2017, which was quoted in part by the learned judge at page 125 of the record of appeal. It tells it all about the relevant

building(s). We are certain that had the learned judge also quoted paragraph two of the letter, he would not have missed the point. That part states:-

> *"Katika ukaguzi uliofanywa na wataalamu wa Halmashauri ya Manispaa ya Songea katika eneo la Msamala Miembeni, tumebaini kuwa* ***umejenga jengo kwa kutumia Mbao, Mabanzi na Miti aina ya Mirunda na kuezeka kwa kutumia Nyasi Kavu. Jengo hilo limeungana na jengo lililojengwa kwa tofali na kuezekwa kwa bati ambayo yote yanamilikiwa na wewe mwenyewe. Jengo hilo limejengwa bila kibali cha ujenzi kutoka kwenye Mamlaka ya Upangaji Mji*** *ambayo ni Halmashauri ya Manispaa ya Songea kwa mujibu wa Sheria ya Mipango Mij Na. 8 ya mwaka 2007 kifungu cha 7(1)..."* (Emphasis added)

Read closely, the above excerpt lends no ambiguity that the appellant erected a wooden structure which adjoined the block house such that they formed one building which was built without a building permit from the concerned authority, Songea Municipal Council. We find support from DW1's testimony too. Speaking of exhibit P4 which gave the appellant 21 days within which to demolish the buildings, DW1 was,

in his testimony, very clear on the structures to be demolished when he, at page 63 of the record of appeal, stated that:-

> *"The letter exhibit P4 required him to demolish a wooden buiiding which had been built and adjoin the block wall. He was told to demolish two buildings as one part was built by using woods and another part was built by using blocks."*

Exhibit P5, a letter Reference No. STC/25563/107 dated 15/03/2017, in what we may say much clearer words, stated, in part, that:-

> *"Nikurejeshe kwenye barua kutoka halmashauri ya Manispaa ya Songea yenye kumbukumbu namba STC/25563/103 ya tarehe 24/01/2017 iliyokutaka uvunje jengo hilo ndani ya siku ishirini na moja (21). Muda uliopewa ulianzia tarehe 24/01/2017 ambapo muda wake ulikwisha tarehe 14/02/2017.*
>
> *Baada ya muda huo kuisha tarehe 14/03/2017 wataalamu wa Mipango Miji na Mazingira wallfika kwenye eneo hilo kuona kama umevunja na* ***kuondoa kabisa majengo hayo ambayo yote yamejengwa kwenye chanzo cha maji na bila kibali kutoka Halmashauri ya Manispaa ya Songea...."*** (Emphasis added)

Plain as it is, exhibit P5 defeats the appellant's argument that it has no any bearing with exhibit P4. It makes reference to both the letter and contents of exhibit P4. Exhibit P5 is, therefore, a notice to demolish the same building referred to in exhibit P4, the wooden structure and a block house which were built without a building permit. It granted the appellant a further 5 days within which to comply with it. He was therefore, in total, granted more than the complained five days' time. The appellant's contention that the time granted to him was unjust, therefore, crumbles. This ground fails, too.

Even assuming that demolition of the appellant's buildings was founded on construction within the prohibited water source as the appellant claimed, yet the appellant's complaint would still find no merit. As was rightly argued by Mr. Nyoni, Regulation 124(3) of GN No. 242 of 2008 (cited above) obligated the appellant to seek and obtain approval before effecting any modification or alteration the violation of which Regulation 139 empowered the urban authority to issue a demolition notice specifying the time within which to comply failure of which demolition would be carried out. In addition, both section 57(1) of the Environmental Management Act, 2004 and section 8 of the Water Utilisation (General) Regulations, GN No. 370 of 1997 prohibit human activities in water sources. In the present case, evidence by PW2, DW1,

DW3 and that of the appellant himself was to the effect that the appellant changed use of his house from a hostel to a guest house, constructed a bore hole and built a wooden structure adjoining the block house which extended to the water source in the year 2015. Although the cited laws do not expressly provide for the sanctions to be imposed, these developments amounted to an alteration or modification and were done when GN No. 242 of 2008 was already in place hence, in terms of regulation 124(3), they required approval (permit) which he unequivocally said he had not. Failure to seek and obtain approval entitled, under Regulation 139(1) and (2), the local authority to issue a written notice specifying the time it deems fit within which to demolish and remove such building or any part thereof and, in the event of non-compliance, enter upon the premises and carry out such demolition, removal or alteration. In the instant case, the appellant was given 21 days on 24/01/2017 (exhibit P4) which was subsequently, after about 38 days, followed by another notice giving him 5 days on 15/03/2017 (exhibit P5) making a total of about 56 days. That is the law and the appellant cannot be heard complaining about either the time given being short or unjust or the demolition being unjustified.

Lastly, we consider ground 4 of appeal. The complaint links the RC with the demolition of the appellant's building. Mr. Nyoni was not

hesitant to agree that in view of how exhibit P5 is couched, one may be tempted to form the impression the appellant has that demolition was effected under the RC's influnce but he was quick to assure the Court that everything was done according to law. He insisted that the appellant was to blame himself for not abiding with the demolition notices (enforcement notices) issued to him and the extension of five days granted to him. We agree with Mr. Nyoni wholesome. The appellant effected development on planning area without a building permit and did not honuor the enforcement notices issued to him according to law. That entitled the respondent to pull down the erected building. Fortunately though to the appellant, as per evidence on record by himself, PW2 and DW2, only a part of the house was demolished. If there is anything we can say, the RC's involvement was just to ensure compliance with the laws only. We have noted nothing suggesting compulsion from him to the respondent to do what they did. Instead, the appellant's own evidence is a revelation of how the RC was trying to assist him by directing him to meet the relevant authority, the respondent, so as to resolve the matter. To evidence that, we wish to quote, in part, what he stated in court at page 53 of the record of appeal when he testified:-

> *"...After being given that notice of five days I wrote a letter to the Municipal Director praying to*

be given more time as five days were not sufficient. The street leaders wrote letter to the RC praying for more days for demolishing the building as five days were not enough.

On 20/03/2017 I followed the answer to the letter written to the RC and the RC told me to see the Municipal Director. *When I went to see the Municipal Director he asked me if I was the owner of the building and I told him I was the owner...*

After asking me those question (sic) he told me he was going to supervise demolition of the building himself. ***The RC told me if I would have not been satisfied I should return to him.*** *After returning to the RC and while there I received a phone call which required me to go to cut electric power as the people for demolishing the building had already arrived there..."*
(Emphasis added)

In the light of the foregoing self-expression of the appellant, we find no justification to adjudge the RC the manner the appellant would wish us to do. There is neither vivid nor any facts from which it can be inferred that there was anything evil or ill will on the part of the RC in the whole process that led to the demolition of the appellant's house. After all, as was rightly stated by DW1, the first enforcement order

(exhibit P4) was issued to the appellant on 24/01/2017 which was prior to the meeting between the RC and Hamlet Chairmen which was held on 14/03/2017 (see exhibit P5). That said, this ground lacks merit, too, and is hereby dismissed.

For the foregoing reasons, this appeal is devoid of merit. It is hereby dismissed with costs.

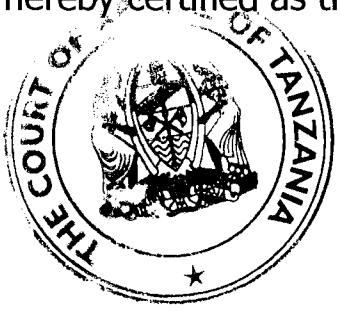
DATED at **DAR ES SALAAM** this 21st day of April, 2022.

S. A. LILA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Judgment delivered this 2nd day of May, 2022 in the presence of appellant in person, through video conference from Songea and Mr. Brison Ngulo, learned State Attorney for the respondent/Republic is hereby certified as true copy of the original.



E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL