IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: RAMADHANI, J.A., LUBUVA, J.A., And LUGAKINGIRA, J.A.)

CIVIL APPEAL NO. 14 OF 1998

BETWEEN

THE ATTORNEY GENERAL ..... APPELLANT

AND

PHILEMON NDESAMBURO ..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dar es Salaam)

(Msumi, J.K.)

dated the 30th April, 1997

in

Misc. Civil Cause No. 12 of 1995

J U D G M E N T

RAMADHANI, J.A.:

The respondent, Philemon Ndesamburo, was given a right of occupancy over Plot No. 3, Ununio, Kinondoni District, Dar es Salaam, with Title No. 35585 L.O. No. 80998 on 17th August, 1989. He saw in the Uhuru Newspaper of September 9th, 1994 that the Minister for Lands, Housing and Urban Development intended to revoke his right of occupancy. On 4th October, 1994 he wrote to the Minister showing why there should not be a revocation order. Nevertheless, the title was revoked. So, the respondent sought from the High Court the prerogative orders of certiorari, to quash the revocation order, and of mandamus, to reinstate the right of occupancy to the respondent.

The application was heard by the learned Jaji Kiongozi (MSUMI, J.K.) who granted the two orders saying:

> ... the revocation is bad in law for it was issued in contravention of the principles of natural justice in that the applicant was not given the right of hearing.

The Attorney General being aggrieved by that decision has preferred this appeal.

An issue arose whether or not leave to appeal was required in this case. Mr. Salula, learned Principal State Attorney, for the appellant, cited the decision of this Court in Leonsi Silayo Ngalai v. Hon. Justine Alfred Salakana & the Attorney General, Civil Appeal No. 38 of 1996, holding at page 12 that:

> ... it is apparent that the provisions of section 5 of the Appellate Jurisdiction Act, 1979 do not apply to all cases. Exceptions are recognized where there is a written law providing for a contrary position.

As it is apparent from the portion quoted, that holding is founded on express words of section 5 (1) of the Appellate Jurisdiction Act, 1979, that:

> In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal

In this case, Mr. Salula pointed out that section 17 (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance (Cap. 360) provides:

> Any person aggrieved by an order made under this section may appeal therefrom to the Court of Appeal of East Africa.

Mr. Muccadam, learned counsel, who advocated for the respondent, argued that as the Appellate Jurisdiction Act, 1979, does not provide for automatic appeals from decisions on prerogative orders, the appellant required leave to appeal.

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We do not think that this issue need detain us. Under section 5 (1) of the Appellate Jurisdiction Act, 1979, and as this Court held in Ngalai's appeal, it is obvious that the right of appeal to this Court is not granted by the Appellate Jurisdiction Act, 1979, alone but that there are other laws providing for such right. In Ngalai the other law was the Constitution of the United Republic of Tanzania, 1977. In the present case it is the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance as amended. So, there was no need for leave to appeal in the present case.

Much was submitted in this appeal but we are of the firm opinion that the appeal stands or falls on the narrow issue of whether or not the respondent was condemned unheard as the learned Jaji Kiongozi so found.

Mr. Mucadam himself conceded that the learned Jaji Kiongozi erred in finding that the respondent was condemned unheard. The learned advocate contended that the President did not consider the reasons given by the respondent in resisting revocation of the right of occupancy.

The respondent himself in his affidavit in support of his application for the prerogative orders said in paragraph 8:

> That I have advanced good cause before the revocation took place. I enclose herewith the letter of 4th October, 1994, to the City Director and of even dated to the Hon. Minister for Lands and Urban Development.

We have seen the letter he wrote to the Minister. Again the respondent said in paragraph 10:

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That there has been serious miscarriage of justice in that the said Revocation was made without good cause and contrary to the Land Ordinance.

Now, rules of natural justice prescribe that a person should not be condemned unheard. The respondent here was heard. Of course a hearing is meaningful if what has been said is taken into consideration in arriving at a decision. As the President is not required to assign any reason for revoking a right of occupancy, we can only presume that he considered the submissions of the respondent. Of course, the presumption is rebuttable.

However, in the present case we are of the opinion that the facts of the matter do not accommodate a different decision to revocation. The title deed clearly directed that buildings in accordance to approved plans should have been erected and be ready for use by 31st March, 1992. The respondent submitted his drawings to the City Council for approval on 15th March, 1992, that is, he had 16 days in which to comply with the stipulated condition, assuming that the approval could have been obtained on the same day! As it turned out, until 4th October, 1994, the respondent had not got the approval because on that date he wrote a reminder to the City Director. The revocation, as already said, was 9th March, 1995, that is, three years after the deadline!

For the above reasons we allow the appeal with costs.

DATED at DAR ES SALAAM this 21st day of June, 2001.

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A.S.L. RAMADHANI
JUSTICE OF APPEAL

D. Z. LUBUVA
JUSTICE OF APPEAL

K.S.K. LUGAKINGIRA
JUSTICE OF APPEAL

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

(F.M. MWAIKUGILE)
REGISTRAR