

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

MISCELLANEOUS CIVIL REVISION No. 4 OF 2003

(Originating from RMS Court Civil Case No. 3/2003)

SANARE MESHILI LAIZER.....APPLICANT

VERSUS

ARUSHA MUNICIPAL COUNCIL.....RESPONDENT.

R U L I N G

R. SHEIKH, J.

The applicant, SANARE MESHILI LAIZER, is by this application seeking the revision of the ruling made by P.M Kente in Arusha Resident Magistrate's Court Civil Case No. 3 of 2003. The application is brought under section 44 (1) (b) of the Magistrates Courts Act No. 2 of 1984 and was filed on 10/07/2003.

The respondent has resisted the application.

Briefly the background to the matter is that the applicant had on 24/01/2002 institute before the Arusha RM'S Court Civil Case No. 3 of 2002 seeking, inter, alia, a declaratory order that the plaintiff (applicant herein is the lawful owner of the ;and described in the plaint.

At the trial objection was taken on behalf of the defendant/respondent on the ground that the trial court lacked jurisdiction to entertain the suit for want of leave of the High Court required under section 63 of the Magistrate's Courts Act of 1984, for matters involving land which is unregistered and held under customary law. The trial Court sustained this preliminary point of objection and dismissed the suit.

It is Mr. Makange's contention that the decision of the RM'S Court is erroneous and that the error/irregularity in the decision has resulted in injustice to the applicant material to the case, and therefore needs to be corrected and revised.

Learned counsel for the applicant does not dispute that leave of the High Court Mandatory under 63 of the MCA in respect of claims for recovery of land. However he contends that the plaintiff's claim.

In this case is for a declaration that the applicant is the lawful owner and not a claim for recovery of land.

Countering these submissions Mr. Ojare learned counsel for the respondent has maintained that the applicant's suit in the lower court being a suit in respect of immovable property held under customary law is bound by the mandatory provisions of section 63 of the Magistrate's Courts Act 1963 for prior leave of the High Court, notwithstanding that the claim is only for a declaratory relief.

A lot more were argued by the respective contending learned counsel which in my view is not relevant to the issue before this court.

Upon careful consideration of the applicant's plaint filed in the RM'S Court on 24/01/2002.

In am satisfied that the plaintiff's claim is immovable property (land) held under customary law as the plaint clearly alleges that the plaintiff inherited it under customary law from his forefathers.

This suit having been file before the coming into effect of the Land Disputes Courts Act 2002 (on 1/10/2003) clearly required leave of the High Court under 63 of the Magistrate's Courts Act prior to its institution in the Arusha RM'S Court. It matters not the suit was for a declaratory order rather than recovery of land. I cannot but agree with Mr. Ojare that the suit was improperly commenced before the Arusha RM's Court without the statutory leave of the High Court having been obtain. The ruling/decision of the Arusha RM'S Court upholding the objection raised by the defendant cannot be faulted. The suit was incompetent for want of the aforesaid leave. (See the case of FANUEL MANTIRI NGUNDA V. HERMAN MANTIRI NGUNDA (1995) T.L.R. 155, Cited by Mr. Ojare).

For the reasons above given I find that this application for revisional orders has no merit.

In the event the application is dismissed with costs.

(Sgd)
R. SHEIKH
JUDGE
18/12/2008.

Date:- 12/3/2009

Coram:- F.S.K. Mutungi, DR

Applicant:- Present


For the Applicant:- (Makange present)

Respondent

For the Respondent Mr. Ojare Advocate assisted by MS Kaaje and Mr. Sepele.

B/c:- Priscila


Court:- Ruling ready this 12/3/2009 in Court the presence of the Applicant also in the presence of counsel Makange in person also the presence of counsel Ojare for the respondent for advocate assisted by MS Kaaye Mr Sepele (interns).



E.S.K. MUTUNGI
DISTRICT REGISTRAR
12/3/2009.

RS/mk

I hereby certify this to be a true copy of the original.



F.S.K. MUTUNGI,
DISTRICT REGISTRAR
12/3/2009.