

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KIMARO, J.A., ORIYO, J.A., And JUMA, J.A.)

CIVIL REVISION NO. 8 OF 2015

THE BOARD OF TRUSTEES OF THE

PARASTATAL PENSIONS FUND APPLICANT

VERSUS

- | | | |
|--------------------------|---|-------------------|
| 1. ABBAS VERSI | } | RESPONDENTS |
| 2. ANTHONY MATHEW HAKALU | | |
| 3. COMMISISONER FOR LAND | | |
| 4. REGISTRAR OF TITLES | | |
| 5. ATTORNEY GENERAL | | |

(Revision from the proceedings, Judgment and Decree of the High Court of Tanzania (Land Division) at Dar es Salaam)

(Nchimbi, J.)

Dated the 28th day of August, 2015

In

Misc. Land Appeal No. 78 of 2015

RULING OF THE COURT

4th March & 24th August, 2016

JUMA, J.A.:

This revision proceeding was commenced *suo motu* by the Court. It follows a complaint to the Chief Justice from Dr. Masumbuko Lamwai, learned Advocate for the Board of Trustees of the Parastatal Pensions Fund. Ownership of Plots Nos. 1777 and 1778 (held under Certificate of Title No.

40329) and Plots Nos. 1779 and 1780 (held under Certificate of Title No. 40330) is at the centre of the dispute amongst parties to this revision.

The dispute was in 2009 presented before for the Land Division of the High Court in form of a suit, Land Case No. 289 of 2009. The amended plaint of the suit placed the BOARD OF TRUSTEES OF THE PARASTATAL PENSION FUND (who we shall refer to as "**the Board of the PPF**") as the Plaintiff. On the other hand, ANTHONY MATHEW HAKALU, the COMMISSIONER FOR LANDS, REGISTRAR OF TITLES and the ATTORNEY GENERAL were cited as defendants to the suit.

In their respective pleadings, the two main players to the suit, the Board of the PPF and Mr. Hakalu; staked different positions regarding how they obtained titles to the disputed plots. The Board of the PPF traced its claims back to 1996, when, after conducting a search at land registry, the Board purchased Plots Nos. 1777 and 1778 (held under Certificate of Title No. 40329) and Plots Nos. 1779 and 1780 (held under Certificate of Title No. 40330) from M/S ESLON LIMITED and M/S NEW WORLD ENTERPRISES LTD respectively. The Board insisted that the dispositions of the four plots were approved by the Commissioner for Lands and Title Deeds were accordingly

issued in the Board's name. Sometime in 1999 the Commissioner for Lands summoned the Fund to express concern over possible illegalities, caused by fraudulence and misrepresentations of the sale and subsequent transfer of the four plots. The Commissioner's fears were apparently allayed and the Board of the PPF retained the ownerships.

While the Board of the PPF traced the root of its claim back to 1996, Mr. Anthony Mathew Hakalu traced his own claim over Plots Nos. 1777 and 1778, 1779 and 1780 way back to two Letters of Offer to occupy the disputed plots of land (*Ref. DCC/LD/39816/1/2M* and *Ref. DCC/LD/39817/1/2M*) which he received from the Dar es Salaam City Council on 1st March, 1991.

Mr. Hakalu claims that he signified his acceptance of the two offers when he paid the requisite fees. Thereafter, he continued to enjoy the occupancy over the plots until 8th October, 2009 when he was issued with Certificate of Titles, Title Number 84830 with respect to Plots Nos. 1777 and 1778 and Title Number 84831 over Plots Nos. 1779 and 1780.

The record of the pending Land Case No. 289 of 2009 shows that the trial Judge (Mgetta, J.) had on 1st October, 2015 drafted the following four issues for the trial court's determination:

"1. - Who is the lawful owner of plots No. 1777 and 1778 with CT No. 40329 Msasani Peninsula and Plots Nos. 1779 and 1780 with CT No. 40330 Msasani Peninsula.

2. - Whether the rectification of the Register to remove the name of the plaintiff and substitute it with the name of the ISE defendant was valid.

3. - Whether the second rectification of the register to remove the name of the 1st defendant and substitute it with the name of the plaintiff was valid.

4. To what relief the parties are entitled.

Sgd: J.S. Mgetta, J.

1/10/2015"

While the suit was pending, there were other developments taking place which impacted the subject matter of the suit. One such development was when Mr. Versi entered the scene to stake his own claim over ownership of Plots Nos. 1777 and 1778. Records show that on 29th July, 2015, Mr. Abbas Versi, went to the same High Court Land Division where he filed a Petition (Misc. Land Appeal No. 78 of 2015) under the provisions of section

99 (1), 102 (1) and (3) of the Land Registration Act, Cap. 334. This petition cited the Registrar of Titles, the Commissioner for Lands and the Attorney General as first, second and third respondents.

In the Petition, Mr. Abbas Versi traced his ownership back to 13th November, 2009 when he purchased the disputed plots from Anthony Mathew Hakalu at a price of Three Hundred Thousand United States Dollars. It is appropriate to observe here that Mr. Abbas Versi was not a party to the Sale Agreement between Mr. Hakalu as the vendor, and one ASHIQ ABBAS VERSI, the purchaser. On 28/8/2015 Nchimbi, J. allowed the petition and declared Abbasi Versi as the lawful owner of plots No. 1777 and 1778.

When the revision was called for hearing on 4th March 2016, Dr. Masumbuko Lamwai learned Advocate appeared for the Board of the PPF. Mr. Abbas Versi was represented by Mr. Ambrose Malamsha, learned Advocate. Mr. Killey Mwitasy, the learned Senior State Attorney, appeared for Commissioner for Land, the Registrar of Titles and the Attorney General. Neither Mr. Hakalu nor his learned counsel entered an appearance. Because the revision was called *suo motu* by the Court, we not only ordered the hearing to proceed without Mr. Hakalu's presence; we also dispensed with

the Notice of Preliminary Objection raised on behalf of Mr. Abass Versi to contend that the record of revision proceeding is incomplete thus making the entire revision to be incompetently before the Court.

Asserting his support for the exercise of the Court's power of revision, Dr. Lamwai pointed out that Mr. Hakalu is still a party to a pending suit and is fully aware of competing claims over plots of land. The learned Advocate urged us to regard it to be a fundamental irregularity for Mr. Hakalu to be part of the Sale Agreement to sell the disputed plots of land to ASHIQ ABBASI VERSI. This irregularity occasioned injustice to the Board, as a party to the pending suit.

Dr. Lamwai next questioned the suspicious way Mr. Hakalu transacted the sale of the plots which was preceded by a search in Land Register by MEHBOOB VERSI followed up with an agreement with one ASHIQ VERSI but for Mr. ABBAS VERSI to stake a claim under that Sale Agreement he was not a party to. He submitted that there is cloud of possible illegalities surrounding the search of Land Register; Sale Agreement involving Mr. Hakalu and Mr. Ashiq Versi and subsequent Petition (Misc. Land Appeal No. 78 of 2015) by Mr. Abbas Versi (who was not a party to the Sale Agreement). This cloud of

doubt can only be cleared after a proper hearing in the pending suit, he submitted.

Dr. Lamwai also expressed his exasperation over the way the Board of the PPF was excluded from the Petition. He argued that when Mr. Abbas Versi filed his Petition on 29/7/2015 in the Land Division of the High Court, the Board still had a pending suit disclosing the Board's outstanding claim over the plots. Dr. Lamwai referred us to pages 586 to 625 of the record where the Board of the PPF, desperate to be included as an interested party to the Petition filed the Misc. Land Application No. 477 of 2015 under a Certificate of Urgency:

"CERTIFICATE OF URGENCY"

I, MASUMBUKO ROMAN MAHUNGA LAMWAI, being
the Advocate of the High Court of Tanzania in the conduct
*of the Applicant's application, do hereby **CERTIFIES** that*
the hearing of the application filed herein is a matter of
extreme urgency because the appeal is due to be heard
tomorrow and in case it proceeds without the Applicant
being given an opportunity to be heard, irreparable injury

will be occasioned to it and this will invite more protracted litigation."

Dr. Lamwai further referred us to paragraphs 5 and 6 of the complaint letter to the Chief Justice wherein he explained why it was crucial for the Board of the PPF to be heard in the Petition:

*"5. The Board was not impleaded in the appeal [**Misc. Land Appeal No. 78 of 2015**] despite the fact that it was clearly known to Anthony Hakalu and Mr. Versi that after the rectification, the plots were re-granted to Board.*

6. Upon learning of the existence of the appeal, the Board filed Miscellaneous Land Application No. 477 of 2015 which was seeking an order that it be joined in the appeal because the Board had a right to be heard before its titles were interfered with. In that application, the court was also informed that there was a pending suit, Land Case No. 289 of 2009 between the Board and Mr. Anthony Hakalu seeking a declaration of title in respect of the suit plots. The application is still pending."

Dr. Lamwai expressed the Board's disappointment that why the Misc. Land Application No. 477 of 2015 was placed before Kente, J. who was not presiding over the Petition. He argued that the matter should have been placed before Nchimbi, J. who was presiding over the Petition. By the time the learned Advocate for the Board of the PPF appeared before Kente, J., the judgment in the Misc. Land Appeal No. 78 of 2015 had been delivered by Nchimbi, J. Dr. Lamwai submitted that the Board of the Fund was hence denied an opportunity to inform Nchimbi, J. that the matters subject of the Petition were *sub judice* under the Land Case No. 298 of 2009.

In light of the foregoing irregularities, abuse of judicial process and breach of the rules of natural justice; Dr. Lamwai offered several alternative courses the Court should choose from. Firstly, he urged us to revise the entire proceedings in the Petition (Misc. Land Appeal No. 78 of 2015), set aside the resulting Order declaring the Petitioner as lawful owner of Plots Nos. 1777 and 1778 and order expeditious determination of the pending Land Case No. 289 of 2009. Secondly, as an alternative to revising the proceedings of the Petition, Dr. Lamwai prayed for the Petition to be heard

afresh before another Judge and the Board of the PPF should be pleaded as one of the respondents in that Petition.

Mr. Malamsha, learned Counsel for Abbasi Versi expressed his opposition to the revision proceeding. He offered two reasons why he thought that the Land Case No. 289 of 2009 and the Petition titled Misc. Land Appeal No. 78 of 2015 are distinctly different matters and each should be pursued to their respective conclusions. Firstly, the procedure for filing a suit, that is, the Land Case No. 289 of 2009, is different from the procedure for appealing by way of a Petition (Misc. Land Appeal No. 78 of 2015) against the decision of the Registrar of Titles as provided for under sections 99 and 101, 102 of the Land Registration Act, Cap. 334. Secondly, he submitted that after conducting a search of Land Register Mr. Versi had no reason to join the Board of the PPF because the Board had no vested interest shown in the Land Register.

Mr. Malamsha further urged us to spare the High Court from any blame over the failure to present the Board's Misc. Land Application No. 477 of 2015 before Nchimbi, J. because this application was presented on 21/8/2015 which was a day after Nchimbi, J. had already heard the Misc.

Land Case Appeal No. 78 of 2015. Mr. Malamsha insisted that after Mr. Abbas Versi had conducted the search on the Land Register on 26/10/2009 and discovered that it was Mathew Hakalu who was the owner; Mr. Versi was entitled to purchase the plots from Mr. Hakalu and to follow-up with a Petition which he did without making the Board as a party.

In his brief submissions, Mr. Mwitasy opposed the revision by pointing out that neither the Commissioner for Lands nor the Registrar of Titles committed any wrong in the entire transactions which can subject the Government to any blame.

From submissions of the learned Counsel, the main issue calling for our determination is the correctness, legality and propriety of activities affecting plots of land which were still subject of a pending suit. While Land Case No. 289 of 2009 was still pending in the Land Division of the High Court, Mr. Hakalu transacted a Sale Agreement with one ASHIQ ABBAS VERSI. This sale of plots was the basis of the subsequent Petition (Misc. Land Appeal No. 78 of 2015) in the Land Division of the High Court wherein Mr. ABBAS VERSI staked his claim over the same plots. The Land Division of the High Court

went ahead to confirm Mr. Abbas Versi as the transferee of the registered plots.

The Court's power to call for revision *suo motu* is mandated under subsection (3) of section 4 of AJA states:

"(3) Without prejudice to subsection (2), the Court of Appeal shall have the power, authority and jurisdiction to call for and examine the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings of the High Court."

[Emphasis added].

We must at the very outset express ourselves here that Mr. Malamsha is correct to submit that the procedure for filing a suit (Land Case No. 289 of 2009) under the Land Disputes Courts Act, Cap 216 suit, is evidently different from the procedure of filing a Petition (Misc. Land Appeal No. 78 of 2015) in the High Court under sections 99 and 101, 102 of the Land

Registration Act, Cap. 334 to change the names of owners of land appearing in the Land Register. We must hasten to caution; in the circumstances of this matter, recourse to a later Petition seeking to change names of the registered owners, should not be designed to negate the subject matter the pending suit.

It seems to us that the impropriety of the Petition with its purported transfer of disputed plots of land to Mr. Abbas Versi becomes evident when we look back at the active roles the Board of the PPF, Mr. Hakalu, the Commissioner for Lands and the Registrar of Titles played in the Land Case Number 289 of 2009 but only for the Board to be shut out of the later Misc. Land Appeal No. 78 of 2015.

By a Complaint which was filed on 10th November, 2009, the Board of PPF sued Anthony Hakalu to claim and trace its ownership of the disputed plots back to 1996. Mr. Hakalu disputed this claim by filing his written statement of defence on 23rd November, 2009 and insisted that his own claim over the disputed land much earlier than the Board's to 1991. There was further development on 26th July, 2010 when the Board filed an Amended Complaint

which this time around pleaded Mr. Hakalu, the Commissioner for Lands, the Registrar of Titles and the Attorney General as defendants.

On 12th August, 2010 the Commissioner for Lands, the Registrar of Titles and the Attorney General filed their Amended Written Statement of Defence which included a Counter Claim and a Notice of Preliminary Objection. On 31st July 2013, Mr. Hakalu was ordered to file his amended written statement of defence which he filed on 14th August, 2013. In his amended defence, Mr. Hakalu included a Counter Claim.

The foregoing chronology leaves us in no doubt that Mr. Hakalu was not only fully aware of the pendency of the Land Case No. 289 of 2009 but was also an active defendant to that suit with his own counter claim. It is therefore an unseemly abuse of court process for the same defendant to be part of any Sale Agreement over the disputed plots which precipitated Misc. Land Appeal No. 78 of 2015 and purported transfer to Mr. ABBAS VERSI.

Similarly, the foregoing chronology of the procedural steps taken shows that both the Commissioner for Lands and the Registrar of Titles and the Attorney General were parties to a suit where Plots Nos. 1777, 1778,

1779 and 1780 were at the centre of a pending suit, they filed the Amended Written Statement of Defence, a Counter Claim and a Notice of Preliminary Objection to subject themselves to the jurisdiction of the court as defendants to the Land Case No. 289 of 2009.

Once parties, like parties to this revision had, subject their dispute to the jurisdiction of the court, this Court does not expect either of them to embark on any other separate judicial or administrative avenue whose outcome would result in making the pending suit inconsequential.

We think it amounted to a material impropriety in the proceedings for Mr. Hakalu to enter into a Sale Agreement with a third party while being fully aware that the Plots subject of the sale was still disputed in a suit. It was similarly unseemly for the Commissioner for Lands and the Registrar of Titles as parties to a pending suit, to allow the change of ownership to go ahead over plots which were still subject matter of suit wherein they had filed their Written Statements of Defence. The conduct was not only an abuse of the on-going judicial process and unnecessary court proceedings, it had the effect of defeating a claim by one of the parties to the suit without being heard.

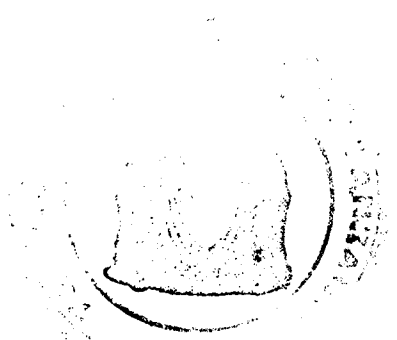
In view of the foregoing material irregularities in the proceedings which adversely affected the ownership of plots of land subject of a pending suit, the entire proceedings in the Petition (Misc. Land Appeal No. 78 of 2015) are untenable. We hereby invoke the Court's power of revision to quash and set aside all other proceedings Misc. Land Appeal No. 78 of 2015 including Rulings and Orders flowing from the same. We order the proceedings in the Land Case No. 289 of 2009 to continue before another trial Judge from the stage it had reached. Each side shall bear its own costs.

DATED at DAR ES SALAAM this 22nd day of August, 2016.


N.P. KIMARO
JUSTICE OF APPEAL

K.K. ORIYO
JUSTISCE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL



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



E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL