

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL REVISION NO. 67 OF 2003

**FRED MTETELEKA & 6 OTHERS APPLICANTS
VERSUS
TANZANIA CHAMBER OF COMMERCE
INDUSTRY AND AGRICULTURE LTD. RESPONDENT**

RULING

MLAY, J.

This ruling, is on a preliminary objection raised by the Respondent after the applicant had made an application to this Court under Sections 43 (2); 44 (1) (b) of the Magistrates Courts Act 1984 and Sections 79 and 95 of the Civil Procedure Code, 1966, to seek the revision of the proceedings in Kisutu RM's Court Civil Case No. 54 of 2003. The applicants who are 7 natural persons, filed a suit against the present Respondents in Kisutu Resident Magistrates Court. The respondent/ defendants raised a preliminary objection to the suit that the Resident Magistrates Court did not have jurisdiction to entertain the suit because it involved matters under the Companies Ordinance, matters which came under

the jurisdiction of the High Court. The trial resident magistrate upheld the preliminary objection and dismissed the suit with costs. After the dismissal of the suit, the respondent through their advocate applied for execution by way of the eviction of the applicants/ plaintiffs and the Resident Magistrate issued an eviction order. As the result of this order of execution, the applicants/plaintiffs filed the application for revision, which is the subject of the preliminary objection under consideration.

Mr. Maira the learned advocate who appeared for the respondent/defendants, submitted that the applicants/ plaintiffs did not have any basis to seek the revision of the proceedings because there are no proceedings in the Resident Magistrates Court following the dismissal of the case on 5/6/2003, on grounds that the Court did not have jurisdiction. Mr. Maira submitted also that there are no proceedings in this court because the Applicants had filed others proceedings in this Court, in Miscellaneous Civil Cause No. 68 of 2003, which were also dismissed by my brother Massati, J. As an upshot Mr. Maira contended that the Applicants who are seeking the revision of the proceedings in the RM's Court have no right of audience because the applicants/ plaintiffs are neither of members of the TCCIA nor Officers of the Dar es salaam Regional body.

Mr. Maira further contended that the Applicants/ Plaintiffs have filed an appeal to the Court of Appeal against the dismissal by Masati, J of the proceedings in Miscellaneous Civil Cause No. 68 of 2003, as the result of which only the Court of Appeal can grant a stay of the execution order.

In reply to the preliminary objection and submissions by Mr. Maira, Mr. Koga advocate, who appeared for the applicants/ plaintiffs, contended that Mr. Maira had misled this Court. He argued that the Resident Magistrates Court dismissed Civil Case No. 54 of 2003 on a preliminary objection that the Court lacked jurisdiction. He further argued that prior to the dismissal of the suit the applicants had obtained an interim order restraining the respondents from registering the new constitution of the TCCIA, pending the termination of the suit and also an order restraining the Respondents from dissolving the Management Committee and the Dar as salaam Regional Council. Mr. Koga conceded that upon the dismissal of the suit the interim injunction ceased but contended that there was no interim order made to evict the respondents.

Mr. Koga conceded on behalf of the applicants that following the dismissal of the suit in the Resident Magistrates Courts, there were no proceedings in that court but contended that for that some reason, the respondent had no right to go to that court to seek an eviction order. Mr. Koga argued that it

was surprising that the applicants went to the Resident Magistrates Court and obtained an eviction order on the basis of the Civil Case which had already been dismissed. Mr. Koga argued that in these circumstances the applicants had no alternative except to file an application for revision of the eviction order.

In reply Mr. Maira contended that all the respondents did was to obtain their premises through an eviction order because until the date of the hearing of the preliminary objection, the applicants were holding onto the keys to the said premises.

Mr. Maira conceded that there were no proceedings in the lower court but there were consequential matters that is why they moved the court to issue an eviction order.

Having heard the arguments and submissions from both sides, the issue for determination here is whether this court should uphold the preliminary objection raised by Mr. Maira, the result of which would be to dismiss the application for revision, without considering it on its merits.

The reasons advanced by Mr. Maira are essentially three. The first reason is that since the main suit was dismissed, there are no proceedings in the Resident

Magistrates Court which can be revised. With respect, I do not think this ground has any merit. Mr. Maira has conceded that after the suit was dismissed, the respondents did apply for execution and an order of execution was made. Although Mr. Maira called these proceedings “**consequential matters**”, the application for execution and the granting of the order of execution, are proceedings which were before the Resident Magistrates Court. These are the proceeding which the applicants are complaining of in the application for revision. In the case of Emanuel Abraham Nanyaro Vs Peniel Ole Saitabau, 1987 TLR 47 the Court of Appeal held that where there is a sufficient disclosure of a cause of complaint a judge is entitled to overrule a preliminary objection. I am of the settled view that the application for revision and as conceded by Mr. Maira himself, discloses sufficient cause of complaint. The complaint being that after dismissing the suit for lack of jurisdiction, the trial magistrate later entertained an application for execution and issued an eviction order.

The applicants who were the plaintiffs and who were affected by the said order have a sufficient cause of complaint.

This finding would be sufficient to dispose of the preliminary objection. However, Mr. Maira did raise two other grounds. The second ground was that the applicants have no right to be heard for not being members or officers of TCCIA.

With respect , this ground is also baseless. There is no dispute that the applicants were each a party to the proceeding in the Resident Magistrates Court. In the circumstances, regardless of their position or membership with TCCIA, they have the right to complain about a decision made in proceedings in which they were parties.

The third and last reason advanced by Mr. Maira is that the applicants had filed proceedings in this Court which were dismissed by Masati, J and the dismissal is the subject of a pending appeal in the Court of Appeal. The argument being put forward is that only the Court of Appeal can grant a stay of execution of the order made by the Resident Magistrate, if such an order is required.

I am not persuaded by this argument either. The matter before the Court of Appeal, if any, relates to the proceedings instituted in the High Court and dismissed by my brother Massati, J. It has not been argued that what was before Massati, J was an appeal from the decision of the Resident Magistrate in dismissing the suit or granting an order of eviction.


Those are therefore different proceedings. The present proceedings arise directly from the order made by the Resident Magistrate, subsequent to the dismissal of the suit.

In the circumstances the preliminary objection fails on all grounds and it is hereby dismissed with costs. The application will proceed for consideration on its merits.


J. I. Mlay,
JUDGE,

01/12/2003.

Delivered in the presence of Mr. Koga advocate for the applicants and Joseph Kitakwa Deputy Executive Director TCCIA this 5th day of December, 2003.


J. I. Mlay,
JUDGE,

01/12/2003.