

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT TANGA**

LAND APPEAL NO.14 OF 2008

*(From the Decision of the District Land and Housing Tribunal of TANGA
District at TANGA in Land Application No.26 of 2007)*

IBRAHIM MLOWE APPELLANT

VERSUS

HEMED A. SAID RESPONDENT

JUDGEMENT

R.E.S. Mziray, J.

This is an appeal arising from the decision of the District Land and Housing Tribunal of Tanga at Tanga in Civil Application No.26 of 2007. The appellant having been dissatisfied with the decision of the Tanga District Land and Housing Tribunal in the Civil Application No.26 of 2007, now appeals to this court on six grounds.

I will start with the first ground of appeal.

1. That the trial Chairman erred in law and in fact for entertaining trying and deciding Application No.26/2007 while aware that Misc. Civil Application No.31/2006 (objection proceedings), Civil Appeal No.31/2006 and Civil Revision No.22/2006 were pending in the High Court (Land Division) at Tanga and that all are challenging the validity of auction of the subject matter.

Having gone through the records of this case I have not seen any where to show that there is enough material evidence that the suits mentioned above were pending at the High Court of Tanga Land Division which leads this matter to be res subjudice. As a matter of law and practice any person relying on the ground of Res-subjudice has no only freedom of raising the same but also he ought to prove by adducing evidence. Therefore for the sake of administering justice the party ought to take note that it is not just a matter of raising Res subjudice but there should be evidence adduced to prove the same.

In essence I find the first ground of appeal to have no merits hence I dismiss it.

The second ground is that the trial Chairman erred in law and fact by refusing the appellant to be given time to engage an advocate to defend him in the said application No.26/2007. The right to legal representation is a constitutional right. It has been embodied under Part III (bill of rights) of the constitution of the United Republic of Tanzania. Further to that refusing a person the right to be represented is against the principles of Natural justice (Right to be heard). This means that a person can be heard personally or through his advocate. In the instant case therefore the learned Chairman grossly erred in refusing the party leave for time to find a new Advocate after the former advocate had been suspended from practicing. He refused him a very important principle of Natural justice. In the circumstance I find that the 2nd ground of appeal has merits.

The third ground of Appeal is that the trial Chairman erred in law and in fact by refusing to disqualify himself from the conduct of the said Application No.27/2007.

The appellant wanted the chairman to disqualify himself from the case because he had no faith with him, (he thought that there was a likelihood of bias against him).

There is no substantial proof on the allegations made by the appellant because I don't see enough evidence of the same. It is alleged that a mere fact that an allegation of judicial bias has been made is not sufficient for a judge or magistrate or chairman of the tribunal to disqualify himself. There must be establishment a real likelihood of bias. The respondent in his submission cited the case of ***National Bank of Commerce vs. Dimson R. Mwakwe – Misc. Civil Appeal No.17 of 1996 High Court of Tanzania at Mbeya*** (unreported) where it was held that:

"The meaning and applicability of judicial bias has not at times been properly understood. Firstly the mere fact that such an allegation has been made is insufficient. In other words mere allegations or mere suspicious are not enough. It must be shown, and there must be a real likelihood of bias.

Secondly the fact that justice must be seen to have been done does not at all mean that it is more important that justice should be seen to have been done than that it is actually done"

In another Court of Appeal case of Laurean G. Rugarabamu vs. Inspector General of Police and Attorney General, Civil Appeal No.13 of 1998 Court at Dar es Salaam (unreported) it was held that:

"An allegation against a judge or magistrate can legitimately be raised in the following circumstances: One, if there is evidence of bad blood between the litigant and the judge concerned. Two, if the judge has close relationship with the advertising party or one of them. Three, if the judge or a member of his close family has an interest in the outcome of the litigation of her than the administration of justice. A judge or a magistrate should not be asked to disqualify himself or herself for flimsy or imaginary fears"

In the case at hand therefore the appellant's request was based on flimsy and imaginary fears and not in the principles aforementioned. I hereby dismiss the third ground of appeal because I find it to have no merits.

The fourth ground of appeal is that the appellant was denied opportunity to lead his witnesses in Application No.26 of 2007. Having gone through the record, I have not seen any evidence as

to whether the appellant was denied right to lead his witnesses. This ground is not supported by evidence. Again I dismiss the 4th ground of appeal.

The fifth ground of appeal states that the trial chairman erred in law and fact by holding that the auctioning of the house was properly conducted. The counsel for appellants submitted that the procedure in execution of any decree is regulated by the Civil Procedure Code, and the Land (Conduct of Auctions and Tenders Regulations 2001) under Order XXI of the Civil Procedure Code the procedure is laid down as follows:

"Rule 64: Save as otherwise prescribed every sale in execution of decree shall be conducted by an officer of the court or by such other person as the court may appoint in this behalf, and shall be made by public auction in a manner prescribed".

Under the Land Conduct of Auctioning and Tendered regulations. (2001).

"Regulations 6: The Agent shall publish in one Swahili and one English daily circulating news papers in the district and on public notice boards

the date of the auction which shall not be less than (2) days before the auction as well as conditions of the auction.”

In the case at hand none of the above procedures were followed as the notice was sent one day before the auction. I therefore uphold the 5th ground of appeal.

The 6th ground of Appeal is that the chairman failed to evaluate evidence. The appellant abandoned this ground in his submission; as the counsel for the respondent submitted that the tribunal correctly directed himself to evidence. This ground of appeal have no merits also.

With regards to the faults in the proceedings from the trial tribunal I quash the same and direct that the dispute between the parties be retried by a different chairman and assessors.

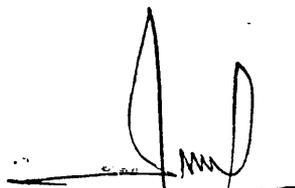
Each party to bear their own costs.


R.E.S. MZIRAY
JUDGE

Coram: Mussa, J;

Appellant: Mr. Mramba

Respondents: Mr. Akaro



K.M. MUSSA, J.
22/07/2011