IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT ARUSHA

LAND REVIEW NO. 6 OF 2017

(C/F the High Court of Tanzania at Arusha vide Land Revision No. 5 of 2017 which originated from District Land and Housing Tribunal of Arusha via Execution Application NO. 172 of 2010)

JONAS PATRICE POTEA.....APPLICANT

VERSUS

RAJUL MOTICHAND SHAH.....RESPONDENT

RULING

DR. OPIYO, J.

The applicant herein filed a Memorandum of Review brought under section 78 (a) together with order XLII rule 1(1) (a) and 3 of the Civil Procedure Code, Cap 33 RE 2002,, praying for this to review its order dated, 06/10/2017 based on the point that it erred for its failure to give orders/ directives of restoring the applicant in his land and ordering the respondent to compensate the applicant's properties which were destroyed during application for execution no. 172 of 2010.

To bring his application home Mr. Mkindi, counsel for the applicant submitted that at page 8 of the ruling the court ruled that there cannot be a judgment debtor and decree holder without a decree capable of execution. That the ruling the filing of execution application without a decree for execute is an obvious abuse of court process and that the

applicant was evicted from suit premises without justification. He argued that after the court finding so, it ought to have issued an order for the applicant to have been returned to his land, but unfortunately the court never issued that order. He continued to argue that in the same ruling at page 8 to 9 the court found that there was no decree declaring the respondent the owner, but up to now the land is still in the hands of the respondent who fraudulently evicted the applicant. He therefore prayed for this court to review its ruling and order dated 06/10/2017 on ground of sufficient reason as provided under order 42 rule 1(i) b of the Civil Procedure Code and provide that the applicant be returned to his land and be compensated for his properties destroyed based on the execution of non-existent decree and costs of this application be provided for.

In contest, Mr. Akyoo, counsel for the respondent submitted that the application emanated from Land Revision No. 5/2017 where by the ruling and drawn order was delivered on 06/10/2017. In the said application the applicants sought only one order from this court, an order for the court to call for the record of DLHT of Arusha, in order to examine the record, proceedings and decisions of the said tribunal so that the court can satisfy itself on legality propriety of the said proceedings and decision and did not ask for orders of restoration or compensation of the applicants property. And the court clearly granted what was asked for, i.e. it went through the decision of the District Land and Housing Tribunal and clearly granted what the parties asked for. He argued that it is a trite Law that parties are bound to what they present to the court and again the court cannot grant to the

parties for what they did not ask for. His further argument is that, as the court has done paramount duty, it is dismay how the applicants are coming back to the same court to pray for other order they might intentionally left behind or they had forgotten to add to their application, if at all, ignorance of the law should not be considered as a defence for the matter at Land. He also argued that, after all, it is crystal clear that the land in issue has ownership dispute, as per page 10 of the ruling where the applicant claims he got the Land in 1952, a year, they even have doubt as to whether he was already born. And the respondent claims that he bought the land from AGM a developer company which bought it from the original owners.

He further argued that since the said execution order no. 1/2010 was found illegal the applicant ought to have filed a case at a the Land and Housing tribunal for restoration and compensation because these orders were not asked for in the first place. That, worse still in this application, the applicant has not shown any reason as to why these orders should be granted and why they were not part of their first application. He continued to argue that, if this application is granted, it will form part of bad precedent for other people since it will become a habit to intentionally leave other prayers thinking that they will just file other prayers review applications as application at hand. The respondent therefore prays that the application be dismissed.

Mr. Mkindi was quick to rejoin by submitting that in application for land revision No. 5/2017, the applicant sought for the following orders:-

1. That this Honourable court be pleased to call for records of DLHT for Arusha in execution NO. 172/2010 by M. R. Makombe, chairman in order to examine the records proceedings and the decision of the said tribunal so that this court should satisfy itself on the legality and property of the said proceedings and decisions therein

2. Any other orders this Honourable court deemed just and equitable to grant.

3. Costs should follow the event.

Based on that, he argued that in Land Revision No. 5/2017. This court did well when it examined the records and proceedings and decision where she found that there was no judgment and decree capable of being executed in application for execution No. 172/2010 at District Land and Housing Tribunal of Arusha at Arusha. In her drawn order the court ordered that the proceedings of District Land and Housing Tribunal for Arusha in Execution proceedings and execution order issue thereon are quashed and set aside and application allowed with costs. Based on that argument, it is clearly that the applicant was fraudulently evicted from the land and respondent has no any color of right to continue to hold that Land. That being the case, after the court had quashed proceedings in application for execution No. 172/2010 and the execution order set aside it ought to have issued an order for the applicant to be returned to his land. He argued that the applicant's application for review is based on the second prayer in Land

Revision No. 5/2017, where he prayed for any other order this court deemed just and equitable to grant. He argued that, as there is no any documents which was presented in any tribunal or court of law which gave him that ownership right and the right to evict the applicant from that land, and in Land Revision No. 5/2017 this court ruled that the eviction was unlawful, so by virtue of that, the applicant is supposed to be in that land and this is the order which we are praying today to be issued. If the respondent feels that they have the right to that Land it is their duty to go and institute a case against the applicant and not for the applicant to institute a suit as submitted by the counsel for respondent? that this ruling in this application will be one of the good precedent because it will assist more people to come to court, whenever the court forget to issue the necessary orders or orders based on the prayer of any other remedy the court deem just and equitable to grant.

The gist of the application is that, the court by quashing and setting aside the decision of the District Land and Housing Tribunal, it ought to have stated that status quo ante be maintained, the order, the applicant's counsel argues that it was unfortunately forgotten by this court. The respondent's objected such kind of prayer on the basis that it was not included in the original revision application, thus it cannot be dealt with this court through review as prayed herein, but by filing a new application at the District Land and Housing Tribunal for the same. In the circumstances, the first issue to be determined by this court is whether it can proceed to grant the prayers in this matter on the ground that it had forgotten to give

the necessary consequential order in the revision application 5/2017. The trite principle is that every court's decision has a legal consequence. In my view when a prayer is that the court had forgotten to issue a necessary consequential order of its decision, then, the same can be reconsidered through review under the umbrella of any other equitable remedy the court deem fit grant as argued by the counsel for the applicant. It does not constitute a new prayer as argued by the counsel for the respondent. The following question is whether the prayer of restoration herein was a necessary consequential order from this court's order in Land Revision No 5/2017 or a new prayer all together.

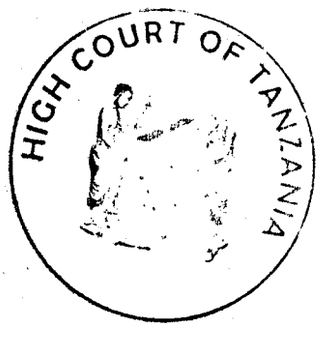
This court held that, the eviction was unlawful; then, it quashed and set aside the execution order by the District Land and Housing Tribunal in execution application no 172/2010 that led to the said illegal eviction. In my rightful thinking, since the effect of such decision is to return the parties to their position they were before the illegal act was committed, I find it unnecessary to come to court for explicit words to that effect. But, anyhow, because the parties herein have refused or neglected to heed to the inevitable implication of this court's previous order in pretext of absence of explicit words to that effect, I will consider adding those words as giving interpretation to this court's order, rather than giving a new order as Mr. Akyoo insinuates. In so doing therefore, using plain words, the inevitable consequence of this courts' former decision in revision application no 5/2017 is the immediate eviction of the respondent whose basis of being in occupation was declared illegal by this court in the first

place. Therefore in order to put the consequence of this court's order in explicit words, at the pleasure of the parties, the said decision in Land Revision no. 5/2017 is reviewed by adding the following words:-

'With regard to the position of the applicant I order that the ***status quo ante*** the illegal execution order by the District Land and Housing Tribunal of Arusha in Execution Application No. 172/2010 dated 4th February 2011 be maintained pending any future determination of the parties rights if they so desire. So, since the record shows that the applicant was illegally evicted from the suit premises as explained above, his restoration to the suit premises or putting him in the position he was before the illegal order in question is ordered with immediate effect. In other words respondent is to give vacant possession of the suit premised to put to an end his illegal occupation. Thereafter the respondent shall be at liberty, if he so desires, to start afresh the process of determination of parties rights of ownership in regard to the suit premises."

I make no order as to costs as the applicant enjoyed the services of the Legal and Human Rights Centre.

Order accordingly.



DR. M. OPIYO,

JUDGE

18/1/2018