

**IN THE HIGH COURT OF TANZANIA**

**DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**MISC. LAND CASE REVISION NO. 13/2016**

*(Arising from Misc. Application No. 182/2013 of the DLHT, Originating from Civil Case No. 14/2013 and 15/2013, Kibeta Ward Tribunal)*

1. MAGRETH SOSPIETER  
2. ASIIMWE SOSPIETER  
3. KOKUTONA SOSPIETER  
4. MUHANUZI SOSPIETER

} ----- APPLICANTS

**VERSUS**

ELESI MINZANI ----- 1<sup>ST</sup> RESPONDENT

ANASTIDIA SOSPIETER ----- 2<sup>ND</sup> RESPONDENT

**RULING**

*18/7/2018 & 14/9/2018*

**Kairo, J.**

This ruling is in respect of an application by the Applicants seeking to move this court to grant an order for revision of the District Land and Housing

Tribunal decision in Land Misc. Application No. 182/2013 delivered on 31/7/2014. The application was brought under section 43 of Cap 216 RE 2002. As usual the application is supported by a joint affidavit sworn by the Applicants. The parties are self represented.

In the Applicant's joint affidavit and the oral submission to elaborate it they deposed that, they were respondents in Civil Cases of Kibeta Ward Tribunal Nos. 14 and 15, the Judgment debtors of the Misc. Application No. 182/2013 of the District Land and Housing Tribunal for Kagera at Bukoba, as well as the Applicants in this revision proceedings and thus conversant with the facts they were deposing. They went on that the Respondents after filing their respective cases proceeded with the hearing of the cases without summoning all of the Applicants so as to defend the matter and finally on 2/7/2013, the Ward Tribunal condemned them without affording them with the opportunity to be heard. They attached copies of the Judgments which were collectively marked as annexure 'A' and prayed the court to regard them as part of the affidavit. The Applicants went on that the Respondents eventually filed the application for execution No. 182/2013 at the District Land and Housing Tribunal whereby on 5/2/2016, the application was granted in respect of decision made in Civil Case No. 14/2013 and 15/2015. They attached copies of the said decision as annexure 'B' to form part of their affidavit. The Applicants further deposed that they were not satisfied with the procedure employed by both tribunals and thus they filed Misc. Land Revision No. 3/2016 to this court but the same was struck out for

failure to properly move the court on 2/9/2016 and attached the copy of the said ruling as part of their affidavit. That few days after the struck out, one of the Applicants applied for the perusal of the case and discovered what he called fatal irregularities including the hearing of the suit with the knowledge of non service to the 2<sup>nd</sup> Applicant in the Civil Case No. 14/2013 as well as in Civil Case No. 15/2013 where the tribunal ignored the service on the reason that one of the Applicants was residing in another district.

They further deposed that the perusal exercise further revealed the concoction made by the Respondents by each of them claiming for private ownership over the same subject matter and ultimately applied for execution. They further stated that the executing tribunal ordered the common subject matter be handed over to the Respondents despite the incurable irregularities made by the trial tribunal insisting that the cases that resulted to the said execution were heard without the Applicant's knowledge.

In reply, the Respondents refuted the contentions by the Applicants that they were not served when the cases were filed. They prayed the court to get the facts from the case file insisting that the Applicants were aware of the filed cases and testified before the Tribunal gave its decision. They further contended that the allegations by the Applicants are wastage of time and prayed the court to dismiss the same.

After going through the application together with the joint affidavit and a reply, the issue for determination in this court is whether this application has merit. The Applicants are seeking to revise the orders for execution in application no.182/2013 after failing to obtain an extension of time to appeal against cases no 14 and 15 both of 2013 out of time and stay of execution of the decree in respect of the said decisions. The DLHT on 31/07/2014 dismissed the prayer for an extension of time for want of merit. The Respondents thereafter prayed to be allowed to execute the decrees, which order was granted on 5/2/2016. This is the order (execution) which triggered them to file this revision proceeding.

The Applicants have filed or brought this application under section 43. It should be noted that the quoted section has various subsections which however deal with supervisory and revisional powers of the High Court. Going through the Applicant's application, I am of the opinion that the proper subsection is section 43 (1) (b) of Cap 216 though they didn't specify it. The said provision provides as follows and wishes to quote:

43 (1) In addition to any other powers in that behalf conferred upon the High court, the High Court (Land Division)

*“(b) May in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to*

*the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit”.*

The Applicant in their application have contended that the execution orders made by the District Land and Housing Tribunal emanated from two Judgments or decisions which were made out of irregular proceedings thus occasioned injustice on the part of the Applicants. They listed the said irregularities to be;

- i. That the Ward Tribunal of Kibeta proceeded with the hearing of Civil Cases No. 14/2013 and 15/2013 without summoning all the Applicants to give their defences and finally the tribunal delivered its decisions on 2/7/2013. They thus claimed to have been condemned unheard.
- ii. That the Ward Tribunal proceeded to hear and determine Civil Cases No. 14/2013 and 15/2013 without serving the 2<sup>nd</sup> Applicant knowingly giving a reason that the 2<sup>nd</sup> Applicant resides in another District.
- iii. That the executing Tribunal (DLHT) ordered for the common – subject matter be handed over to the Respondents despite the knowledge of the incurable irregularities made by the tri tribunal.

Looking at the irregularities claimed, generally they all revolve or centered on the right to be heard. The law is settled that a decision reached without affording a party with a right to be heard is a nullity. **[Refer the case of**

**Abbas Sherally and Another vrs Abdul S.H. M Fazalboy; Civil Applicant No. 33/2002** (unreported).

The wanting question therefore is whether the Applicants weren't afforded with a right to be heard.

The record reveals that, both of the decisions complained of (Nos. 14/2013 and 15/2013) were delivered on 2/7/2013 and 30/9/2013 respectively. The Applicants later filed Application No. 19/2013 at the District Land and Housing Tribunal for Kagera praying for an extension of time to appeal out of time. However, the said application was dismissed on 31/7/2014 for want of sufficient cause. Thereafter the Respondents applied for execution vide application No. 182/2013 at the District Land and Housing Tribunal which was allowed on 5/2/2016.

To verify as to whether the Applicants were heard or not, the court revisited the Ward Tribunal proceedings. In land Case No. 15/2013 into which the 2<sup>nd</sup> Respondent sued all of the Applicants; the record reveals that the Respondents refused service when served and wish to quote the said proceedings to that effect;

*“Shauri hili lilipangiwa kusikilizwa leo tarehe 14/5/2013 mbele ya pande zote mbili za wahusika lakini leo walamikiwa kwa pamoja hawakujitokeza na kabla ya hapo hata walipopelekewa wito wa kuja shaurini walikataa kuweka saini zao na kuwashambulia waliozipeleka*

*kwa matusi. Kutonaka na hali hiyo Baraza limeamua kusikiliza maelezo ya upande mmoja na hii inafanyika leo.....”*

Further to that on the 2<sup>nd</sup> page of the Judgment it was stated and I quote

*“Baraza liliwaita walalamikiwa mara 3 lakini hawakukubali kufika barazani badala yake wanawatukana wapeleka wito hizo. Kwa sababu hiyo Baraza liliamua kusikiliza upande mmoja .....:”*

Looking at what transpired in the proceedings of the said case No. 15/2015, it is obvious that the Applicants deliberately decided to sleep on their rights by refusing to appear to defend themselves and not true that they were not summoned. It is the position of the law that court record cannot easily be lightly impeached. Besides I have found nothing to fault the records of the Ward Tribunal. I am thus convinced that the Applicants were called but refused to appear to defend themselves. They are therefore stopped from claiming or demanding the said right now.

With regards to Land Case No. 14/2013 into which the 1<sup>st</sup> Respondent sued the Applicants the record reveals that three out of the four Applicants (save for Kokutona Sospeter who was the 4<sup>th</sup> Respondent) attended the matter at the Ward Tribunal.

I wish to quote the Judgment of the Ward Tribunal 2<sup>nd</sup> page which so verifies *“kati ya walalamikiwa 4, ni watatu walofika Barazani. Yule wa nne anaishi mbali huko Bukoba vijijini. Huyo ni Kokutona. Walalamikiwa waliofika Barazani walidai maelezo yao yatatolewa na mtu mmoja dada yao Magreth*

*Sospeter ambaye ameteuliwa na Mahakama kuwa msimamizi wa mirathi ya baba yao Sospeter Minzani aliyefariki 1994 .....*”

The record further reveals that the 1<sup>st</sup>-3<sup>rd</sup> Applicants participate in the case No. 14/2013 by cross examining the 1<sup>st</sup> Respondent who was a claimant therein. Further to that the proceedings also show that the 1<sup>st</sup> Applicant testified in chief, which verified the contention in the Judgment that she spoke for the rest.

In the said circumstance, it is not true that the 1<sup>st</sup> – 3<sup>rd</sup> Applicants were not afforded with a right to defend the case as they contended. However, according to record, the 4<sup>th</sup> Respondent wasn't heard to which I concede to be an irregularity. This is because they were sued individually, as such the 4<sup>th</sup> Applicant was as well required to be given a right to defend herself individually as well. I should hasten to add that I am also convinced that even for the case No. 15/2013 where the 1<sup>st</sup> – 3<sup>rd</sup> Applicants refused to appear, the 4<sup>th</sup> Applicant (Kokutona) was not informed; as such the said refusal cannot be generalized and cover her.

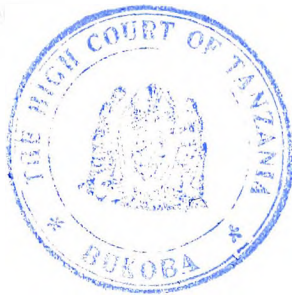
In that respect therefore this court has made a finding that the DLHT was right to dismiss the application for an extension of time for want of sufficient cause against the 1<sup>st</sup> -3<sup>rd</sup> Applicants. However as above analyzed the 4<sup>th</sup> Applicant was not heard, thus it was an error which occasioned injustice to the 4th Applicant and thus give the following orders:-



The 4<sup>th</sup> Applicant that is Kokutona be allowed to appeal out of time at the District Land and Housing Tribunal if still wish to do so. I further order that the said step by the 4<sup>th</sup> Respondent should be taken within a month from the date of this judgment. For avoidance of doubt the execution is ordered to be stayed pending the lodging of the appeal by the 4<sup>th</sup> Applicant within the time ordered, short of it the execution should proceed. I also revert this file to the DLHT for necessary orders as above analyzed.

It is so ordered.

R/A explained.



  
L.G. Kairo  
**Judge**

At Bukoba

14/9/2018

Date: 14/9/2018

Coram: Hon. L.G. Kairo, J.

1<sup>st</sup> Applicant: }  
2<sup>nd</sup> Applicant: } Present in person

3<sup>rd</sup> Applicant: Absent with notice

4<sup>th</sup> Applicant: Present in person

1<sup>st</sup> Respondent: }  
2<sup>nd</sup> Respondent: } Present in person

B/C: R. Bamporiki

**Court:** The matter is for ruling. The same is ready and is read over before the parties as per today's coram in open court today.



L.G. Kairo  
**Judge**  
14/9/2018