

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

MISC. LAND APPLICATION NO.10 OF 2017

MARIKI LEON MMASI.....1ST APPLICANT
GASPER KIMATI.....2ND APPLICANT
VERSUS
AZIZI MOHAMED SOOD.....RESPONDENT

RULING

MGETTA, J:

This ruling arises from an application for revision brought by way of chamber summons filed to this court on 03.7.2017 through a legal service of Mr. Justinian Mushokorwa, the learned advocate for the applicants namely Mariki Leon Mmasi and Gasper Kimati. The chamber summons has been made under **sections 41(1) and 43(2) of the Land Disputes Courts Act, No. 2 of 2002** (henceforth CAP 216) as amended by **Written Laws (Miscellaneous Amendments) (No. 2) Act No. 4 of 2016** (henceforth Act No. 4 of 2016); and, is supported by an affidavit sworn by the applicants who, in their chamber summons, are seeking for the following orders:

- (a) That the proceedings of Sumbawanga District Land and Housing Tribunal in Application No.60 of 2013 be revised;
- (b) That the respondent be restrained from evicting the applicants from their houses until the outcome of this revision and thereafter until their rights are determined by a court of law;
- (c) Costs be provided for; and,
- (d) Any other orders this court would deem just to grant.

In Application No. 60 of 2013 (henceforth the suit), the applicants were not made parties. Stead, parties were the present respondent who successfully instituted a suit in the District Land and Housing Tribunal of Sumbawanga (henceforth the district tribunal) against Samson Mbwire, Baraka Cornel, John Emmanuel and Elikunda Macha. At the end, on the strength of the evidence adduced before it, the district tribunal chairperson declared the present respondent a lawful owner of Plot No. 300, Block A, Utengule area within Sumbawanga Municipality (henceforth the suit plot), which is now the bane of the parties herein. One of the documentary evidence tendered by the present respondent, Azizi Mohamed Sood at the district tribunal is an "Acknowledgement of Payment" issued him on 15.12.2011 by an Authorised Land Officer, Sumbawanga Municipality, showing that he was the one to whom the suit plot was allocated by plot

allocating authority. As I have stated herein before he won the suit. But now the applicants who were not made parties to that suit are resisting vacate it; instead, they are requesting this court to revise the district tribunal proceedings as well to issue a restraint order against the respondent.

Bearing in mind the foregoing brief, when the application was called on for hearing, Mr. Justinian Mushokorwa, the learned advocate appeared for the applicants; while, the respondent was represented by Mr. Baltazar Sichilima Chambi, the learned advocate.

In his submission, Mr. Mushokorwa adopted the affidavit of the applicants, and added that the applicants were not parties to the suit at the district tribunal whose subject matter was ownership of the suit plot. However, they were aggrieved by the decision of the district tribunal, and hence this application. He said it was one Elikunda Macha who was the owner of the land before it was surveyed and allocated to the respondent by the Land Office, Sumbawanga Municipality. The respondent successfully sued Elikunda Macha and others. Thereafter, the respondent reported the applicants to police for the offence of Criminal Trespass, but the applicants had already built on the land which they claimed to be theirs as they purchased it from Elikunda Macha in the presence of ward councillor and other leaders within the vicinity. The documents were produced as exhibit in

Criminal Case no. 137 of 2016 before Sumbawanga District Court which at the end convicted them. They appealed against such conviction. But the respondent threatened to evict them.

He went on asserting that the district tribunal proceedings did not concern the applicants. As they were not made parties to the suit at the district tribunal, they couldn't appeal, but rather coming to this court by way of application for revision. He added that even Elikunda Macha did not defend himself at the district tribunal as the present respondent removed him from the suit. To him the district tribunal decision holding that Elikunda Macha was a loser was not proper because Elikunda Macha was already removed from the suit. Moreover, he lamented, the respondent reported the applicants to police which arrested them and arraigned them to Sumbawanga District Court. They were prosecuted and eventually convicted. He finished by praying that the district tribunal proceedings be revised, quashed and set aside.

Responding to Mr. Mushokorwa's submission, Mr. Chambi adopted the contents of the counter affidavit and vehemently opposed the application submitting that the proceedings and or decision of the district tribunal should not be quashed as there are any irregularities and or anomalies on the face of record. He insisted that the land which is within

Sumbawanga Municipality was surveyed since 2009 and marked as plot No. 300, Block A and was thereafter allocated to the respondent in the year 2011. He said and queried that if the applicants purchased it from Elikunda Macha in the year 2012 and then erected a building therein they did so on their peril. Moreover, they built on the suit plot without a building permit while the same plot had already been surveyed since 2009 and allocated to the respondent in 2011 as per "Acknowledgement of Payment". Hence, it is clearly indicated that they invaded the land and started to build thereon without building permit.

Likewise, Mr. Chambi added that in the year 2012, Elikunda Macha had no authority to sell it to the applicants. He was already been compensated. If he did so, he conned the applicants as he had no title over the suit plot to pass to the applicants. On the other side, before purchasing it the applicants ought to have performed a careful search first. But they didn't and hence were conned. If they so wish, they had the right to sue the one who conned them. Remaining in the land that did not belong to them, amounts to criminal trespass. That's why they were arrested, prosecuted and convicted. Likewise, the failure to vacate the suit plot after compensation had been effected to Elikunda Macha was not proper. That's why he and others were sued before the district tribunal

which declared the respondent as a lawful owner of the suit plot. Elikunda Macha and others in the suit were ordered to quit the suit plot.

Submitting furthermore, Mr. Chambi stated that when the applicants entered into a purported sale transaction they knew that the land was owned by another lawful person. That's why at the back of the purported sale agreement concluded on 13.02.2012, it is endorsed that if any dispute would arise in respect of the suit plot, Elikunda Macha, the vendor would return the purchase price to the applicants, the purchasers. Therefore, the sale agreement was not complete. The applicants anticipated a land dispute that why there is such endorsement at the back of the purported sale agreement. Worse enough, Mr. Chambi submitted upon purportedly purchasing the suit plot they started to build thereon without building permit. The respondent wants them to remove their properties and or building and vacate the suit plot.

In a rejoinder, Mr. Mushokorwa stated that when the respondent was instituting a suit at the district tribunal, he was supposed to sue also the applicants who are owners of the houses on the suit plot. It was his duty to sue them, because at the time the suit was instituted the applicants were already on the suit plot, but he did not do that. Hence, he is to be blamed and not otherwise. If he could have sued them, they could have used their

right to explain to the court how they entered into the suit plot. The respondent is offending the applicants who are owners of the houses on the suit plot. He added that the respondent has no right to demolish the applicants' houses. Criminal court did not order the same to be demolished. The respondent is using district tribunal decision to demolish the houses of the applicants. As regards to the sale agreement, the interpretation of the statements on it is wrong. The sale agreement was complete. The statement on it was just assurance by Elikunda Macha that if a dispute would arise over the suit plot, he would be ready to refund them. The applicants had no worry.

First and foremost, I understand that a third party or a person who was not a party to a suit but aggrieved by any outcome of proceedings of such suit, cannot seek a redress or remedy by way of appeal, but rather by way of filing an application for revision. As regards to this application, having gone through the submissions of both learned advocates as well the records of the district tribunal, Mr. Mushokorwa submitted that the applicants have invoked a revisional jurisdiction of this court so as the decision and proceedings of the district tribunal could be revised. To revise the decision or proceedings of the lower court or tribunal the court must

first be satisfied that there is an error or anomaly or irregularity material occasioning injustices on the face of the record.

Having painstakingly gone through the records of the district tribunal, I discovered that the proceedings went well and at the end, the decision was passed and the present respondent who was an applicant in the suit at the district tribunal was declared as a lawful owner of the suit plot. To say that one Elikunda Macha who was one of the respondents to that suit did not defend his case to me it sound as afterthought because Elikunda himself did not lodge any complaint and he is not a party to these revisional proceedings. Thus, to say that the decision and or proceedings of the district tribunal had anomalies and or irregularities simply because Elikunda Macha did not defend the case does not suffice to revise the district tribunal proceedings for reasons I have tried to assign hereinbefore.

Moreover, in the decision of the district tribunal there is a proof that since the year 2011 the suit plot had already been allocated to the respondent as per acknowledgement of payment. The purported sale agreement in respect of the suit plot between the applicants as purchasers and Elikunda Macha as vendor came later in the year 2012. As found by the district tribunal such sale transaction was unlawful and invalid in the sense that if Elikunda Macha sold it to them definitely he conned the

applicants who, if they so wishes, have to take a legal action against him as they have no legal right to remain in the suit plot that does not belong to them. They must vacate the suit plot, Plot No. 300, Block A, Utengule area within Sumbawanga Municipality.

By passing, I think, Mr. Mushokorwa the learned advocate for the applicants did not professionally perform his duty well. He failed to cite a proper provision of the law to move this court to grant what is sought by his clients. According to my interpretation of the law, **section 41(1) of CAP 216** generally provides that all appeal, revisional and similar proceedings emanating from or made or passed by a district land and housing tribunal in the exercise of its original jurisdiction shall be heard by the High Court. In a simple term, it just directs or shows a way to a party who wishes to appeal or file an application for revision against a decision or order reached by the district tribunal in the exercise of its original jurisdiction, where to go. That is to go to the High Court. For ease of reference I do hereunder quote **section 41(1) of CAP 216** as amended by **Act No. 4 of 2016**:

“Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in

a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.....”

Meanwhile, **Section 43(2) of CAP 216** vests powers to the High Court that in course of exercising its revisional jurisdiction, it shall have all powers it has, at the time of exercising its appellate jurisdiction. For ease of reference, the provision of **Section 43(2) of CAP 216** is quoted as follows:

“In the exercise of its revisional jurisdiction, the High Court.....shall have all powers in the exercise of its appellate jurisdiction”

Now having the foregoing in mind, it my finding therefore that specific provision of the law ought to be cited by Mr. Mushokorwa to move this court to provide what the applicants have sought is **section 43(1)(b) of CAP 216**. It is **paragraph (b) of subsection (1) of Section 43 of CAP 216** which is relevant here. For ease of reference, i do quote it as hereunder:

“43. (1) In addition to any other powers in that behalf conferred upon the High Court, the High Court –

(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 failure to cite the just quoted paragraph to me amounts to non citation of proper provision of the law. In law, that failure by a competent and experienced lawyer, is fatal as it was observed by His Lordship E.K.M.Rutakangwa in the case of **Edward Bachwa & 3 Others Versus The Attorney General & Another**; Civil Application No 128 of 2006 (DSM) (CA) (unreported), that:

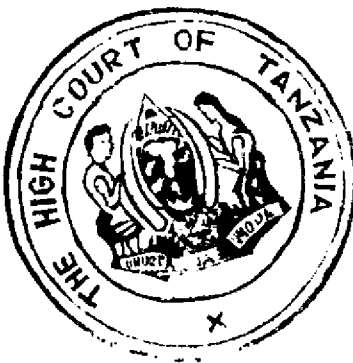
“.....wrong citation of the law, section, subsections and/or paragraphs of the law or non citation of the law will not move the court to do

what it is asked and renders the application incompetent"

I thus find that the sections cited in the chamber summons by Mr. Mushokorwa, the learned advocate could not be of assistance to the applicants to move this court to revise the proceedings and or decision of the district tribunal; and, to order the respondent from evicting the them from the suit plot that was declared by the district tribunal to be lawful owned by the respondent.

All in all, for reasons stated herein I find the present application totally misplaced. I could not see any sufficient reason to agree with the applicants. I cannot therefore fault the decision and or proceedings of the district tribunal chairperson in Application No 60 of 2013. The judgment is accordingly sustained and should be executed. The present application has no merits at all and is accordingly dismissed with costs.

It is so ordered.



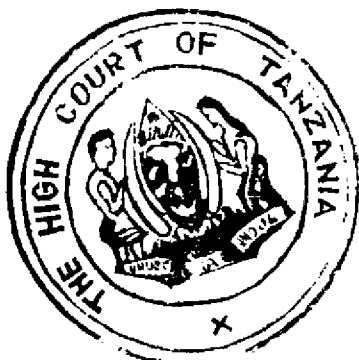
A handwritten signature in black ink, appearing to read "J. S. MGETTA".


**J. S. MGETTA
JUDGE
24.01.2019**

Date - 24.01.2019
Coram - Hon. R.M. Mbuya – DR.
1st Applicant - Absent
2nd Applicant - Present
For Applicant - Mr. Chambi - Advocate
Respondent - Absent
B/C - J.J. Kabata

COURT: Ruling hereby delivered this 24th day of January, 2019 in the presence of the 2nd Applicant, Mr. Chambi – Advocate for the Respondent to the Court Clerk Ms. J.J. Kabata in the absence of the 1st Applicant.

Rights of appeal explained.




R.M. MBUYA
DEPUTY REGISTRAR
24.01.2019