

IN THE HIGH COURT OF TANZANIA

DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

LAND CASE REVISION NO. 7/2016

*(Arising from Misc. Application No. 24/2016 at the District Land and Housing Tribunal for
Bukoba and Land Case No. 7/2015 at Kemono Ward Tribunal)*

SAID ATHUMANI ----- APPLICANT

VERSUS

GILBERT ANATORY ----- RESPONDENT

RULING

23/8/2018 & 11/1/2019

Kairo, J.

The Applicant in this matter is praying from the court for revision of the decision of the District Land and Housing Tribunal for Bukoba in Misc. Application No. 24/2016 delivered on 20/5/2016 and the Applicant be allowed to execute the Judgment in Land Application No. 7/2015 of Kemono Ward Tribunal. The Applicant further prayed cost be provided for. The application has been preferred

under Order XLIII Rule 2 and section 43 (1) (a) (b) of the Land Disputes Courts Act Cap 216 RE 2002 and any other enabling provision of the law.

As usual the chamber application was supported by an affidavit sworn by the Applicant.

Briefly the facts that resulted to this application was that, the Applicant has successfully sued the Respondent alleging that he had grabbed the shamba the Applicant inherited from his father one Athumani Saidi. The matter (No. 7/2015) was instituted at Kemondo Ward Tribunal. It appears the Respondent filed an application No. 149/2015 at the District Land and Housing Tribunal for Bukoba praying the court to transfer the said Land Case No. 7/2015 so that he can be allowed to get legal representation. Before the Respondent's application could be determined, the Ward Tribunal, Kemondo decided Land Application No. 7/2015 on 8/12/2015 in favor of the Applicant. The Respondent was aggrieved and filed Appeal No. 14/2016 to challenge the said decision on 19/01/2016 at the District Land and Housing Tribunal. In the meantime the Applicant also filed an application to execute the decree in land case No. 7/2015 on 17/2/201 at the District Land and Housing Tribunal. On 20/5/2016, the District Land and Housing Tribunal gave the following orders for the above matters:

For Misc. Application No. 149/2015, the District Land and Housing Tribunal quashed the proceedings and the decision of Kemondo Ward Tribunal Case No. 7/2015 and further gave an order for the case file be transferred to the District Land and Housing Tribunal. The decision was delivered in the absence of the Applicant (Respondent therein).

With regards to land appeal No. 14/2016, the District Land and Housing Tribunal struck out the appeal for want of merit giving reason that the tribunal records were quashed. As for the application for execution (No. 24/2016) filed by the Applicant, the District Land and Housing Tribunal closed the case file; to quote his orders as per proceedings of 20/5/2016, the chairman stated;

“the appeal was struck out and the decree quashed so this application has no legs to stand”.

It was from the said background that the Applicant decided to file this application for revision.

The Applicant is represented by Advocate Danstan Mutagahywa while the Respondent is self represented. For avoidance of repetition, I will combine the affidavit and the written submission by the Applicant and do the same for the Respondent with regards to his counter affidavit and reply to the written submission. In his affidavit which was amplified in the written submission, the Applicant stated that, the Applicant and the Respondent were parties in land case No. 7/2015 instituted at Kemondo Ward Tribunal into which the decision was in favor of the Applicant in the Judgment issued on 8/12/2015.

He went on that, following the said decision, the Applicant on 17/12/2016 instituted execution proceeding No. 24/2016 at the District Land and Housing Tribunal to execute the Kemondo Ward Tribunal decision. That before hearing of the execution proceedings, the Applicant was informed that on 19/1/2016 the Respondent had filed an appeal No. 14/2016 at the District Land and Housing Tribunal against the Kemondo Ward Tribunal decision. The Applicant went on to submit that he hoped the applicant's application for execution could be stayed

pending determination of the appeal by the Respondent but the Tribunal on 20/5/2016 in the absence of the Applicant closed the file of application No. 24/2016. Furthermore on the same date of 20/5/2016, the District Land and Housing Tribunal struck out appeal No. 14/2016 and surprisingly without giving the Applicant right to be heard, the Hon. Chairman determined Civil Application No. 149/2019 of the Respondent and through the said application, the Chairperson ordered for the transfer of Kemondo Ward Tribunal Land Case No. 7/2015 to itself.

The Applicant went on to submit that, the District Land and Housing Tribunal acted illegally and with serious material irregularities in the exercise of his jurisdiction in respect of application No. 24/2016 into which the Applicant sought for execution. He clarified that it was wrong for the Chairman to determine it without summoning the Applicant to attend the same adding that the Applicant was ordered to attend on 23/5/2016 but the Chairman gave an order to close the said file on 20/5/2016 in the absence of the Applicant thus condemning him unheard.

The Applicant went on to pin point the observed material irregularity whereby he stated that, after closing the file in execution proceedings No. 24/2016, the Chairman went ahead to entertain appeal No. 14/2016 and application No. 149/2015 both preferred by the Respondent. However, the Chairman didn't give the Applicant an opportunity to be heard in respect of the said appeal and application by either filing the counter affidavit or contest them.

The Applicant further stated that, the third material irregularity which he explained to be incurable in the eyes of law was that, the chairman ordered for

the transfer of the Kemondo Ward Tribunal Land Case No 7/2015, while the same had already been determined, that's is why even the Respondent had filed an appeal to challenge its decision. The Applicant concluded by insisting that the Applicant was not afforded with a fair hearing in the determination of Misc. Civil Application No. 149/2015, land Appeal No. 14/2016 and Misc. Civil Application No. 24/2016 as emphasized by Article 13 (6) (a) of the constitution of the United Republic of Tanzania which shows that the Hon. Chairman acted with bias. He thus prayed the court to grant his prayers in the chamber summons.

In his reply, the Respondent started by attacking the analysis and decision of the Kemondo Ward Tribunal. However this court will not recapitulate the same as it is not within the purview of this application. It should be understood that, the decision sought to be reviewed is of the District Land and Housing Tribunal and not Kemondo Ward Tribunal. I will thus deal with the reply that concerns the issues/ matters challenged; to be precise the one of District Land and Housing Tribunal.

The Respondent submitted that following his dissatisfaction with the decision of the Ward Tribunal, Kemondo, he decided to appeal to the District Land and Housing Tribunal in appeal No. 149/2015. He went on that, the Applicant was dully served but used abusive language and threats to the Chairman of the District Land and Housing Tribunal. He went on that the appeal was scheduled to another date but the Applicant didn't turn up and the application for execution was set aside pending the hearing of the appeal. But the Applicant never attended for his application nor attended the appeal by the Respondent.

In disputing the alleged first and second irregularities, the Respondent stated that, the Applicant after abandoning the appeal, he was required to be patient to wait for the final outcome of the appeal and quoted the case of **Athumani Kungubaya & Another vrs PSRC & TTC: Civil Application No. 9/2001** quoting His Lordship Lwanda as follows; *“Else where I have said courts orders should be complied with for the betterment of administration of justice. To allow a party to any proceedings to do things contrary to court’s order not only show disrespect to the court but also create chaos to the entire process of administration of justice. That this should not be allowed to occur”*.

The Respondent further submitted that the claimed material irregularities has no merit as the Applicant knowingly and deliberately ignored the order of the trial tribunal to attend case No. 7/2015 from the Ward Tribunal and that since the Respondent had already appealed against its judgment to the District Land and Housing Tribunal, the Applicant ought to wait for its outcome. He thus prayed for the court to dismiss the application with cost.

Having gone through the parties’ affidavit and counter affidavit together with the written submissions from both parties, the main issue for determination is whether the application for revision has merits.

The law requires the High Court to exercise its revision jurisdiction in a case where it appears that there has been an error material to the merits of the case involving justice. The Applicant in this matter has sought the application under section 43 (1) (a) (b) of Cap 216 RE 2002 which provision also confer revisional power to the High Court where there is an error material to the merits of the case involving injustice.

[Refer the case of **Zabron Pangalameza vrs Joachim Kiwaraka [1987] TLR 140**. The wanting question therefore is whether there was any error material to the merit of the case which is Misc. Application No. 24/2016 involving injustice.

Closer examination of the errors as pointed out by the Applicant, I observed that they all revolve around the right to be heard whereby the Applicant alleged that he was not afforded with a fair hearing by the District Land and Housing Tribunal in application No. 149/2015 whereby the Respondent prayed the transfer of Kemondo Ward Tribunal application No. 7/2015; appeal No. 14/2016 whereby the Respondent was challenging the decision of Kemondo Ward in application No. 7/2015 and in application No. 24/2016 whereby the Applicant sought for execution of the decree in land application No. 7/2015.

I am aware that the subject of this application is application No. 24/2016, but I will analyze all of the above as they all originate from land application not 7/2015 and also for easy understanding.

The record reveals that all of the above matters were decided on the same date by the District Land and Housing Tribunal and various orders were made:

In application No. 149/2015; on 5/2/2016 the District Land and Housing Tribunal ordered for proof of service to authenticate whether the Applicant was served, thus ordered the matter be mentioned on 29/3/2016. On the scheduled date, the Applicant was again absent, but it was not on record if he was served or not. The chairman thereafter scheduled the hearing of an application on 20/5/2016. The Applicant appeared on this date together with Advocate Lameck who was representing the Respondent therein informed the court that the matter was for hearing of the prayer to transfer the case file (No. 7/2015) from Kemondo Ward

Tribunal to afford legal representation. The Chairman acknowledge that the matter prayed to be transferred was already determined but went ahead to grant the prayers to transfer the case file to the District Land and Housing Tribunal, and further quashed the proceedings and decision of Kemondo Ward Tribunal.

For the appeal No. 14/2016 whereby the Respondent was challenging the decision of application No. 7/2015, the Chairman on 18/4/2016 scheduled the case to be mentioned on 23/5/2016 and ordered the application for execution be annexed to the case file. However he called the matter on 20/5/2016 at the absence of the Respondent (the Appellant therein) but the Applicant was present. The Chairman resolved that the appeal has no merit as the records were quashed, he thus struck it out.

With regards to application No. 24/2016 whereby the Applicant prayed for execution of the decree in application No. 7/2015 of Kemondo Ward Tribunal, the same was ordered to be closed. According to the proceedings, the application was first called before Hon. Assey on 17/2/2016 at the presence of the Applicant herein as the decree holder but in the absence of the judgment debtor and was scheduled for mention on 29/3/2016. On that scheduled date, the judgment debtor was again absent and the District Land and Housing Tribunal scheduled the matter for mention again on 3/5/2016 and further ordered the original records be brought. However the matter was called before the Hon. Chairman, Mr. Assey on 20/5/2016 at the presence of the Decree holder but in the absence of the Judgment debtor. The Chairman then gave the following order *“the appeal was struck out and the decree quashed, so this application has no leg to stand”* – and thereafter ordered the closure of the file.

Looking at the chain of events on the three matters above listed, I have observed that the District Land and Housing Tribunal changed the scheduled dated without informing the parties, or rather the record is silent if the parties were duly informed – for example Appeal No. 14/2016 which was originally scheduled for 23/5/2016 but called on 20/5/2016 and ordered for its struck out at the absence of the appellant (Respondent herein) which is a procedural irregularity. Besides, the records are silent as to whether the parties were afforded with the chances to present their replies to respective applications and appeal. The court has noted the irregularity to be common for all of the matter under attack above listed.

But also it was not stated whether the opposite party was served, for example in application No. 149/2015 wherein the District Land and Housing Tribunal categorically ordered for the proof of service to be brought – but it wasn't indicated whether at all the order was complied with. As if that was not enough, the matter, despite being scheduled for hearing on 20/5/2016, but the same wasn't heard instead the Tribunal went ahead to determine it despite the presence of the contestant of the application. The above incidents are overt material errors which has occasioned injustice not only to the Applicant but even to the Respondent in this matter as each at one point in time was not afforded with a fair hearing in respect of their matters filed at the DLHT. I thus join hands with the Applicant's argument that he was denied the right to be heard.

It has repetitively stated that, right to be heard falls under natural justice and is among the cardinal principles in assuring that justice has been afforded to the parties in dispute. The party must be afforded with such an opportunity even if it appears that he/she would have nothing to say or what he/she might say would

have no substance. In the case of **Abbas Sherally & Another vrs Abdul S.H.M Fazalboy: Civil Application No. 33/2002** (unreported) to Court of Appeal has this to say;

“the right of a party to be heard before adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. The right is so basic that a decision which is arrived at in violation of it will be nullified even if the same decision will have been reached had the party been heard, because the violation is considered to be a breach of nature justice”.

Despite the above pointed out irregularities; the court has also noted that, it was not correct for the District Land and Housing Tribunal to quash the proceedings and decision of Kemondo Ward Tribunal in application No. 149/2015 with much respect, while there was already an appeal filed (No. 14/2016) before it to impugn the said decision. In my view, it was a contradiction to quash the said proceedings and its orders. Yet ordering the transfer of the said file no 7/2015. This is so because there was nothing to transfer after quashing the said proceedings.

The Respondent has argued that the Applicant was to wait for the outcome of the appeal which he has filed, but the records show that the said appeal (no 14/2016) has already been determined by the court as above explained. With regards to the cited case of Athumani Kungubaya, I failed to see the relevance of it in the matter at hand with much respect to the Respondent.

The Respondent has also argued that the Applicant has insulted and threatened the Chairman. However there is no such information on record, besides the chairman had the mandate to charge him for contempt if at all it happened.

In order to correct the observed errors which are material to the merits of the case and which involved injustice it is imperative to grant the revision as I hereby do.

This court further orders that all of the proceedings and orders in application No. 149/2015, Appeal No. 14/2016 and Application No. 24/2016 are hereby quashed and set aside. Though the Applicant has prayed for the restoration of application No. 24/2016 for execution, but having found that the Respondent was also not afforded with a fair hearing, the same has to follow suit. For avoidance of doubt, the decision of Kemondo Ward Tribunal in Land Application No. 7/2015 has not been affected by the grant of revision in this matter and parties are at liberty to take further steps from thereon if so wish.

It is so ordered.

Right of Appeal explained.




L.G. Kairo
Judge

At Bukoba

11/1/2019

Date: 11/01/2019

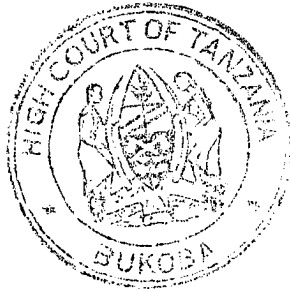
Coram: Hon. L.G. Kairo, J.

Applicant: Deceased Reported by Awam Kapela brother of the deceased

Respondent: Present in person

B/C: R. Bamporiki

Court: The matter is for ruling which is ready. The same is read over before the parties as per above coram.



L.G. Kairo

Judge

11/1/2019