

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 27 OF 2019
(Arising from Land Case No. 5 of 2015)

JERRY WILLIAM SILAA.....APPLICANT

VERSUS

PETER KIWANGO.....1ST RESPONDENT

HAROLD MAKULE.....2ND RESPONDENT

PIUS NYAMBACHA.....3RD RESPONDENT

RULING

Date of last order: 23/3/2020

Date of Ruling: 30/06/2020

S.M. KULITA J;

This application has been made under section 38(1) and section 95 of the Civil Procedure Code [Cap 33 R.E. 2002]. It is accompanied with a chamber summons and the affidavit deposed by the Applicant one **JERRY WILLIAM SILAA**. The said applicant seeks the for the following orders;

- i. That, this court be pleased to order that the respondents, its agents, officers or any other person acting on its

behalf, be compelled to execute sixty acres concerning the land dispute situated at Msongola Ward Kiboga Street in Ilala Municipality as awarded in the judgment and decree delivered before Judge Muruke on 28th November, 2017 and that the respondents should cease and or desist from trespassing on the remaining piece of land which was not in dispute.

- ii. Any other relief this court may deem fit to grant.
- iii. Costs of this application.

This application was heard by way of written submissions. The applicant through his Advocate Mr. Abdallah Shaibu Kitwana submitted that though the judgment which was delivered on 28th November, 2017 the court awarded the respondents 60 Acres out of 120 acres which were in dispute during the hearing of the main suit, Land Case No. 5 of 2015. He further stated that the respondents are now trespassing in the whole 120 acres instead of the 60 acres awarded to them. The said respondents claim that the court had awarded them the whole piece of land. Mr. Abdallah Shaibu Kitwana said that the applicant through letters dated 26th February, 2019 made efforts to request the respondents to vacate their 60 acres which they were awarded in the main suit so that the applicant can proceed to develop those

remaining 60 acres but the respondent have not been cooperative.

The counsel prayed for this court to give interpretation and directions or to issue an order for a land surveyor to measure 60 acres within the land in dispute for the respondents as awarded by the court.

In reply to the above submission, the respondents in their joint submission through their advocate, Ms. Hosiana Allan submitted that the applicant is a trespasser since the respondents are the legal owners of the sixty acres of land which were allocated to them by the village council, and the court declared the same.

Ms. Hosiana Allan submitted that the decree holder cannot be compelled to execute his rights as prayed by the applicant who is the trespasser and therefore with no legal legs to stand. She concluded by praying the court to adopt the respondents' prayers in the counter affidavit.

From the submissions I have noticed that the sale agreement which was Exh D1 in the original case shows that the applicant purchased from one Donald Kambili a piece of land measured 120 acres on the 5/5/2011. But according to the Land Case No. 5 of

2015 from which this application arises the subject matter was a claim of 60 acres which is a part of the said land of which in its judgment delivered on the 28/11/2017 the High Court granted the said piece of land to the Plaintiffs (Respondents in this matter).

As for the remaining piece of land it was not in dispute. It was not a part of the land that was given to the respondents by the Village Council and the trial court had not awarded it to any party. Order of the trial judge in the Land Case No. 5 of 2015 was for the defendants (Applicants in this matter) to give vacant possession of 60 acres in dispute. This means that it is out of the alleged 120 acres which the applicant was possessing regardless of its legality, as that was not a case thereat.

The application is therefore allowed. I grant no order as to costs.



S.M. KULITA

JUDGE

30/06/2020