

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(KIGOMA DISTRICT REGISTRY)

AT KIGOMA

LAND DIVISION

(APPELLATE JURISDICTION)

LAND REVISION APPLICATION NO 02 OF 2020

*(Original Land Application Case No. 23/2013, District Land Housing and Tribunal of
Kigoma)*

ALLY S/O SAID MNUKWA.....APPLICANT

VERSUS

RAMLA D/O HUSSEIN MANGA.....RESPONDENT

R U L I N G

03/07/2020 & 08/07/2020

I.C. MUGETA, J.

On 8/5/2020, having heard the parties on the merits of the application, I fixed this case for judgment. In the course of composing it, I noticed an irregularity in the chamber summons on the prayers part. The applicant prays this court to revise the record of District Land and Housing Tribunal for Kigoma in Misc. Land Application No. 23/2013 for containing illegalities but the contents of the affidavit concerns the decisions in Misc. land

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application No. 40/2016 and Misc. land application No. 74/2016. Therefore, the prayers in the chamber summons conflict with the contents of the supporting affidavit. I was convinced the prayers in the chamber summons are not supported by the affidavit filed. It is for this reason, I stopped to record the ruling on merits and directed the parties to address me on the propriety of the application before me.

Briefly, the facts are that the applicant had sold to the respondent land by auction at Tshs 12,000,000/= on 14/09/2011 which he has failed to deliver vacant possession to date. Since he failed to refund the money too, he entered into agreement with the respondent to surrender his house on plot No. 208 HD block "H", Aman Street Ujiji, in case he failed to refund the purchase money within 60 days from 3/8/2012. He failed to honour the promise and on application by the respondent, the District Land Housing and Tribunal vide land application No. 23/2013 ordered his eviction from the said house. The application was decided ex parte as the applicant defaulted to appear. His effort to have the exparte judgment set aside has bounced.

Upon the eviction orders, the applicant filed Misc. Land Application No. 74/2016 to try to set aside the exparte judgment. The application was dismissed on a preliminary objection that it was "*omnibus*". At the same time the respondent had filed Misc. Land Application No. 40/2016 for execution of the decree which was granted. The applicant was aggrieved by both the decision in the said two applications hence this application. The affidavit supporting the application is clear that the complaint is about Misc. Land Application No. 74/2016 and No. 40/2016. This, however, as I have

already said, conflicts with the prayers in the chamber summons. The prayer in the chamber summons reads:-

"That, this Honourable court be pleased to call for the records of Kigoma District Land Housing and Tribunal in Misc. land application No. 23/2013 for purposes of examining such records in order to satisfy itself on the correctness, illegality (sic) or material irregularity and revise the same accordingly"

Daniel Rumenyela, advocate for the applicant readily conceded to the irregularity. He, however, was quick to point out that since this is a revisional jurisdiction, the court has wider discretionary powers to give any order to curb injustice including rectifying the errors in the chamber summons. That since all the record of the lower tribunal are before this court, this court should examine them and make orders which can avoid occasioning injustice if the application is rejected. He pointed out the injustice to be occasioned as the denial on part of the applicant his right to be heard.

In reply, Michael Mwangati, learned advocate, submitted that in applications, the reliefs are contained in the chamber summons and if the chamber summons has to be granted as prayed, the orders in the impugned two applications shall remain intact as the prayers concern the main case No. 23/2013 which would render the orders meaningless. He argued further that this court cannot infer the impugned applications as the one sought to be revised in the prayer in the chamber summons as doing so amounts to granting the applicant what he did not ask for.

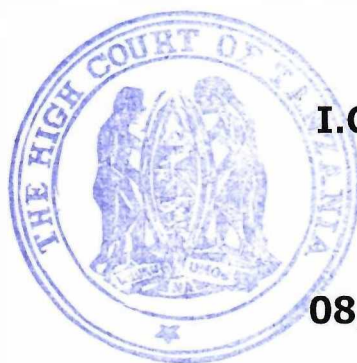
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In rejoinder, Rumenyela submitted that since the facts and the complaint in the affidavit is about the two application; for execution and for setting aside the exparte judgment, the respondent was not prejudiced as the affidavit properly informed him what the complaint was about. That is why, the learned counsel argued, the respondent filed a counter affidavit without noticing the irregularity pointed out by the court.

To cut a long story short, the issue raised by the court and which calls for my determination is whether the court can amend the prayers in the chamber summons to mirror the content of the affidavit supporting it. This issue has tasked my mind considering the advent of the rule requiring courts to consider the principle on overriding objectives when determining cases. On reflection, I have come to a conclusion that there are situations where the principle is not helpful. This is one of such a situation. The reason is simple. That is, as submitted by Mwangati, learned advocate, the court cannot grant what a party did not ask for. In this case the applicant prays the court to revise the record of land application No. 23/2013 which so far has no errors to rectify. As admitted by counsel for the applicant the illegalities complained about are in Misc. land application No. 40/2016 and Misc. land application No. 74/2016. The remedy, therefore is to have a proper application filed. I hold that in case of mismatch between the prayers in the chamber summons and the contents of the supporting affidavit, the court, by application or suo motto, cannot amend a chamber summons to mirror the contents of the supporting affidavit.

Mr. Rumenyela has asked the court to exercise its wider discretionary powers to avert injustice, namely, to deny the applicant an opportunity to be heard

in case the application is rejected. I have considered this argument and reviewed the record of the trial tribunal, it is my view that the conduct of the applicant in attending court sessions leaves a lot to be desired. However, whether the applicant has a right to be heard or not is an issue to be determined by the Tribunal on filing an appropriate application. I hastate to use the revisional powers of this court to examine the propriety of the record of the lower court because the applicant ought to have known what to ask from this court. Revisional powers of this court cannot be exercised in situation of this nature. Doing so would amount to prosecuting the applicant's case. Since the chamber summons is defective for mismatching with the affidavit, I hereby find the application to be incompetently before the court. I accordingly strike it out with costs.



Mugeta

I.C. Mugeta

Judge

08/07/2020

Court: Ruling delivered in chambers in the presence of the applicant and the respondent in person.

Sgd: I.C. Mugeta

Judge

08/07/2020