

IN THE HIGH COURT OF TANZANIA

MWANZA REGISTRY

AT MWANZA

HIGH COURT CIVIL REVIEW NO. 09 OF 2020

(Original Land Case No. 44/2013 of the High Court- Mwanza and Civil Execution No. 31/2019, Misc. Land Application No. 08/2019)

LEOKADIA NG'WENDESHA & 15 OTHERS APPLICANTS

VERSUS

NYAKATO ENTERPRISES & 5 OTHERS RESPONDENTS

RULING

23 & 30/06/2020

RUMANYIKA, J.:

It comes up at the instance of Jakob Dickson and 2 others, by a letter of complaints dated 05/06/2020 titled; **KULAZIMISHWA KUPOKEA PESA YA FIDIA AMBAYO INATOKANA NA KESI NA 44/2013 BAINA YA LEOKADIA NGWENDESHA & OTHERS DHIDI YA NYAKATO ENTERPRISES NA WENZAKE BILA KUPEWA MUDA WA KUSIKILIZWA** the gist of which, pursuant to judgment, decree and orders of 31.08.2017 of the court (De-Mello, J), among others, my sister judge ordered :-

- a. I declare the plaintiffs as true and lawful occupiers as opposed to trespass in the suit land for their long occupation...**

- b. ...(not applicable).
- c. ...**General damages is replaced by compensation following official valuation.**
- d. ...(not applicable).
- e. **Compensation and, allocation of alternative land is instead and "Suo Motu" granted to the plaintiffs...** (emphasis added)

It is the very letter which prompted the court to initiate the instant review proceedings suo motu. Messrs Mwita Emmanuel and Erick Katemi learned counsel appeared for Leokadia Ng'wendesha and 15 others (the decree holders) and Nyakato Enterprises and 5 others (the respondents) respectively. Ms Subira Mwandambo learned state attorney represented the Ministry for Land Housing and human settlements and The Attorney General (the 2nd and 3rd respondents). Mr. Joseph Vungwa learned Solicitor appeared for Mwanza City Counsel (the 4th respondent).

Mr. Katemi learned counsel submitted; **one**, that with lapse of the time this court had no jurisdiction, **two**, that subsequent to it the decree holders had application for revision pending in the Court of Appeal of Tanzania, **three**, that aggrieved by decision of the Taxing officers the decree holders were at liberty only to apply for reference.

Ms. Mwandambo learned state attorney submitted; **1.** That this court had no jurisdiction, **2.** That the valuation report bound all as it was admitted in court unopposed, **3.** That basing on the very report some decree holders had been compensated, **4.** That none of the decree holders

appealed against the judgment and decree, 5. That no one of them objected it until at the execution stage therefore the complaints was afterthought.

Mr. Vungwa learned Solicitor submitted that before the Taxing master the decree holders had challenged the valuation report but they failed therefore, holding otherwise the court may cause chaos leave alone the principle that litigation should get to end always.

Mr. M.Emmanuel learned counsel submitted that not only the valuation report at issue (Exhibit "P7") was prepared and submitted by dependent valuation officer, but also inordinately the report excluded value of the disputed land that the omission entitled one review proceedings and order. That it was against the principles of natural justice that the interested 4th respondent assumed the role. That is all.

The pivotal issue is whether for the purposes of execution, preparation of the valuation report by the 4th respondent was compliant of the impugned judgment and decree. The answer is no because neither the judgment nor decree had such bearing I will come back to this point shortly.

Subsequent to the judgment and decree and now at the execution stage, on 17/04/2018 the Taxing master (F. J. Kabwe, DR) held and found:

".....it is evident that the prayer is in tandem with the decree. As stated herein above **the court decreed that**

the applicant should be compensated and relocated to another land. Using my human ingenuity and through experience, I think in order to discharge my duty as an executing officer in assisting the applicants in enjoying the fruits of the judgment, it is prudent to direct the Respondents to make arrangements for compensation. It is the stage for reallocation or not from these directives, I find the prayer for compensation prematurely made as submitted by the respondents....."

Yet still for execution purposes there followed a ruling of 08/05/2020 of Karayemaha, Deputy Registrar also a Taxing Officer which sort of struck out the application for stay of execution following demise death of the 2nd decree holder. Leave alone the Taxing Officer's order of dismissal dated 27/04/2020 with respect to the mode that the execution should have been carried out.

The accumulation of all the above findings, decisions and orders of the Taxing Officers quietly though, it meant one attempting to interpret the judgment and decree under execution, with regard to the compensation element, my learned sister DE-Mello, J having found and held thus:-

"...I am highly attracted to the findings in the case of **Attorney General V. Lohay Akonaay and Joseph Lohay** (1995) TLR 80...but to relevance here, as follows;

- (i) customary or deemed rights in land, though by their nature are nothing but rights to occupy and use land, are nevertheless real property protected by the Provisions of Article 24 of the Constitution of United Republic of Tanzania and **their deprivation of a customary or deemed right of occupancy without compensation is prohibited by the constitution;**
- (ii) **Fair compensation is not confined to unexhausted improvements; where...there are no unexhausted improvements but some effort has been put to the land by the occupier that occupier becomes entitled to protection under Article 24(2) of the constitution and fair compensation is payable for deprivation of property and land...**

I am thus of settled view that, much as there is a presence of a Title Deed in place, **the weight of evidence adduced by the plaintiffs** overshadows that of the Defendants, them being deemed to that of Right of occupancy as defined under Section 2 of the Village Land Act Cap 114 as an extension of customary Right of occupancy ...”

It therefore follows that the outgoing occupiers owned the disputed land customarily up to, and until such time when it was now declared surveyed and developed but the outgoing occupiers should not have vacated empty handed. Then the issue was when, who, and how could

arrangements for compensation be made, leave alone the scope and extent thereof. It is very unfortunate that inadvertently though the presiding judge did not, in the judgment make this one clear. It is for that reason that during execution process the taxing officers were at loss to date so was the decree holders, in order to clear the manifest error apparent on the face of it all therefore one to have executable judgment and decree, the present review proceedings were inevitable (see the case of **Transport Equipment Limited v. Devram P.Valambhia** (1998) TLR 89 quoted with approval by the highest fountain of justice in the case of **John Kashekya v. Attorney General**, Civil Application No.480/03 of 2018, unreported). By all intents and purposes my sister judge couldn't have meant it that any one of the interested and adverse judgment debtors value the disputed landed property and present the report or in any way howsoever cause procurement of the valuation report. Like Mr. M. Emmanuel learned precisely so in my considered view argued, the principles of natural justice required that no judge shall decide his own cause - Audi partem alteram rule. The impugned judgment and orders therefore it should have had it that the parties procure a free and independent valuation officer who shall within twenty one (21) days of this ruling prepare and present a report to the Taxing Officer for execution of the decree. It is ordered accordingly.

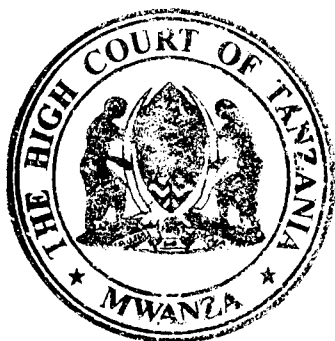
Right of revision/ appeal explained.

S. M. RUMANYIKA

JUDGE

09/06/2020

It is delivered under my hand and seal of the court in chambers in presence of the parties.




S. M. RUMANYIKA

JUDGE

30/06/2020