

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LAND REVISION CASE NO. 01 OF 2020

(Arising from Misc. Land Application No. 541B of 2019, Originating from the decision of Land Application No. 541 of 2018 in the District Land and Housing Tribunal for Mwanza at Mwanza before Hon. Masao E. dated 17th April, 2019)

SAID PETER KATAKULAAPPLICANT

VERSUS

NOBERT MAHIGILA GWEBE.....RESPONDENT

RULING

08 & 25.06.2020

RUMANYIKA, J.:

When, with regard to judgment and decree of 17/4/2019 the application for revision with respect to execution order of 26/2/2020 of the District Land and Housing Tribunal for Mwanza (the DLHT) was called on 8/6/2020 for hearing, I had to hear the parties on jurisdictional and non joinder based limbs of preliminary point of objection (the p.o) formally raised on 28/4/2020 and now taken by Mr. Mwita Emmanuel learned counsel for Nobert Mahigila Gwebe (the respondent). Ms Rose Ndege learned counsel appeared for Peter Katakula (the applicant).

Following the global outbreak of coronavirus pandemic and pursuant to my order of 13/5/2020 the parties were present online, by way of audio

teleconferencing I heard them through mobile numbers 0764 539 900 and 0768 716 171 respectively.

Mr. Mwita Emmanuel learned counsel submitted; (1) that this court had no jurisdiction because subsequent to the impugned decision the applicant had lodged notices of appeal, one on 28/10/2019 and the other one on 29/2/2020 leave alone the 13/11/2019 application for stay of execution also filed and equally pending but the applicant did not disclose it all in the affidavit (2) that alternatively now that the parties were done with execution, the instant application was long over taken by events because the respondent had the suit premises back already. (3) that the application was incompetent for non joinder of the respective Court Broker (paragraph 4, 6,7 and 8 of the supporting affidavit) refer.

Ms. Rose Ndege learned counsel submitted; (1) that indeed there had been two notices and application for stay in the court but on reflection the applicant wrote on 22/4/2020 and 27/4/2020 withdrawing the notices of appeal and he was waiting for the court orders of withdrawal (2) that as long as at no given point time was the Court Broker a party to the proceedings, the latter shouldn't therefore have been joined here (case of **Suryakant D. Ramji V. Saving and Finance Limited and others** (2002) TLR 121) leave alone provisions of Order 1 Rule 6 of the Civil Procedure Code Cap 33 RE 2019 that no case shall be defeated for the reason of non joinder or misjoinder of the parties. That should the court find otherwise, the applicant be allowed to amend the application much as the principles of overriding objectives allowed it. That is all.

The central issue is whether this court has jurisdiction under the circumstances. The answer is no much as it was undeniable fact that subsequent to the impugned order of execution the applicant had intimated to appeal and at least a notice of appeal and application for stay of execution were pending. On reflection, perhaps rightly so the applicant may have asked to withdraw the notices yes, but with that regard court order of withdrawal was awaited. In other words not only appeal and revision processes were alternative to each other but also the two processes do not co-exist against one and the same judgment and decree short of which chances of confusion and mockery of justice would not be ruled out. With greatest respect therefore the instant application is out of place suffices the point to dispose of the application.

Without prejudice to the foregoing the issue of non joinder needs not to take much of my time given the scope and legal effects of the facts deposed in paragraphs 4,6,7 and 8 of the supporting affidavit much as I am also mindful of the provisions of Order 1 Rule 9 of the Civil Procedure Code Cap 33 RE. 2019 namely no suit shall be defeated only for the reason of misjoinder or non joinder of the parties. In the present case however, by order of the DLHT and through the execution process Josina and Company Limited and Auctioneers were now done, with all intents and purposes for better determination of this application the latter should have been joined as the necessary party. On this ground therefore the application was bound to fail (see the case of **Abdullatif Mohamed Hamis V. Mohmood yusuf and Another**, Civil Revision No. 6/2017) the Court of Appeal of Tanzania, unreported defined a necessary party thus:-

... a necessary party is one whose presence is indispensable to constitution of a suit and **in whose absence no effective decree or order can** be passed. Thus, **the determination as to who is a necessary party to a suit would vary from case to case depending upon the facts and circumstances of each particular case.**

Without prejudice to the foregoing discussion however, I find the application both hopeless and afterthought, hopeless in the sense that the applicant only protested against judgment and decree passed on 17/4/2019 whose execution order was passed say 1²/₁₂ years plus later i.e on 26/2/2020 but he (the judgment debtor/applicant) took no necessary steps before until execution was sought, granted and now fully carried out. I think a judgment debtor who, upon receiving judgment and decree without explanation did not take any necessary steps until execution was carried out any damage sustained shall be considered as a self inflicted wound and injuries which will entitle one no compensation.

The p.o is sustained. The application is dismissed with costs. It is so ordered.

Right of appeal explained.

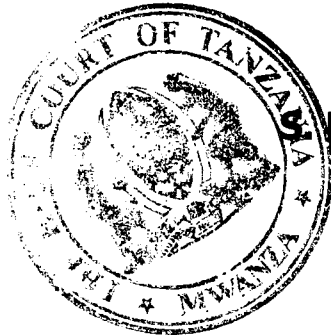


S. M. RUMANYIKA

JUDGE

21/06/2020

The ruling delivered under my hand and seal of the court in chambers this 25/06/2020 in absence of the parties with notice.



S. M. RUMANYIKA
JUDGE
25/06/2020