

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

(LAND DIVISION)

MISCELLANEOUS LAND CASE APPLICATION NO. 2 OF 2020

MANDE SHABANI.....APPLICANT

VERSUS

HAKIMU MFAUME.....RESPONDENT

RULING

Date: 18/3/2020

Before: Hon. A. Matuma, J.

This is an application for directions in the exercise of general powers of supervision over the District Land and Housing Tribunal under the Provisions of section 43 (1) (a) of the Courts (Land Disputes Settlements) Act, No.2 of 2002, section 68 (e) and 95 of the Civil Procedure Code, Cap.33 R.E 2002.

The Historical background leading to this application is that, the parties herein had a dispute of land in the Ward Tribunal of Buzebazeba (Dispute No. 15/2012). The Ward Tribunal adjudged for the Respondent. The applicant was aggrieved and thereby appealed to the District Land and Housing Tribunal for Kigoma.

The District allowed the appeal by the applicant and ordered that the Dispute Land be **re-surveyed** to identify the appellant's shamba and if the

respondent is found to have trespassed into the applicant's shamba then compensation for unexhausted improvements be payed.

The respondent was not satisfied and therefore appealed to the High Court (Land case Appeal No. 34/2013). The High Court dismissed the appeal with costs having observed that the respondent bought the dispute shamba from one **Almas Msongera** who had initiated a Private survey without involving the neighbours to the shamba among them, the Applicant. As a result of such private survey, the applicant's piece of land was included into Almas Msongera's shamba and measured as one plot, plot no. 3127 Block D Burega. After such a survey it is when the Respondent bought the said plot hence a quarrel between him and the Applicant. To quote the High Court's decision on appeal it observed;

"The only issue, a very simple issue is that when conducting the survey of his shamba including fixing becones, the late Almas Msongera should have informed, and asked for the presence of the people having shambas bordering his shamba, in order to avoid a possible overshooting into someone's shamba".

Therefore, the High Court **S.B. Lukelelwa** Judge, confirmed the decision of the District Land and Housing Tribunal that **a re- survey** be carried on **to identify first the applicant's shamba**. The respondent was not happy with the High Court's decision herein above but he could not timely take necessary action and therefore applied to this Court for orders that;-

- i. He be extended time to file application for leave to appeal to the Court of appeal of Tanzania.*
- ii. He be extended time to file notice of appeal.*
- iii. For an order staying execution of the decree.*

He lost the application before **D.E Mrango**, Judge. Therefore, the respondent decided to execute the original decree of the District Land and Housing Tribunal. The problems arose in the execution process whereas the applicant alleges that instead of executing the decree by **re-surveying** the dispute plot to identify her shamba, the whole dispute shamba was taken and handled to the respondent as if he had been a decree holder in the said decree, hence this application.

At the hearing of this application. Mr. Kagashe learned advocate appeared for the applicant while Mr. Thomas Msasa appeared for the Respondent.

Mr. Kagashe learned advocate submitted that during execution process, the respondent prayed to be handled over the dispute plot and plot no. 3126 which is not subject to this application and the tribunal issued such an order which rendered the applicant shambaless contrary to the original decree which required a re-survey and identification of the applicant's shamba and if need be compensation to whatever legal right of the Applicant to the dispute shamba that might be included in the premises which the respondent purchased from Almas Msongera.

Mr. Thomas Msasa learned advocate despite the fact that he vigorously contested this application he conceded on two important aspects. **One**, that the original order did not declare the respondent as a decree holder to be handled over the dispute plot but that the same be re-survey to identify the applicant's shamba. **Two**, that the execution process did not identify the applicant's shamba but the respondent acknowledges that it is just a half of an acre within plot No. 3127 Block LD. which ~~they~~ are ready to compensate the applicant.

It is my settled view that, the District Land and Housing Tribunal brought all this chaos unnecessarily. At first, it adjudged that the **re-survey** at the dispute land be carried on to identify the shamba of the applicant. That decision was confirmed by this Court on appeal after having realized that the survey thereof was privately initiated without involving the neighbours, the applicant inclusive.

The respondent at all times was not happy with such a decree and struggled to have it set aside but in vein.

In unjustifiable manner, he went to execute it **as a decree holder** while he was not and the District Land and Housing Tribunal erroneously ordered the Court Blocker;

*"You are hereby commanded to demolish and remove the fence erected by the respondent (now applicant) and **remove the said respondent/judgment debtor and any person claiming or deriving tittle from or under her.** And lastly **put the decree holder (now respondent) in possession**".*

As a result of such an order, the Court Blocker demolished the wall of the applicant and put into possession the respondent over all the dispute plot/shamba.

There is no evidence that the area was **re-surveyed** as initially decreed, nor there is any report that the applicant's shamba was **first identified** as initially decreed.

The respondent who was a loser both at the District Land and Housing Tribunal during the first appeal and in the High Court during the second appeal, turned himself into a decree holder to circumvent the due process

of the Law. He has even by himself and his advocate admitted before me that part of the applicant's shamba has been included into his shamba during the survey on the so named "**Kunyoosha mipaka**". Yet they have not compensated the applicant even for that small share which they acknowledge.

Even though, the applicant is claiming that it is not only half an acre she owns but the whole of plot No. 3127.

Since the parties are at issue as to whether the whole plot No. 3127 belongs to the applicant or just a half of it, was necessary to execute first the **re-survey order** and a report thereof be brought to the executing tribunal in which it would have heard the parties on the findings of the **re-survey** then make a finding to the entitlements of each party on the dispute plot/shamba. That last findings would be capable of being executed and any aggrieved party would be entitled to appeal.

In the circumstances, I find this application to have been brought with sufficient cause and issue the following directions;

- i. The execution proceedings are hereby declared a nullity and the status quo of the parties which existed before the execution be maintained.
- ii. The re-survey as initially ordered be carried on to identify not only the applicant's shamba but also that what the respondent had purchased from Almas Msongera.
- iii. If it is found that the area which the respondent purchased from Almas Msongera is not in dispute by the applicant then only that area be surveyed as a lawful property of the respondent.

- iv. If the area which the respondent bought from Almas Msongera is in dispute by the applicant then, the trial tribunal should hear the parties and make a finding thereof.
- v. The shamba which shall be identified during the survey to belong to the applicant if not disputed by the respondent then the same should be left to the applicant and she should not be forced to vacate by way of compensation. She shall be at liberty to use it, sale or transfer to a person of her own choice.
- vi. If the shamba that might be identified as the property of the applicant but such identification disputed by the respondent then the District Land and Housing Tribunal must hear the parties and make a finding thereof.
- vii. As the respondent has declared before me that half an acre at plot No. 3127 belongs to the applicant, he is estopped under the provisions of section 123 of the Evidence Act, Cap. 6 R.E 2002 to make any attempt to deny the truth of such fact during the re-survey and even during trial if need be.
- viii. After the resurvey and identification of the shambas in respect of each party and or after the trial in case it is necessitated, if it is found that the demolished wall which was erected by the applicant or her agents was constructed within her boundaries, the respondent shall bear costs to re-construct it and the applicant shall not be burned to make further claims as consequential thereto.
- ix. The respondent is restrained to assume any tittle over the dispute plot, nor to make any development thereof, until the dispute is fully resolved under the directions herein ~~above~~ and the right of each party is determined.

- x. Should any party herein violate the directions herein above, contempt of Court shall be pronounced against him or her.

The application is thus allowed with costs. Whoever aggrieved has the right to appeal to the Court of appeal of Tanzania subject to the requirements of the relevant Laws governing appeals thereof.

It is so ordered



A handwritten signature in black ink, written over a horizontal dotted line. The signature is stylized and appears to be "A. Matuma".

**A. Matuma,
Judge,
18/3/ 2020.**