

IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

MISC LAND CASE APPEAL NO. 57 OF 2019

(Arising from Misc. Land Application No. 143 of 2018 and Misc. Land Application No. 126 of 2016 and Land Appeal Case No. 14 of 2010 both of the District Land and Housing Tribunal for Singida and Original Civil Case No. 5 of 2009 of Mandewa Ward Tribunal)

MOHAMED YUSUFU APPELLANT

VERSUS

ELIAS MUSAGHAA MONKORESPONDENT

3/8/2020 & 7/9/2020

JUDGMENT

MASAJU, J

The Respondent, Elias Musaghaa Monko, unsuccessfully sued the Appellant, Mohamed Yusufu in the Ward Tribunal of Mandewa vide land Application No. 5 of 2009. Aggrieved with the decision, the Respondent successfully appealed to the District Land and Housing Tribunal for Singida at Singida vide land Appeal No. 14 of 2010 where he was declared a lawful owner of the disputed land measuring 70M X 70M. The Respondent then

filed Miscellaneous Land Application No. 126 in the first appellate Tribunal, the Application was granted to the extent of 20M x 30M allegedly being the size of the suitland.

The Respondent filed Miscellaneous Land Application No. 143 of 2018 for review of the Miscellaneous Land Application No. 126 of 2016 for the reasons that there were some clerical errors on the actual measurement of the suitland. The Application was granted hence this appeal in the Court.

The Appellant's Petition of Appeal is made up of five (5) grounds of appeal, one of them being;

"1. That, the chairman for District land and Housing Tribunal erred in law by entertaining the matter whereof it is functus officio."

The Respondent contests the appeal, he filed his Reply to the Petition of Appeal made up of five (5) grounds.

When the appeal was heard in the court on the 3rd day of August, 2020 both parties were represented. The Appellant was in the service of Mr. Raymond Joakim Kimu, the learned counsel while the Respondent was represented by Mr. Lucas Komba, the learned counsel.

Submitting in support of the appeal, the Appellant's learned counsel argued that, the District Land and Housing Tribunal for Singida was "*functus officio*" for varying the decision in Miscellaneous Land Application No. 126 of 2016 as per **TUICO OTTU Union and Augustine Celestine V. NBC Ltd. and Attorney General (HC) Miscellaneous Civil Cause No. 11 of 1999, Dar es Salaam Registry.**

On the 2nd ground of appeal the Appellant submitted that, the trial chairman erred in law by reversing his previous decision on merit pursuant to section 96 of the Civil Procedure Code, [Cap 33].

On the 3rd ground of appeal the Appellant argued that the Tribunal entertaining Miscellaneous Land Application No. 143 of 2018 was a second bite, and that the Respondent ought to have appealed against the decision in Miscellaneous Land Application No. 126 of 2016.

The Appellant prayed the court to allow the appeal with costs accordingly, quash and set aside the trial Tribunal's decision in Miscellaneous Land Application No. 143 of 2018.

On his part, the Respondent contested the appeal by submitting that the District Land and Housing Tribunal was not *functus officio* when it entertained Miscellaneous Land Application No. 143 of 2018 because the said decision was on rectification of clerical errors. That, Miscellaneous Land Application No. 126 of 2016 was for execution of decree in Land Appeal No. 14 of 2010 whereby the Respondent was declared the lawful owner of land 70 X 70 paces size, hence Miscellaneous Land Application No. 126 of 2016 for decree execution of the said size of land where the District land and Housing Tribunal wrongly decided that the Respondent be given land 20 x 30 paces.

That, the error was rectified in Miscellaneous Land Application No 143 of 2018 as per section 96 of the Civil Procedure Code, [Cap 33] which allows amendment of judgment, decree or order on clerical or arithmetic mistakes. That, the District Land and Housing Tribunal was therefore not "*functus*

officio” as it acted with the view of section 96 of the Civil Procedure Code, [Cap 33] accordingly. The Respondent finally prayed the Court to dismiss the appeal with costs for want of merit.

In Rejoinder, the Appellant maintained his submissions in chief that, section 96 of the civil Procedure Code, [Cap 33] is categorical that rectification can be made on clerical and arithmetical or accidental errors, but the rectification by the District Land and Housing Tribunal for Singida substantially affected the merit of the case.

That, is what was shared by the parties in support of and against the appeal in the Court.

The decision in the Land Appeal No. 14 of 2010 is very clear that the Respondent was declared a lawful owner of the land in dispute measuring 70 x 70 paces. The District Land and Housing Tribunal decision in Miscellaneous Land Application No 126 of 2016 on Application for execution ought to base its findings in the judgment thereto. The Appellant alleged in the said Application that, the land in dispute to be measuring 20 x 30 paces. If that was the case, the Appellant ought to have appealed against the judgment in Land Appeal No. 14 of 2010 and not bringing that fact in execution proceedings.

The trial Tribunal misdirected itself in granting the Application for execution to the extent alleged by the Appellant, that is 20 x 30 paces. It is then that the Respondent filed Miscellaneous Application No. 143 of 2018 for rectifying the clerical errors done by the trial Tribunal.

Section 96 read together with Order XLII rule 1 (1) of the Civil Procedure Code, [Cap 33] provides for circumstances in which an Application for Review can be preferred.

In the instant case, there was a mistake done by the District Land and Housing Tribunal in the Application for execution, since it is very clear that the measurement of the suitland in Land Appeal No 14 of 2010, which has never been reversed by any other Court of law, is 70 x 70 paces thus, the execution ought to have been granted on the same size of the land and not otherwise.

The decision in **TUICO – OTTU Union and Augustine Celestine V. NBC Ltd and Attorney General (Supra)** cited by the Appellant can not fit in the instant case since the facts are quite different from the case at hand.

That said, the appeal is hereby dismissed with no orders as to costs.



GEORGE M. MASAJU

JUDGE

7/9/2020