

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISCELLANEOUS LAND APPEAL NO. 8 OF 2019

(C/F Misc. Land Application 165 of 2018 at Arusha District Land and Housing Tribunal arising from Misc. Application No. 458 of 2017 at Arusha District Land and Housing Tribunal, Originating from Land Case No. 99 of 2017 Muriyet Ward Tribunal)

CAROLINE WILLIAM MUSHI APPELLANT

VERSUS

DANIEL MANYANGA MSAMI RESPONDENT

JUDGMENT

ROBERT, J:

This is an appeal against the Ruling of the District Land and Housing Tribunal of Arusha dated 24th July, 2019 in objection proceedings preferred by the Respondent, Daniel Manyanga Msami objecting an execution order given by the District Land and Housing Tribunal in Misc. Application No. 458/2017.

The factual background of this appeal divulges that the Appellant Caroline William Mushi filed Land Case No. 99 of 2017 at Muriyet Ward Tribunal against one Bakari Ramadhani claiming ownership of a landed property measuring 20 meters in length by 15 meters in width located at Mtaa wa Kati, Muriyet

Ward in the city of Arusha. The Ward Tribunal gave Judgment and decree in favour of the Appellant.

Thereafter, the Appellant filed Miscellaneous Application No. 458 of 2017 for execution of the decree against Bakari Ramadhani. On 29th January, 2018 the District Land and Housing Tribunal granted an order for execution in favour of the Appellant and appointed Majembe Auction Mart to undertake the execution process including by forcefully removing Bakari Ramadhani, the Judgment debtor, from the suit land.

Aggrieved, the Respondent, Daniel Manyanga Msami, who was not joined in the original Land Case No. 99 of 2017 at Muriyet Ward Tribunal preferred an application for objection proceedings under certificate of extreme urgency vide Miscellaneous Application No. 165 of 2018 claiming interest over the dispute land.

The Respondent submitted that at the time of instituting Land Case No. 99 of 2017 he had already compensated Mr. Bakari Ramadhani the purchase price of the disputed land together with developments made on that land hence, he had absolute interest over the suit land and the Appellant didn't join him in the original case. He implored the District Land and Housing

Tribunal to investigate the ownership of the suit property and see if the same is liable to be attached and demolished in execution of the Tribunal's order in Miscellaneous Application No. 458 of 2017 and for the Tribunal to vacate its execution order dated 29th January, 2018 and declare him a lawful owner of the suit property.

In opposition to the objection proceedings the Appellant filed a counter-affidavit sworn on 13th June, 2018. The gist of the opposition was to the effect that the Respondent had no interest in the suit land.

On 24/7/2019 the District Land and Housing Tribunal delivered its Ruling. In its Ruling, the Tribunal made findings to the effect that the record of proceedings of the Ward Tribunal had a lot of irregularities such as non-joinder of necessary parties which would enable the Tribunal to properly and justly determine parties' rights. The District Tribunal ruled that one Omary Juma who allegedly sold the disputed property to the Appellant as well as the Respondent herein who was mentioned by some witnesses as the owner of the disputed property should be joined to this dispute as necessary parties to assist the Tribunal in determining the dispute.

Aggrieved with the decision of the Tribunal, the Appellant appealed to this court on three grounds which I have the liberty to reproduce as follows: **One**, that the Honourable Chairman erred in determining objection proceedings as if it was an appeal. **Two**, the Honourable Chairman erred in law and in fact in holding that the Respondent herein was a necessary party to be joined at the Ward Tribunal case while he had no any interest attached thereto. **Three**, That the Honourable Chairman erred in law and in fact in holding that the Respondent has a valid interest in the suit land without any iota of proof or evidence.

In light of the grounds above, the Appellant sought for the following relief: for the following orders: One, Ruling of the Tribunal delivered on 24th July, 2019 be quashed and set aside. Two, A declaration that the Respondent has no any interest on the suit land. Three, execution order of the Tribunal in Miscellaneous Application No. 458 of 2017 dated 29th January, 2018 be restored. Four, Costs of this appeal and that of the Tribunal be provided for in favour of the Appellant.

When the appeal came up for hearing on 29th June, 2020 the Appellant was represented by Mr. Sylvester Kahunduka, Learned counsel whereas the Respondent was represented by Mr. Dismas Lume, Learned Counsel.

Submitting on the first ground of appeal on determining objection proceedings as an appeal, the learned counsel submitted that once a court of law has given its decision it becomes *functus officio* unless it is moved to determine an issue. He argued that objection proceedings is one of the circumstances where a court is allowed to entertain a matter after it has given its decision, but the powers of the court in those circumstances are limited to objection proceedings. He stated that for the District Land and Housing Tribunal, the objection proceedings are governed by Regulation 22 (3) of the GN No. 174/2003, Land Disputes Courts Regulations, 2003. Proviso to Regulation 23 (5) limits the powers only to the raised objections.

In determining the objection raised by the Respondent herein, the Tribunal went into dealing with irregularities in the proceedings which were in record in Land case No. 99/2017 and it revised the decision which was reached by the Ward Tribunal. He submitted that the court dealt with the objection proceedings as if it was an appeal because its function was limited

to determining if at the time of deciding on the objection proceedings the objector had an interest in the suit land. He argued that the chairman acted ultra-vires in dealing with irregularities at the time of dealing with an objection proceedings she should have dealt with that at the time of application for execution and not after she had given an order for execution. He contended that since the objector was a stranger to the proceedings at the Ward Tribunal, he had no right of appeal or revision. His right was on showing interest in that land. He therefore moved this court to decide that the court erred in determining objection proceedings as an appeal.

On the second ground of appeal, the learned counsel submitted that it is on record that the objector had sold his land to Bakari Ramadhani, third Respondent in objection proceedings. It is in the Applicant's written submission in support of objection proceedings at page 1 para 3 that the Respondent herein had sold the suit land to the Bakari Ramadhani on 29/2/2016. Bakari Ramadhani was the Respondent in the Land application No. 99 of 2017 at the Ward Tribunal. By the time case No. 99 of 2017 was filed, the interest in the land had passed from the objector to the then Respondent Bakari Ramadhani.

The learned counsel submitted further that the Objector's claim to have compensated Bakari Ramadhani which passed interest again from Bakari Ramadhani to himself through compensation does not indicate when the alleged compensation was effected. There was no any evidence proving that after he had sold the said land to Bakari Ramadhani the same was transferred to him. He argued that since the first Appellant herein found Bakari Ramadhani developing her land which she had legally purchased she had no obligation to join the objector as a necessary party because he was a stranger to her and not a necessary party in the Application No. 99 of 2017. Based on that the learned counsel argued that the Hon. Chairman erred in holding that the Respondent herein was a necessary party and he called upon the court to rule that it was an error by the District Land and Housing Tribunal to hold so.

On the third ground, she submitted that it is the confirmation of the objector that he had sold the said piece of land to the third Respondent on 29/2/2016 and therefore the interest had passed from the objector to the third Respondent so there was no valid interest attached to the objector. What he said about compensating the third Respondent was a lie which was

not backed by any evidence. He didn't reveal how much he compensated and when he compensated.

In objection proceedings it is the burden of the objector to prove that he had a legally valid interest in the matter subject of interest. He referred the court to the case of Kwigu Masa vs Samwel Mtubakwa (1989) TLR 103 where it was held that the burden of proving interest in objection proceedings is on the objector. He submitted further that at page 11 of the Ward Tribunal proceedings records indicate that Bakari Remadhani said "mimi ninachokuomba mbele ya baraza... na yeye abaki na eneo lake". He argued that this means by the time proceedings were in place at the Ward Tribunal the owner of the land was Bakari Ramadhani and he had not been compensated. It is therefore not true that Daniel Manyanga had a valid interest over the said land and he was not supposed to file objection proceedings.

He submitted that the claim of the Respondent herein that he had interest in the land subject of appeal is a cooked information which is not backed by evidence. The Tribunal was not supposed to vacate from its order dated 29/1/2018 in Miscellaneous Application No. 458/2018.

In the upshot he prayed that the ruling dated 24/7/2019 in Miscellaneous Land Application no. 165 of 2018 be quashed and set aside. The court declare that Respondent has no interest on the suit land and restore the execution order dated 29/1/2018 in Miscellaneous Application No. 458 of 2018 and the Respondent be ordered to pay for the costs of this appeal and that of the objection proceedings at the DLHT as the actions taken were frivolous and had ill intent.

In Response, Mr. Lume, Counsel for the Respondent started by alerting the court that this appeal has no merit because it emanated from nullity proceedings of the alleged Ward Tribunal. He submitted that the tribunal records in Land Application No. 99 of 2017 indicates that the matter was decided at the "BARAZA LA ARDHI NA NYUMBA KATA YA MURIET" which he interpreted literally as the "WARD LAND AND HOUSING TRIBUNAL OF MURIET". He argued that in law that institution does exist, the relevant land laws which establish courts with competent jurisdiction in land matters particularly section 3 of the Land Disputes Courts Act does not establish the cited institution. Based on that he argued that the entire proceedings emanating from the no-existent court forum are a nullity in law and further that the District Land and Housing Tribunal should have exercised its

discretion suo motto under section 36(1) of the Land Disputes Courts Act to quash and set aside the entire proceedings for being irregular and advise the parties on a proper cause to be taken.

Submitting on the grounds of appeal, starting with the first ground of appeal, he argued that the Ruling of the District Land and Housing Tribunal dealt with the application before it as objection proceedings and confined itself to the Chamber application brought by the objector, submissions filed by parties to the proceedings and the entire record proceedings of the alleged Tribunal. He argued that since the District Land and Housing Tribunal is vested with powers under Regulation 22(c) of the Land Disputes Courts Regulations, 2003 (GN No. 174/2003) read together with Order XXI Rule 57 and 58 of the Civil Procedure Code, R.E. 2002 it correctly determined the matter as an objection proceedings and not an appeal.

On the second ground, he submitted that according to the records of the lower Tribunal the Respondent was the lawful owner of the Land measuring about one acre, located at mtaa wa kati, muriet ward in the city of Arusha. He was the one who sold pieces of land to different people who were in need of land. He admitted that it is true that at the trial Tribunal record it is shown

that the Respondent sold the suit land to one Bakari Ramadhani who was the third Respondent in the Miscellaneous Land Application No. 165 of 2018.

He submitted further that Juma Bakari who the Appellant claim she purchased the said piece of land from was not the lawful owner but a mere broker. He argued that since the suit land was sold by the Respondent to Bakari Ramadhani, the Respondent was a necessary party and he ought to have been joined in the Land Case No. 99 of 2017.

The learned counsel made reference to the case of **Juma B. Kadala vs. Laurent Mnkande (1983) TLR 103** where it was held that: in a suit for recovery of land sold to a third party the buyers should be joined with the sellers as necessary party or defendant. Non-joinder will be fatal to the proceedings.

In the trial Tribunal proceedings witnesses mentioned the name of Daniel Manyanga Msami who is the Respondent herein that he was the actual and lawful owner of the disputed land and he ought to have been joined as a necessary party in order for the Tribunal to be in a good position to determine the dispute filed by the Appellant. He submitted that the person who sold the suit land was not joined or called as a witness to the suit,

therefore based on the reasons given we pray that the second ground of appeal be quashed.

On the third ground, he submitted that the record of evidence before the Tribunal revealed to what extent the Respondent has an interest over the suit land. Since Bakari Ramadhani who was the Respondent in the Ward Tribunal claimed to have been compensated by the Respondent herein, automatically the Respondent became a necessary and interested party to the proceedings.

The learned counsel submitted further that, when the Respondent filed objection proceedings because Bakari Ramadhani had already been compensated he lost interest in the matter hence he left the matter in the hands of the Respondent Daniel Manyanga Msangi. He referred the court to the case of *Katibu Mkuu Amani Fresh Sport Club vs Dodo Umbwa Mambo Mbaya and another* (2004) TLR 326 it was held:

“the fact that the Appellant was not a party to the suit is all the more reasons for the objection proceedings in which it is open for any claimant or objector to prefer a claim or make objection to the attachment of the property”.

He prayed that the court should uphold the decision of the District Land and Housing Tribunal and dismiss the appeal with costs.

In rejoinder submissions, the learned counsel reiterated that the proceedings were based on a nullity and further that the District Land and Housing Tribunal had power to set aside the proceedings of the lower Tribunal.

He submitted further, application for objection proceedings was filed before the District Tribunal at the execution stage. The District Tribunal was only required to deal with the objection. The issue of a nullity could have been dealt with by the District Land and Housing Tribunal before an order for execution. The District Land and Housing Tribunal was not legally entitled to deal with the issue of nullity at the objection proceedings.

The Learned counsel argued further that the problem is not how the matter was preferred to the Tribunal but how the final outcome was reached by the Tribunal. The Tribunal dealt with issues which ought to have been dealt with by an appeal. He opposed the argument made by the counsel for the Respondent and submitted that the Civil Procedure Code was not the applicable law because Miscellaneous Amendments No.2 of 2010 introduced

section 51 of the Land Disputes Courts Act which provides on how the issue in question should be dealt with. He reiterated that the District Land and Housing Tribunal acted beyond its capacity.

Submitting whether the Respondent was the lawful owner of the disputed land, the learned counsel argued that, since counsel for the Respondent submitted that Respondent had sold the disputed land which makes it clear that the title had passed to Bakari Ramadhani. He also mentioned that Bakari Ramadhani claimed for compensation. That makes it clear that the objector had no interest in the suitland. There is no proof that title passed to him again. He could be a witness of Bakari Ramadhani. He never testified that he sold the land to Bakari Ramadhani.

He argued that the case of Juma B. Kadala (*supra*) is distinguishable because in the present case the objector is the seller and not the buyer as it was held in the cited case.

Submitting on whether objection proceedings was preferred because he was not a party he argued that he should demonstrate his interest in the subject matter and not otherwise. He did not show how his interest was

jeopardized. Therefore it is not true that anybody who is not a party to the proceedings has a right to prefer objection proceedings.

In conclusion he submitted that objection proceedings were preferred frivolously without demonstrating any interest in the subject matter. He prayed that the appeal be allowed with cost both of this appeal and the Tribunal.

Having heard the arguments and submissions by counsel for both parties I will now pose here and make a determination on whether this application has merit.

Before going into the grounds of appeal raised in this matter, I feel duty bound to make an observation on the issue raised by Counsel for the Respondent that this appeal has no merit because it emanated from nullity proceedings of the alleged Ward Tribunal in Land Case No. 99 of 2017. Admittedly, the details of Land Case No. 99 of 2017 are not germane to the issue before this court. This appeal was preferred against the Ruling of the District Land and Housing Tribunal in Miscellaneous Application No. 165 of 2018 objecting execution orders issued by the same Tribunal in Misc. Application No. 458 of 2017. However, for the purpose of furthering the

overriding objective specified in section 3A of the Civil Procedure Code, Cap. 33 R.E. 2019, this court is of the firm view that cases cannot be nullified for misspelled names or other clerical errors. When a Title to a Tribunal decision contains a clerical error such as an incorrect title or name which does not touch on judicial reasoning of the Tribunal when making decision, parties in the case may move the relevant Tribunal to rectify the clerical error. In the present case, apart from what this court considers to be a clerical error in the title of the Ward Tribunal decision, there was no proof to the effect that the institution which presided over Land Case No. 99 of 2017 was none other than the Ward Tribunal of Muriyet.

Coming to the merits of this appeal, records indicate that Miscellaneous Application No. 165 of 2018 was filed under Regulation 22(c) of the GN No. 174 of 2003 and Order XXI Rule 57(1) and 58 of the Civil Procedure Code, (Cap. 33 R.E.2002). Given the nature of application and reliefs sought by the Applicant therein, the question for determination by the District Land and Housing Tribunal was supposed to be whether the Applicant, Respondent herein adduced enough evidence to establish that at the date of execution orders he had some interest in the property subject of execution. It was not proper for the District Land and Housing Tribunal to make determination on

the irregularities noted in the proceedings of Land Case No. 99 of 2017. As rightly stated by the Appellant, that room was available to the Tribunal when it was dealing with the application for execution in Miscellaneous Application No. 458 of 2017. The Tribunal was therefore misdirected in addressing issues which were not within the bounds of the application before it.

However, apart from the noted irregularity, it should be known that the Respondent was not required to prove ownership of the disputed property in Miscellaneous Application No. 165 of 2018. The requirement at that stage was for the Applicant, Respondent herein to establish within a balance of probabilities that he had interest in the property subject of execution which would entitle him to be joined as a party in land case no. 99 of 2017. It is clear that the Hon. Chairman addressed this issue at page 3 of the impugned Ruling. I will let the wording of the Hon Chairman speak on this as follows:

"Apart from that, the Applicant herein has been mentioned by witnesses of the first and third Respondents and is evidence (sic) from the trial tribunal record of evidence that the Applicant herein one Daniel Manyanga owned the suit land. For that reason, he was also a

necessary party to be joined in the said case so that he can be heard and assist the trial ward tribunal in determining the dispute”.

Having found that the Applicant, Respondent herein had interest in the property subject of application, the Hon. Chairman was justified in making consequential orders needed for proper determination of the dispute between parties. I find no reason to fault the orders of the Tribunal.

Consequently, I find this appeal to be lacking in merit and I dismiss it accordingly. Given the circumstances of this case, I order that parties should bear their own costs.

It is ordered.




K.N. ROBERT

JUDGE

5/10/2020