

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**MISC. CIVIL APPLICATION NO. 117 OF 2020**  
(Arising from HC Civil Review No. 09/2020)

**LEOKADIA NG'WENDESHA & 11 OTHERS ..... APPLICANTS  
VERSUS**

**MINISTRY OF LAND, HOUSING  
AND HUMAN SETTLEMENTS & 5 OTHERS ..... RESPONDENTS**

**RULING**

**12 & 13/11/2020**

**RUMANYIKA, J.:**

The application is brought under Section 95 of the Civil Procedure Code Cap 33 R.E. 2019 for the court with respect to Regulation 64 (2) (3) and (4) of the Valuation and Valuers Registration Act of 2016 GN No. 136 (the GN), order of the court dated 09/06/2020, and Niche Consult's Valuation Report, pursuant to the letter Ref. No.BD.354/41361/BDM dated 21.09.2020 the conditions therein set by the Government Chief Valuer (the GCV) to be dispensed with. The application is supported by affidavit of Julius Mushobozi learned counsel for Leokadia Ng'wendesha and 11 Others (the applicants) whose contents essentially, counsel adopted during the hearing. Messrs Joseph Vungwa and Erick Katemi learned counsel appeared for Mwanza City Council (the 3<sup>rd</sup> respondent), Nyakato Enterprises, Deodory John and Kulwa Fedel Wabanhu (the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents) respectively. However, appearance of the Minister for Land,

Housing and Human Settlements and the Attorney General (the 1<sup>st</sup> and 2<sup>nd</sup> respondents) respectively was dispensed with given the nature and scope of the application.

Mr. Julius Mushobozi learned counsel in a nutshell he submitted: **(a)** that with the 21 day time limit pursuant to order of 09/06/2020 set by the court for a joint valuation report being accomplished but for reasons known to them the local Mahanu WEO, Authorised Land Officer Mwanza City Council and the District Commissioner refused to sign the report prepared by Niche Consult, therefore the respondents did not corporate, but having had the advocates for the 3<sup>rd</sup> and 4<sup>th</sup> – 6<sup>th</sup> also attended some of the material preparatory meetings, the valuation officer just like that he sent the report to the GCV (paragraph 8 of the supporting affidavit). That the GCV's direction therefore it was neither practicable nor implementable under the circumstances so was the requirement of a letter of commitment to pay compensation because the applicants could not have established who, amongst the respondents was responsible to pay the compensation. That is all.

Mr. Vungwa learned counsel adopted contents of the counter affidavit and he submitted; **(1)** that the application lacked merits and it intended to waste court's time because no way could an unapproved valuation report be authentic and workable **(2)** that the application contravened the court order of 09/06/2020 because the report at issue it had not been jointly procured by the parties leave alone the same having been prepared by independent valuer. That the said three government officials may have simply refused to witness or sign the report yes, but the



applicants should not have just ended there they should have otherwise compelled the officials. That the applicants just risked it therefore they volunteered the consequences no one was to blame. That is all.

Having adopted contents of the counter affidavit, additional to Mr. Vungwa's submissions Mr. E. Katemi learned counsel also contended that if anything, the applicants only complained against the government officials' inaction but they did not in the supporting affidavit show how was Niche Consult incapacitated/prevented from discharging the duty. That is it.

In reply, Mr. J. Mushobozi learned counsel further contended that signing of any valuation report by the said local authorities only intended that the later now acknowledge that the exercise had been carried out in their respective spheres of administration.

The central issue is whether pursuant to direction of the GCV the provisions of Regulation 64 (2) (3) and (4) of the GN were mandatory such that no court should have dispensed with it. The answer is yes. In effect, but in part the GCV's letter and direction would read thus;

"... (i) **Commitment letter and confirmation of available funds for compensation.**

(ii) The land acquired must be clearly identified by polygons to be overlaid to the approved survey plan.

(iii) Attachment of approved survey plan.

**(iv) It should be signed by the District Commissioner, Ward Executive Officer and Authorized Land Officer ..."**

At least from its inception it hadn't been disputed; **(1)** that with respect to the judgment and decree dated 31.08.2017 now under execution, there was 25 decree holders of them **(2)** that pursuant to my review order dated 09/06/2020, the parties were directed to have a free and impartial but a jointly procured valuer but for reasons known to them, and they did not even formally report back their failure, like the applicants did, end of the day also on their own the respondents procured Magu District Council hence the report (Valuation Report No. 1). On their part the applicants had Niche Consult (Valuation Report No. 2) with all intents and purposes the two different valuation reports all together.

For reasons known to them, if at all the local Ward Executive Officer, the Authorized Land Officer and the District Commissioner may, or may have not refused to sign the Valuation Report yes, and, like the respondents' counsel argued, the applicants should have found out a way to compel the government officers' inaction yes, but why such refusals more so where, among others independence of the judiciary required that a court order shall only be stayed not administratively or simply by any individuals . Casual resistances to court orders, leave alone the 3 years plus old court decree. The WEO, Authorized Land Officers or District Commissioner's refusals to Valuation Report No.1 it was no court's order. The latters' signatures therefore are dispensed with under the peculiar circumstances. After all like Mr. J. Mushobozi learned counsel argued,



provisions of the GN only intended that the local government officials sign the report only with a view to verifying that the valuation was carried out on no places other than their respective sphere of administration. At no given time therefore had the parties disputed this fact essentially. With this understanding therefore requirement numbers (ii) and (iii) set by the GCV were, with greatest respect uncalled for.

With respect to the requirement of letter of commitment hence confirmation of availability of the compensating funds, I would agree with Mr. Mushobozi learned counsel that only the respondents had monopoly of the knowledge of who, amongst the respondents exactly could pay the applicants. With all the obtaining circumstances therefore the applicants having had missed the respondents' good corporation.

For the avoidance of doubts, it is my hope and direction that the Executing Officer shall use this formula: **(Valuation Report No. 1 + Valuation Report No. 2) Divide by 2** for the purposes. Not only the formula takes the two valuation reports therefore the parties' interests on board, but also it is my considered opinion that if courts of law will not order what had not been said by the law, development of the law shall remain stagnant while the socio-economic circumstances forging its way through. It being by design or accidentally, Valuation Report No. 2 may have missed out the element of the land value yes, but from its inception the decree under execution canvassed it all much as the respondents did not appeal against it. The respondents therefore are estopped from denying the truth.

In the upshot, the application is granted with costs. It is so ordered.

Right of appeal explained.

  
**S. M. RUMANYIKA**

**JUDGE**

**13/11/2020**

The ruling delivered under my hand and seal of the court in chambers this 13/11/2020 in the presence of Messrs Joseph Vungwa and Julius Mushobozi learned counsel for the 3<sup>rd</sup> respondent and the applicants respectively.



  
**S. M. RUMANYIKA**

**JUDGE**

**13/11/2020**