

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

LAND REVISION NO. 04 OF 2020

*(Arising from Ruling of District Land and Housing Tribunal for Geita at Geita in
Misc. Application No.44 of 2018)*

ZAKALIA SANYENGE APPLICANT

VERSUS

- | | | |
|--|---|--------------------------|
| <p>1. JAMES LUFUNGA</p> <p>2. ZAKARIA KIVURUGA (Administrators of the
Estate of the late KASONGI JINGO</p> | } | RESPONDENTS |
|--|---|--------------------------|

RULING

Last Order date: 04.11.2020

Judgment Date: 12.11.2020

A.Z.MGEYEKWA, J

The background to the present application is rather chequered. To appreciate the nature of the present appeal, I find it appropriate to narrate it, albeit briefly, as I could gather from the record as follows:- Zakalia Sanyenge, the applicant filed a suit before Buzilasoga Ward Tribunal in

Case No. 3 No. 240 of 2007 claiming that one Yuda Kasongi has trespassed his land. The Ward Tribunal decided in favour of Zakalia Sanyenge. Dissatisfied, Yuda Kasongi filed an appeal before the District Land and Housing Tribunal for Geita claiming that the Ward Tribunal had no jurisdiction to determine the matter. The Chairman decided in favour of Zakalia Sanyenge.

On 20th March, 2020 James Lufunga and the second respondent Zakalia Kivuruga as administrator of the estates of the late Kasongi Njigo filed an objection proceedings against Zakalia Sanyege, the applicant and Yuda Kasongi before the District Land and Housing Tribunal for Geita. They claimed that the applicant and Yuda Kasongi had no *locus standi* before the Ward Tribunal for the reason that they were not administrators of estate for the suit properties of the deceased. Thus, the execution proceedings would affect the rights of beneficiaries of estate of Kasongi Njingo. The District Land and Housing Tribunal decided in favour of the respondents and proceeded to quash the decision of the Ward Tribunal and ordered the dispute to be filed before the District Land and Housing Tribunal and all parties to be joined in the suit.

The ruling of the District Land and Housing for Geita did not amuse the applicant. However, his intention to challenge it was not implemented

timely. He thus filed a Misc. Land Application No. 21 of 2020 seeking the District Land and Housing Tribunal orders for extension of time to file an application for revision before this Court whereas, the Chairman granted his application. He thus filed the instant appeal before this Court vide Land Revision No. 04 of 2020. The applicant seek this court to call and revise the proceedings, decision of the District Land and Housing Tribunal for Geita at Geita in Misc. Application No.44 of 2018 before Hon. Kapinga A.M, Chairperson dated 14th May, 2019 as there are errors material to the merit of the case.

When the matter was placed before this court for hearing on 4th November, 2020, the applicant enjoyed the legal service of Mr. Bernard Msalaba, learned counsel while the respondents enjoyed the legal service of Mr. Felix Kajimbo, learned counsel.

Submitting first, Mr. Msalaba urged this court to adopt the applicant's affidavit and form part of his submission. Mr. Msalaba stated that the applicant won the case at the Ward Tribunal against one Yuda Kasongi then Yuda filed a complaint that he acquired the suit land from one Mkumbo Michael. The learned counsel went on to state that Yuda filed an appeal before the District Land and Housing Tribunal for Geita and the first appellate tribunal decided in favour of the applicant. He added that

Yuda did not file an appeal against the District Land and Housing Tribunal and the applicant proceeded to file an Application for Execution No.34 of 2018 at the District Land and Housing Tribunal for Geita.

It was Mr. Msalaba's further submission that the respondents cited a wrong provision, Regulation 25 (1) of GN No.174 of 2003 which was related to stay of execution by judgment debtor while the respondents are not judgment debtor. He also faulted the respondents for citing Regulation 25 (3) of GN No.174 which is not related to objection proceedings. Mr. Msalaba continued to argue that one of the condition in attachment of property is to lift the attachment but the same was not done and other condition, the applicant should not be part of the suit but the respondents are relatives of Yuda Kasongi and he will be affected by the execution order thus, the respondents are not proper parties to the instant application.

On the strength of the above arguments, Mr. Msalaba beckoned upon this court to quash the decision of the District Land and Housing Tribunal in Application No. 44 of 2018 and allow the appeal.

Responding, Mr. Kajimbo urged this court to adopt his grounds of appeal and form part of his submission. He argued that the applicant filed an Application No.03 of 2016 against Yuda Kasongi while he had no

locus standi because the suit land belonged to his late father and he did not apply for a letter of administration of the estate of his late father. He added that Yuda was also sued on his own capacity, therefore he was required to apply for a letter of administration of the estate of his late father. He added that Yuda filed an appeal at the District Land and Housing Tribunal claiming that the applicant had no *locus standi* but the case was decided in favour of the applicant.

Mr. Kajimbo continued to argue that during execution the second respondent's relatives noted that the execution will disturb them thus they appointed an administrator of the estate to object the execution. He added that the administrator of the estate of the late Kasongi filed an objection proceeding against Yuda Kasongi and Zakali Sanyenge. The learned counsel for the respondents stated that a person who institute a case must have a *locus standi*. Mr. Felix fortified his submission by referring this court to the cases of **Rujuna Shubi Balonzi v Registered Trusteed Trustee of CCM** (1996) TLR 203 and **Abdallah Ibrahim Mpazi v Ibrahim Ally Yusufu and another** Land Case No. 1 of 2009.

The learned counsel for the respondents did not end there, he submitted that in the case of **Nyanyanga Nyamarasa v Makao**

Nyamarasa Masiku, Land Appeal No. 18 of 2020, the court held that a suit against a deceased be made by an executor. He went on to state that a proceeding before a tribunal cannot be allowed to stand if an administrator was not appointed. Mr. Kajimbo submitted that the suit in dispute is more than 70 acres thus it is more than Tshs. 3,000,000/= therefore the pecuniary jurisdiction falls under the District Land and Housing Tribunal.

With regard to the issue of wrong citation of the law, he argued that non citation of the law does not render the application incompetent considering that the applicant's rights were not vitiated.

On the basis of the above, the learned counsel for the respondents submitted that the appeal was without merit and urged this court to uphold the decision of the District Land and Housing Tribunal.

In a short rejoinder, the learned counsel for the applicant argued that the applicant at the time when the applicant instituted a suit at the trial tribunal had locus *standi*, thus, the issue of administrator did not feature therein since the applicant stated that he bought the suit land from one Michael and the applicant complained that the second respondent encroached his land. Mr. Msalaba lamented that the respondents used a back door to challenge the District Land and

Housing Tribunal execution application. He lamented that to file a new case is justice delayed. Insisting, Mr. Msalaba stated that the issue of jurisdiction was not challenged instead it is an assumption.

Having considered the rival arguments by both learned counsels, I am now in a position to confront the issues of controversy in this application as submitted by both learned counsels. In my determination, I shall have my own style, that is to say, I shall determine the core issue whether the objection proceeding was proper before the District Land and Housing Tribunal. It is the same concern that was raised by Mr. Msalaba, learned counsel for the applicant. The whole matter is evolved in objection proceedings. It should be noted that the purpose of objection proceedings is to protect the interest of the third party whose property has been wrongly attached. In other words, an objection proceeding is a remedy that is available to a third party whose property was wrongly attached in execution of the court decree on which he was not a party to the dispute.

Thus, in determining the above issue this court will find out whether there was any property which was attached. The objection proceedings is governed by the Civil Procedure Code specifically Order XXI Rule 57 (1) and (2) of the Civil procedure Code Cap.33 [R.E 2019].

However, reading Order XX Rule 57 of the Civil procedure Code Cap.33 [R.E 2019] and the proceedings of the District Land and Housing Tribunal for Geita in Application No.44 of 2018, I do not find any relevancy or the applicability of the objection proceedings. In other words, the objection proceeding was misconceived. I am saying so because for the objection of proceedings to stand the three conditions which were listed by Mr. Msalaba must stand. First, there should be an attachment of the property which is not likely to such attachment made by decree-holder.

Secondly, the attachment should be made in an execution proceeding and thirdly, the objection proceedings are made by a person who was not the party to the suit. The same was observed in the case of **Abdallah Salum Lukemo** (supra). As rightly pointed out by the learned counsel for the applicant the records are silent if there was an attachment of property, whether the attachment of property was lifted and whether the execution proceedings was in place.

In the instant application, the first respondent was declared a lawful owner of the suit land therefore the property which was subjected for execution was owned by Zakalia. If that is the case, the question to ask is how the respondents could lift the attachment? Examining closely Application No.44 of 2018 it is clear that the two conditions were not

established. Therefore, the objection proceedings was wrongly filed before the District Land and Housing Tribunal for Geita.

Nevertheless, the whole procedure in Application No.44 of 2018 was improper. I have scrutinized the tribunal records and found that the Chairman erred in law to entertain the respondents' application because the second respondent had already appeared before the District Land and Housing Tribunal by way of appeal in Appeal No. 21 of 2017 and the appellate tribunal uphold the decision of the Ward Tribunal and dismissed the appeal.

Then the respondent appeared before the same appellate tribunal which determined the issue of *locus standi* and uphold the decision of the Ward Tribunal. Then later the appellate tribunal quashed the decision of the same Ward Tribunal on the same issue of *locus standi*. Having said it all, it is my considered opinion that it was improper for the appellate tribunal to determine the application for objection proceedings because it was already *functus officio* to determine the same matter. The respondents were required to follow a proper procedure to challenge the decision of the District Land and Housing Tribunal for Geita in Misc. Execution Application No.34 of 2017 and Appeal No. 21 of 2017.

Now, from what I have observed, I proceed to quash and set aside the decision of the District Land and Housing Tribunal in Application No.44 of 2018 and uphold the Ward Tribunal decision. The application is allowed without costs.

Order accordingly.

DATED at MWANZA this 12th November, 2020.




A.Z.MGEYEKWA

JUDGE

12.11.2020

Judgment delivered on 12th November, 2020 in the presence of Mr. Msalaba, learned counsel for the applicant, and Mr. Felix Kajimbo, learned counsel for the respondent.


A.Z.MGEYEKWA

JUDGE

12.11.2020

Right to appeal fully explained.