

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT SUMBAWANGA

MISC. LAND APPEAL NO. 4 OF 2020

(From the decision of the District Land and Housing Tribunal of Rukwa District at Sumbawanga in Land Application No. 31 of 2019 Original Civil Case No. 20 of 2018 Mtowisa Ward Tribunal)

GENI S/O KISINZA.....APPELLANT

VERSUS

DEUSDEDIT S/O KASWAYA.....RESPONDENT

JUDGEMENT

5th – 31st March, 2020

MRANGO, J

This is an appeal in respect of the ruling of the District Land and Housing Tribunal for Rukwa at Sumbawanga. The matter has its genesis from Mtowisa Ward Tribunal (hereinafter referred to as a trial tribunal) whereby the respondent herein sued the appellant herein for the claim of piece of land (hereinafter referred to as the disputed land).

At the trial tribunal, the respondent filed original Civil Case No. 30 of 2015 of which the respondent became victorious over the disputed land. In an attempt to appeal to such a decision, the appellant successfully filed an

appeal No. 16 of 2016 before the District Land and Housing Tribunal for Rukwa which was strike out on 23.11.2016 for being time barred and thereafter he filed Misc. Application No. 57 of 2016 for extension of time before the same appellate tribunal, which was dismissed on 19. 07. 2017.

Hence, the respondent filed an application for execution before the appellate Tribunal in respect of the original case No. 50/ 2015 determined by the Mtowisa Ward Tribunal. However, the of perusal of the records of the trial tribunal, the appellate tribunal discovered that the case was determined ex parte and that the appellant was not accorded the chance of being heard, as a result the whole proceedings and the judgement of the Ward Tribunal were quashed and nullified without any further orders.

Aggrieved by the decision of the appellate tribunal, the respondent filed before this court Misc. Land Appeal No. 31 of 2018 with the following complaints, that Hon. Chairperson erred in law and fact for not granting execution order based on unfounded facts which she did not explore despite the fact that on 20th October, 2016 she visited the locus in quo and saw a refusal letter by the respondent not to attend the ward tribunal, that the Hon. Chairperson misdirected herself in law and facts for not granting

execution order on the reasons that the respondent was not heard at the ward tribunal which is the same tribunal which dismissed the respondent application for appealing out of time in Appeal No. 16 of 2016 and application No. 57 of 2016, that the appellate tribunal ruling on execution lack legs to stand as the reason given upon its decision does not clearly show / indicate if the chairperson was involving her revision power at execution stage or not, that Hon. Chairperson failed to decide judiciously when she nullified the entire proceedings and judgement, yet with supervisory power failed to direct what legally is to be done and the fact of the parties at the moment, and lastly, the Hon. Chairperson acted in contravention with the law when she failed to deal with the respondent's objection on execution but raised her own and unfounded story and decide upon herself.

The appeal was called on and determined by this court before Hon. Dr. A. J. Mambi, J whom after going through the arguments of both sides, he found that such appeal has no merit, thus he upheld the decision of the appellate tribunal with an order for the matter be heard de novo within reasonable time if the parties are to be interested with the case.

As it was ordered by this Court that the case is to be heard de novo, the respondent filed afresh the land complaint No. 20 of 2018 at the Mtowisa Land Tribunal where the respondent herein was the complainant whereas the village government of Mwela and the appellant were respondents. The dispute was heard and determined again in the absence of the appellant, Geni Kisinza. The respondent became victorious again over the disputed land in a decision which was delivered on 28. 11. 2018. However, the appellant wrote a letter dated 05. 11. 2018 to the tribunal asking for the trial tribunal to transfer the dispute that is to be heard and determined at the District Land and Housing Tribunal so as the justice be seen to be done. Also Ward Executive Officer wrote a letter dated 10. 04. 2018 to the trial tribunal asking for the trial tribunal to hear both parties of the dispute. As a result the appellant was summoned before the trial tribunal where he submitted his evidence in respect of the dispute. Thereafter, the trial tribunal delivered an order dated 25. 09. 2019 that such dispute be referred to the District Land and Housing Tribunal for the both parties to be heard, that means the decision dated 28. 09. 2018 was set aside.

Meanwhile respondent filed Misc. Application No. 31 of 2019 at the District Land and Housing Tribunal for the execution of the decision of the trial tribunal dated 28. 11. 2018. The appellate tribunal granted the application with an order for the judgement debtor to vacate from the suit.

Dissatisfied with the ruling of the appellate tribunal, the appellant herein lodged this appeal to this court comprised of six grounds of petition of appeal quoted as hereunder;

- 1. That, the tribunal Chairperson erred in law and fact in ordering execution to be made against the appellant herein while the said judgement which was subject to execution had already been set aside by the Mtowisa Ward tribunal and hence reaching to the wrong decision.**
- 2. That, the tribunal Chairperson erred in law and fact in failing to consider the facts that the dispute in question is pending at the Mtowisa Ward Tribunal and the Ward tribunal failed to deliver judgement and referred the matter to a District Land and Housing tribunal for determination and hence reaching to the wrong decision.**

- 3. That, the tribunal Chairperson erred in law and fact in failing to consider that the Mtowisa judgement which was subject of execution was heard exparte contrary to the order of this court before Mambi J, in Misc. Land Appeal No. 31/ 2018 and hence reaching to the wrong decision.**
- 4. That, the tribunal Chairperson erred in law and facts in disregard completely the statement of the appellant that this matter is pending at the Mtowisa Ward Tribunal but continued to deliver the said ruling and drawn order and hence reaching to the wrong decision.**
- 5. That the tribunal Chairperson erred in law and facts in failing to consider the real matters in question in relation to the application for execution and hence reaching to the wrong decision.**
- 6. That the tribunal Chairperson erred in law and facts in failing to consider that the application for execution was pre maturely brought as the case in question was pending at the Mtowisa Ward tribunal and hence reaching to the wrong decision.**

Like it was before the appellate tribunal, before this court, both parties appeared in persons, unrepresented. When the case was called on for hearing on 05. 03. 2020, the appellant prayed for the court to adopt his grounds of appeal he has lodged, and he had nothing more to add, whereas the respondent prayed for the court to adopt his reply to the petition of appeal he has lodged and he had nothing more to add.

Having gone through submission of both sides, the issue for determination before this court is whether the appeal has merit or not.

As it can be scanned from the records of the tribunals below. After the order of this court in respect of the dispute to be heard de novo at the trial tribunal, the respondent filed afresh the land complaint No. 20 of 2018 at the Mtowisa Land Tribunal. The respondent herein sued the village government of Mwela and the appellant. The dispute proceeded to be heard and determined again in the absence of the appellant herein, Geni Kisinza. The respondent became victorious again over the disputed land in a decision which was delivered on 28. 11. 2018. However, the appellant wrote a letter dated 05. 11. 2018 to the tribunal complaining for the fact that the matter was heard there and he prayed for the dispute be

transferred so as it can be heard and determined at the District Land and Housing Tribunal in order for the justice be seen to be done. The letter dated 10. 04. 2018 by the Ward Executive Officer to the trial tribunal called for the tribunal reset so as both parties of the dispute be heard. As a result the appellant was summoned before the trial tribunal where he submitted his evidence in respect of the dispute. Hence, the trial tribunal on 25. 09. 2019 delivered a decision which declined to proceed with the dispute and thereafter it referred the dispute to the District Land and Housing Tribunal for the both parties to be heard as prayed by the appellant.

Meanwhile respondent filed Misc. Application No. 31 of 2019 at the District Land and Housing Tribunal. The application was for the execution of the decision of the trial tribunal dated 28. 11. 2018. The appellate tribunal after heard both parties granted the application on 21. 11. 2019 with an order for the judgement debtor to vacate from the suit.

In the light of the above, it is my firm view that the application for execution was prematurely filed at the District Land and Housing Tribunal as the decision dated 28. 11. 2018 was set aside by the trial tribunal on 25. 09. 2019. By practice and law, the Ward Tribunal has jurisdiction to set

aside its own ex parte decision. The jurisdiction to set aside ex parte order is conferred to the tribunal under section **16 (1) g of the Courts (Land Disputes Settlements) Act, 2002** relating to powers of the ward tribunal, which provides thus;

“Notwithstanding the provisions of section 23 of the Ward Tribunal Act, 1985, the Tribunal in proceedings of civil nature relating to land may,

(a).....

(b).....

(c).....

(d).....

(e).....

(f).....

(g) Make any other order, which the justice of the case may require.

The law cited above is specifically silent as to the power of the tribunal to set aside its own order made as a result of hearing the dispute ex parte. However, established practice has been that a person who has been not accorded the chance of being heard for good reasons shown before the tribunal, the ex parte order is set aside by such tribunal so as to provide

room for the person to submit his/her evidence. In the interest of justice as of this case, such room is provided in the aforesaid provision of law.

However, the tribunal's records revealed that the land complaint No. 20 of 2018 was heard and determined by the trial tribunal in the absence of the appellant. Respondent argument in his petition of appeal was that appellant was aware of the case, but deliberately absconded himself from participating in the hearing. He referred the appellant letter dated 05. 11. 2018 of which he raised an objection to the effect that the trial tribunal had no jurisdiction. My further scrutiny of the record suggests that the appellant was not aware of the order of this court which direct for the dispute to be heard de novo at the trial tribunal in the presence of both parties. The appellant's letter dated 12. 11. 2018 to the Ward Executive Officer which has several complaints may suggest such argument. This court is of the view that the appellant saw the trial tribunal as it is using various technicalities to defeat his right and accusing it for being allied with the respondent. One of his complaints to the Ward Executive Officer is that, it reads:-

"Nimeambiwa baraza limeshauriwa liendeleo kusikiliza shauri hili wanasema wanabarua ya majibu hayo

nimeomba nakala nikaambiwa siwezi kupewa ni mambo ya ofisi, sasa katika hayo yote ninaendelea kuwa na mashaka na baraza hili kutokuwa na imani nalo ninaambiwa niandike barua ya kukubali barua yako ili kesi iendelee. Kwa hayo nimekosa imani kabisa nimeamua kuleta hili kwako ili ulichunguze na nione utanisaidiaje ili haki itendeke”

Through these complaints by the appellant, is where the ward executive officer wrote a letter to the trial tribunal advising the tribunal to hear both parties by receiving the evidence of the appellant. However, the trial instead of proceeding to dispose of the dispute, decided to refer the dispute to the District Land and Housing Tribunal (Now pending before the appellate tribunal, Application No. 48 of 2019 after the appellant filed the same). Therefore, the argument by the respondent that the appellant was not a party to a dispute is misconceived one.

As rightly submitted by the appellant the application for execution was pre-maturely entertained as the matter in question at such date of filing the application before the appellate tribunal was still pending at the trial tribunal.

Have in mind the foregoing discussion, the application for execution before the appellate tribunal was improper which resulted to the improper ruling delivered on 21. 11. 2019. Even if such had not been the argument before this court, the failure by the trial tribunal to hear both parties as ordered by this court in the judgment dated 17.09.2018 before A. J. Mambi, J such decision becomes a nullity. Even, Hon. Chairperson misdirected herself for failure to nullify the proceedings of the trial tribunal when she said at pg. 2 of the judgment, I quote;

"However, this tribunal is now dealing with an application for execution; had it been an appeal I would not hesitated to nullify the proceedings of the Mtowisa Ward Tribunal"

Hon. Chairperson misdirected herself. I say so for one fact that is, the District Land and Housing Tribunal has power of revision in respect of all decisions of the Ward Tribunals in its area of jurisdiction. Such revisionary powers is provided under the provision of **section. 36 of the Courts (Land Disputes Settlements) Act, No. 12 of 2002**, the power which Hon. Chairperson did not endeavor to use it for the interest of justice.

What the appellate tribunal ought to have done was to nullify the proceedings through revision process as conferred to it by provision of law as aforesaid. Failure by the Hon. Chairperson to interpret law as it happened would create a plethora of unnecessary appeals cases to this court like this one, otherwise this appeal could have been disposed of earlier by that tribunal.

Having said that, and in the best interest of justice this court nullifies all proceedings, ruling and orders of the appellate tribunal as it is emanated from the order of the trial tribunal which was set aside.

The appeal has merit. The application No. 48 which is pending at the District Land and Housing Tribunal in respect of the same dispute and parties to remain undisturbed and proceeded to be heard on merit in the presence of both parties.

It is so ordered.


D.E. MRANGO

JUDGE

31/03/2020

Date - 31.03.2020
Coram - Hon. D.E. Mrango – J.
Appellant - Absent/with notice
Respondent - Present
B/C - Mr. A.K. Sichilima – SRMA

COURT: Judgment delivered today the 31st day of March, 2020 in presence of the Respondent in person, and in the absence of the Appellant, with notice.

Right of appeal explained.


D.E. MRANGO

JUDGE

31.03.2020