

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

LAND REVISION NO. 5 OF 2020

ILEMELA MUNICIPAL COUNCIL 1ST APPLICANT

TANZANIA RURAL AND URBAN ROADS AGENCY 2ND APPLICANT

VERSUS

JOSEPH LWIZA KASHEKU RESPONDENT

RULING

28th May, & 29th May, 2020

ISMAIL, J.

In this application, I am called upon to call for and examine the records of the District Land and Housing Tribunal for Mwanza (DLHT), in respect of Miscellaneous Application No. 115B of 2020 with a view to satisfying itself as to the correctness, legality, regularity or propriety of the Order dated 12th May, 2020, together with all the proceedings and revise them accordingly.

The Court is moved under the provisions of Section 79 (1) (c) of the Civil Procedure Code, Cap. 33 R.E. 2002; and Section 43 (1) (b) of the Land Disputes Courts Act, 2002. Supporting the application are the

affidavits sworn by Messrs John Paul Mwanga and Ludovick Joseph Ringia, the applicant's principal officers, serving as the applicant's director and solicitor, respectively. These sworn depositions set out grounds on which the prayer for extension of time is based.

In the supporting depositions, the applicant gives a detailed account of how the proceedings that precipitated this application were bungled. Of significance in these depositions is the fact that two orders were granted by the DLHT without letting the applicants know and or being invited to make their representations. With respect to *ex-parte* interim order which restrained the respondents from demolishing, developing, constructing or tempering in any way with houses located on the suit land, the applicants' contention is that the same was issued against the law which bars proceeding *ex-parte* against any of the government departments or agency. In this case, the order was issued in defiance of the said provision of the law. With regards to an order for arrest and investigation on allegations of contempt of court, the applicants aver that clarity is lacking on whether there was an order of the DLHT in that respect, and whether such orders were a culmination of any proceedings. The applicants alleged that no pleadings or orders were served in respect thereof, and that they were not made aware of the hearing.

In the twin depositions sworn in reply to the applicants' supporting affidavits, the respondent supported the stance taken by the DLHT. He averred that the DLHT issued an injunctive order which was served on the 1st applicant but the latter chose to disobey it. In such circumstances, it was inevitable that an order of arrest should issue with a view having the offenders cited for contempt.

Hearing of the matter pitted Mr. Ludovick Ringia, the 1st applicant's Solicitor against the Mr. Steven Makwega, learned Counsel for the respondent. Mr. Ringia began his brief address by informing the Court of the status of the proceedings at DLHT. He submitted that, vide a decision which was delivered on 26th May, 2020, the application which was pending in the DLHT has been dismissed, on account of the fact that the DLHT was not seized with jurisdiction to entertain the matter. By his reckoning, dismissal of the matter meant that all previous orders which were issued on assumption that the DLHT was clothed with requisite jurisdiction die with the death of the main application. Nevertheless, Mr. Ringia contended, the Court is implored to guide on the next course of action and the fate of the order which cited the applicants' officers for contempt. The learned counsel expressed his worry that the dismissal order may not be accorded the appropriate interpretation if the same is left to officers who were

ordered to execute it. Winding up the discussion, Mr. Ringia took exception to the DLHT's failure to order payment of costs when the matter was dismissed, it being the established principle that costs follow the event. He also contended that parties had spent considerable energy and industry in preparing some pleadings and entering appearance in the DLHT on a few occasions.

Mr. Makwega was equally admirable for his terse submission. He confirmed that proceedings at the DLHT were brought to a halt, following the DLHT's concession that it was not clothed with power to deal with the matter. He was of the view that all orders issued prior to the dismissal order were no longer operative. On the failure to award costs, the learned counsel took the view that award of costs is discretionary and he sees nothing to fault the DLHT's decision not to award costs. Mr. Makwega argued that if the applicants aren't happy with the decision, the available avenue is to challenge it by way of appeal. He urged the Court to order that each party should bear their own costs.

The counsel's near unanimous submissions have substantially cut down this Court's work to that of merely guiding on what should be done in the aftermath of the DLHT's decision to accede to the applicant's objection and prayer to have the proceedings brought to an end. It is common

knowledge that once a court or a tribunal pronounces itself on not being seized with jurisdiction to entertain a dispute, it means that its involvement in the matter ceases immediately and, as it is in this matter, the proceedings become stillborn. The counsel have expressed their unanimity on this as are in concurrence on what befalls the orders which were issued in the wrong assumption of jurisdiction by the DLHT. They contend that such orders, including those that precipitated this application, and face an extinction. The counsel couldn't be more right on this. Lack of jurisdiction which rolls back to the day the matter that bred the impugned orders was instituted. It is the date on which the DLHT was irregularly brought into a position in which it had no powers to make any decision. This means that actions that it took, henceforth, were shrouded in flagrant illegality and, therefore, a mere charade. They are nothing but a nullity which cannot outlive the dismissal order issued on 26th May, 2020. Thus, as rightly contended by counsel, both of these orders are no longer of any operative or legitimate effect and, therefore, not liable to implementation by any enforcement organ, and it is hereby so declared.

In consequence, I order that orders issued by the DLHT on 7th and 12th May, 2020, are invalid, inoperative and quashed. Accordingly, I hereby order a halt of their enforcement.

With respect to the claim for costs for the proceedings in the DLHT, my hastened position is that indulgence of the Court's powers of revision is limited to orders which were issued on 7th and 12th May, 2020, and these do not include the aspect of costs whose order was issued subsequent to preference of the matter to this Court. In view thereof, the applicant's invitation in that respect is declined.

In the upshot, I hold that proceedings in respect of Application No. 115 of 2020 which were instituted in the DLHT and orders that emanated therefrom are, on account of what is stated above, annulled and struck off the record. I make no order as to costs.

Order accordingly.

DATED at ~~MWANZA~~ this 29th day of May, 2020.



M.K. ISMAIL
M.K. ISMAIL
JUDGE

Date: 29/05/2020

Coram: Hon. M. K. Ismail, J

Applicant }

Respondent: Absent

B/C: B. France

Court:

Ruling delivered in chamber, in the absence of the parties but in the presence of Ms. Beatrice B/c, this 29th day of May, 2020.



M. K. Ismail
JUDGE

At Mwanza
29th May, 2020