IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 24 OF 2020

(C/F APPLICATION NO. 05 OF 2017)

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND MANDUMUS.

AND

IN THE MATTER OF CHALLENGING CONSTITUTIONALITY OF THE ARUMERU DISTRICT COMMISSIONER TO NULLIFY THE DECISION OF THE DISTRICT LAND AND HOUSING TRIBUNAL OF ARUSHA.

BETWEEN

FELISTA ZADOCK SUMARI.....1ST APPLICANT

SALVATORY ZADOCK SUMARI.....2ND APPLICANT

VERSUS

GIDEON ROBERT KAAYA.....1ST RESPONDENT

THE ARUMERU DISTRICT COMMISSIONER.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

20/11/2020 & 16/02/2021

GWAE, J

The applicants above have brought this application under the provisions of section 2 (3) of the Judicature and Application of Laws Act Cap 358 Revised Edition, 2002, section 17 (1), (2), 18 (1), 19 (1), (2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous provision) (Judicial Review Procedure and Fees) Rules, 2014,

section 68 (e) and section 95 of the Civil procedure Code Cap 33 R.E 2002, seeking for the following orders;

1. That, this Court be pleased to grant an order of Certiorari.
2. That, this Court be pleased to grant an order for Mandamus.
3. Costs of this application be provided for.
4. Any other relief(s) this Court may deem fit and just to grant.

The application is supported by a joint affidavit of both applicants together with a statement in support of the orders sought while the respondents opposed this application by filing counter affidavits whereas the 2nd and 3rd respondent filed also a joint statement in reply.

Hearing of the application proceeded by way of written submission, where the applicants were represented by the learned counsel namely; **Mr. William Waziri** while the 2nd and 3rd respondent were represented by the learned State Attorney by names of **Mr. Peter Musetti,** the 1st respondent appeared in person, unrepresented.

For the purposes of this ruling, I find it relevant to give a brief fact giving rise to this application.

The applicants claim to be lawful owners of a piece of land measuring three (3) acres located at Kikwe, Maweni Village through inheritance from the late Zadock Kaaya. It was in 2016 where a dispute between the applicants and the 1st

respondent arose where the 1st respondent is alleged to have trespassed into the applicants' land claiming to be his land through purchase from the late Zadock Kaaya. The dispute was referred to the office of the Village Executive Officer (VEO) for conciliation and on the 13th December 2016 the VEO wrote a letter with reference No. VEO/MAWENI/VOL.11/16 where the letter directed the applicants to use the said land. This letter was followed by another letter from the VEO dated 5th January 2017 which prohibited the agents of the 1st respondent from cultivating in the said land.

The 1st respondent was aggrieved with the directives of the VEO, he therefore filed an application before the District Land and Housing Tribunal for Arusha at Arusha vide Application No. 5 of 2017 which was nevertheless dismissed for want of appearance on the 28th day of March 2019. In between, the 1st respondent referred the dispute to the Arumeru District Commissioner who wrote a letter dated 6th August 2018 nullifying the VEO's letter dated 13/12/2016 declaring the 1st respondent as the owner of the land in dispute. On the 26th August 2019 the applicants wrote a letter to the Arumeru DC asking him to cancel his order as the same matter was still pending in the District Land and Housing Tribunal. The applicants further stated that upon making follow ups to the DC he verbally responded to them that, he will not invalidate his previous decision, hence, the applicants have preferred this application for this court to quash the order by the

DC in his letter and further to that this court to compel the 1st respondent and his agents to vacate from the said land with immediate effect.

Supporting the application, the applicants reiterated what they stated in their application and maintained that the administrative powers by the 2nd respondent were excessive and unconstitutional. In addition to that the learned counsel cited the cases of **John Mwombeki Byombalirwa vs. the Regional Commissioner and Regional Police Commander** [1986] TLR 73 and **Sanai Murumbe and another vs. Muhere Chacha** [1990] TLR 54 where in both cases the counsel was trying to show circumstances or conditions where an order for certiorari and mandamus can be granted by the High Court.

In his reply to the above submission in support of the application, the 2nd and 3rd respondent submitted that, the administrative action taken by the 2nd respondent of nullifying the letter of the VEO were within his administrative powers vested to him by virtue of section 14 (3) (c) of the Regional Administration Act No. 19 of 1997 which imposes a duty to the District Commissioner to facilitate and assist local government authorities in the district to undertake and discharge their responsibilities.

The counsel went on submitting that all that was done by the 2nd respondent cannot be said to have interfered the independence of the Judiciary as suggested by the applicants' counsel. According to the counsel the letter written by the 2nd

respondent did not in any way interfere with the on-going proceeding at the District Land and Housing Tribunal nor did the letter determine the rights of the parties, the letter was a mere administrative directive to the VEO who did not have the authority to adjudicate the alleged land dispute.

On the relief of mandamus, the counsel submitted that this relief sought in the application is different from that which was submitted by the applicants in their written submissions. According to the learned counsel for the respondents, in the applicants' application the relief sought was for an order of mandamus compelling the 1st respondent and his agents to vacate from the land in dispute whereas in the submission the applicants are seeking for an order of mandamus compelling the 2nd respondent not to interfere with the judiciary and act as a judge. The counsel maintained that the applicants must be bound by their own pleadings, the counsel cited the case of **Tanelec Limited vs. The Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018 (unreported).

After going through the application and the submissions by the parties, I wholly decline to agree with the learned Senior State Attorney, counsel for the 2nd and 3rd respondent that the applicants are not seeking for the orders of Certiorari and Mandamus, quashing the decision of the District Commissioner and compelling the 1st respondent to vacate the disputed land with immediate effect since the

applicants' statement is all about order of certiorari in respect directive given by the DC and an order of mandamus in respect of the 1st respondent.

The fundamental question that, this court asks itself is, whether the application herein is worthy to be considered for the reliefs sought. The answer to the above question is obvious simply because both VEO and DC issued declaratory order out of the powers provided under section 14 (3) (c) of the Regional Administration Act No. 19 of 1997 taking into account that the same were in respect of the suit land that were made by the VEO and the District Commissioner.

The laws of our land that is "Land Laws (See sect. 67 of Village Land Act, Cap 113, R. E, 2019, sect. 3 of the Land Dispute Courts' Act, Cap 216 R. E, 2019 and sect. 62 of the Village Land Act, Cap 114 R. E, 2019) are very clear that the above-named public officials do not have any power to hear and determine land disputes except conducting reconciliations or mediations among disputants in order to ensure that, the requisite peace and tranquility are maintained within the areas of their jurisdiction. When the executive officials like VEO or DC, not vested with powers to adjudicate land matters, fail to mediate, parties have to refer their dispute to land courts bestowed with adjudicative functions.

It therefore appears that the orders declaring the parties as "lawful owners" of the disputed land through the letters issued by DC and VEO were of no legal or in other words are not capable of being enforced since the same were directives.

Worse enough, the DC declared the 1st respondent a lawful owner of the suit land while the matter was still pending in the District Land and Housing Tribunal. The DC's directive is the one which led the 1st respondent to assume that he was legally declared a lawful owner he consequently made no appearance in the DLHT. The directive of the DC ("Gigioni Kaaya ana haki ya kumiliki shamba hilo kutokana na hoja kuu kuwa...") in favour of the 1st respondent as the case for the applicants who is found relying on the directive issued by the VEO to date that is why they are not challenging the VEO's directive in this application. That is, legally wrong as both DC and VEO had no mandate to declare any disputant a rightful owner of any disputed piece of land unless they amicably settle the dispute.

In the light of the foregoing, this application is partly granted to the extent of prayer of certiorari as far as the DC's Order is concern, the said order is hereby quashed and nullified as he acted out of his jurisdiction. Equally, that of VEO.

However, for the interest of justice and fairness, the parties are advised to file their land dispute in the competent court/tribunal as per see Order ix rule 3 Civil Procedure Code, Revised Edition, 2019 notwithstanding that the 1st respondent's case before DLHT was dismissed. Each party shall bear its costs.

It is ordered.

M.R. GWAE
JUDGE
16/02/2021