

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LAND CASE REVISION NO. 01 OF 2021

(From the decision of the District land and Housing Tribunal of Mwanza District at Mwanza in
Land Case Application No. 14B of 2021)

JANE PATRICK MFOI APPLICANT

VERSUS

MARIA IGNAS CHANALA & ANOTHER..... RESPONDENTS

RULING

15th & 26th February, 2021

RUMANYIKA, J.:

As the J i/c on 05/02/2021, in ordinary course of business with respect to house on Plot no. 94 Block "A" Bulola Ilemela Municipal Council (the dispute premises), I received a letter of even reference number dated 04/02/2021 of such serious complaints from Jane Patrick Mfoi (for the purposes of this matter "the applicant"), without much ado, and with a view to satisfying myself with its correctness, legality and propriety of the same I called for the records of Mwanza District Land and Housing Tribunal (the DLHT) of Land Application No. 14/2021 Misc. Application No. 14B of 2021 hence the instant **suo motu** revision proceedings made under Section 43(1) (a) of the Land Disputes Courts Act Cap 216 R.E. 2019.

Messrs Mwita Emmanuel and S. Kitale learned counsel appeared for the applicant and Maria Ignas Chanala (the 1st respondent) respectively.

When the application was called on 15/02/2021 for hearing, although duly served, Patrick Hamfrey Tarimo (the 2nd respondent) did not appear. Having considered the circumstances I ordered dispensation of his appearance hence, only with respect to him the exparte ruling.

Mr. Mwita Emmanuel learned counsel submitted that having had premised her application under the provisions of Order XXVII Rule 8 and Section 95 of the Civil Procedure Code Cap 33 R.E. 2019 and, by an interim order dated the very 29/01/2021 the 1st respondent went back onto the disputed premises alleged sold by her husband the 2nd respondent to the applicant, therefore on 01/02/2020, but without any certificate of urgency the DLHT issued the forcible order against the applicant exparte irrespective of the counsel's prayer for adjournment to 05/02/2021. That essentially the impugned interlocutory order pre-empted Land Application No. 14 of 2021 at the time pending in the DLHT by way of sale the applicant having had the disputed land handed over to her on 21/01/2021. That within such a short span of time the DLHT should not have issued such serious orders exparte, more so one of the orders having had been

made just on a Friday. Whether or not the order had been executed it was immaterial much as the same hadn't been reversed or set aside by any court of law.

Having had adopted contents of the 1st respondent's counter affidavit, Mr. S. Kitale learned counsel submitted: **(1)** that submissions by the applicant's counsel and the complaints presented before the Judge In charge were materially at variance because the Land Applicant No. 14 of 2021 under reference it was still pending therefore no single irregularities of any kind singled out to warrant calling for revision proceedings **(2)** that the exparte proceedings were properly ordered and conducted given the obtaining circumstances and urgency. That is all.

The central issue is whether with all intents and purposes the impugned exparte interim order and forcible order made by the DLHT on 29/01/2021 and 01/02/2021 respectively in Misc. Land Applicant No. 14B of 2021 were proper and regular under the circumstances. At least until 29/01/2021, from the contents of paragraph 6(iv) and (v) of her applicant cum plaint quietly though the present 1st respondent recognized the applicant as bona fide purchaser/mortgagee as the case may be of the disputed premises. Whether or not with respect to the 2nd respondent she

had a matrimonial share on the property therefore from its inception the transaction needed her consent as spouse, probably she just acted prematurely because not only the DLHT was not a matrimonial court but also the said main Land Application No. 14 of 2021 it was pending there much as, without running risks of pre-empting the pending case, essentially the first respondent admits having had consented to whatever was the transaction between the applicant and the 2nd respondent like she ate the cake and yet wanted to have it! I think there is no wonder respect to these proceedings the husband avoided service.

Moreover, but even more strangely whereas, according to records the main Land Application No. 14 of 2021 was lodged on 02/02/2021, the associated Misc. Application No. 14B was lodged on 29/01/2021 say four (4) good days later much as I know there were such few "stand alone" miscellaneous applications which could be lodged without main cases being instituted.

The issue of why, with respect to the impugned orders the DLHT in a rush and of supersonic speed it needs no more words. I would agree with Mr. Mwita Emmanuel learned counsel that it left a million questions unanswered because no one of the two applications had been lodged

under a certificate of urgency much as one having had purchased it, or on whatever basis taken over the disputed premises, as it was reasonably expected of her the applicant just occupied it and probably through arrangements made by the 2nd respondent or both, the 1st respondent secured such alternative shelter. It means therefore that the interim exparte and forcible orders were, with respect to the main Land Application No. 14/2021 both improper and illegal under the circumstance the orders are set aside much as also the proceedings are nullified. The applicant shall, with immediate effect be reinstated to the disputed premises pending final determination of the main Land Application No. 14 of 2021 and the records are with immediate effect dispatched to the DLHT. It is so ordered.

S. M. RUMANYIKA

JUDGE

22/02/2021

The ruling is delivered under my hand and seal of the court in chambers this 26/02/2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

26/02/2021