

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(BUKOBA DISTRICT REGISTRY)

AT BUKOBA

CIVIL REVISION NO. 20 OF 2021

(Arising from Application No. 58 & 164 of 2019 of the District Land and Housing Tribunal of Muleba and Civil Case No. 21 of 2018 of Muleba Primary Court at Muleba)

JOSIAH NSANGIRA ----- APPLICANT

VERSUS

1. ANESIUS K. STEWART	-----	RESPONDENTS
2. DUGUZA FUSTUS CHAPAKAZI		
3. MAJEMAJE AUCTION MART		

RULING

11/03/2021 & 11/03/2021

Mtulya, J.:

This court under the authority in the provisions of section 43 (1) (b) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act) and section 79 (1) & (3) and 95 of the **Civil Procedure Code** [Cap. 33. R. E.2019] (the Code) initiated *suo moto* proceedings in **Civil Revision No. 20 of 2021** in order to inspect and satisfy itself on the correctness and legality of proceedings and three (3) decisions originated from two different bodies mandated in interpretation of statutes.

In the three decisions, two are emanated from the **District Land and Housing Tribunal for Muleba at Muleba** (the Tribunal) in

Application No. 58 of 2019 and **Misc. Application No. 164 of 2019** between **Anesius K. Stewart and Duguza Fustus Chapakazi, Josiah Nsangira & Majemaje Auction Mart**. The third decision was delivered by **Muleba Primary Court at Muleba** (the Primary Court) in **Civil Case No. 21 of 2018**. This decision of the Primary Court went up to the execution stage.

In order to give the parties the right to be heard as per requirement of the law in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E 2002] (the Constitution) and precedents in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 4 of 2002 and **Judge In charge, High Court at Arusha & the Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44, this court invited all parties revealed in the named three decisions.

The parties entered their presence and after a full hearing of the Revision, it was found out that there is objection of the execution in the decision of the Primary Court in **Civil Case No. 21 of 2018** via **Misc. Application No. 164 of 2019** emanated from **Application No. 58 of 2019** of the Tribunal. It was fortunate that one of the parties in **Application No. 58 of 2019** and **Misc. Application No. 164 of 2019**, Mr. Anesius K. Stewart invited the

services of two (2) learned counsels, Mr. Projestus Prosper Mulokozi and Mr. Reinhold Tirutangwa Mujuni to assist this court in arriving justice. In their lengthy submissions, the dual admitted that there is a law in **Magistrates' Court (Civil Procedure in Primary Court) Rules, GN. No. 310 of 1964** (the Rules) which allow filing of an objection proceedings in Primary Courts when there is a protest of execution emanated from decisions of primary courts, and their client was supposed to opt for that route for proper record of the court.

However, the dual argued that there are defects in the execution notices drafted by Majemaje Auction Mart which is distinct from the court order in **Civil Case No. 21 of 2018**. According to the learned counsels, the order in **Civil Case No. 21 of 2018** in the Primary Court emanated from a contract between Duguza Fustus Chapakazi and Josiah Nsangira which mentioned *Jengo* as a security for loan of Tanzanian Shillings Sixteen Million Fifty Thousand Only (16,050,000/=). However, during execution Majemaje Auction Mart executed all buildings located at the Muleba Academy Institute where the *Jengo* was found. Following that fault, the dual learned counsels prayed this court *suo moto* to revise the decision of the **Primary Court in Civil Case No. 21 of 2018**.

The other two parties in this Revision, Mr. Duguza Fustus Chapakazi and Mr. Josiah Nsangira, who were lay persons entered their presence without any legal represented hence had produced brief history of the dispute. They both agree to have a dispute originated from a contract which was decided by the Primary Court in **Civil Case No. 21 of 2018** in favor of Mr. Josiah Nsangira. However, their versions of the stories differ in property which is to be attached for payment of the claim emanated from the contract. The version of Mr. Chapakazi is that the execution was against one building in Muleba Academy Institute whereas Mr. Nsangira thinks no such interpretation in the decision of the Primary Court.

I have had an opportunity to peruse the records in the three (3) decisions of the lower courts and tribunal. In **Civil Case No. 21 of 2018** decided by Primary Court, and found the following display at page 2 of the decision. For purpose of clarity, I will quote two paragraphs:

1. Mdai ameshinda madai yake ya Tshs. (16,050,000/=)

Milioni Kumi na Sita na Hamsini Elfu dhidi ya Mdaiwa

baada ya kukiri.

2. Mdaiwa alipe fedha za Mdai Tshs. 16,050,000/=

Milioni Kumi na Sita na Elfu Hamsini tu. Kwa awamu

mbili, pamoja na gharama za shauri.

This decision or interpretation of the Primary Court was not protested in any appeal or revision before the District Court or any other court with competent authority to interpret the quoted words. However, the judgment debtor failed to pay the ordered amount hence normal court procedures took their course leading the execution order to the attachment and sale of the properties located at Muleba Academy Institute. According to Mr. Mulokozi, the court order did not align with the contract of the parties entered on 28th November 2016 with a security clause stating that:

Naweka jengo langu la computer lenye vyumba viwili

lililoko chuoni, jengo la tatu kuelekea Nshamba Mjini

ukitokea Muleba.

Whereas to Mr. Nsangira the interpretation invited by learned counsel Mr. Mulokozi is not part of the decision and is not displayed anywhere in the decision of the Primary Court. According to Mr. Nsangira issues of *jengo* or *majengo* were raised as afterthought by

Mr. Fustus after failure to pay the money as per order of the Primary Court.

On my part, I do not need to be detained on the straight forward issues. My position is that once the court has taken its role of interpreting a statute or any other facts, no further interpretations are allowed to be added in the decision, unless proper course of inquiry on the interpretation is initiated to resolve the dispute. I have quoted the order of the Primary Court in **Civil Case No. 21 of 2018** and shows silence on the words *jengo* or *majengo* as contended by Mr. Mulokozi. I also understand that Mr. Nsangira complained that there are trick plays, conspiracies and obstructions of his rights by learned counsels who are trained in law. To substantiate his claim he registered two (2) reasons *viz*: learned counsel Mr. Anesius K. Stewart once appeared as a legal counsel of Mr. Duguza in this dispute and he bought the properties in Muleba Academy Institute after the decision of the Primary Court in **Civil Case No. 21 of 2018**. To his opinion, Mr. Stewart is well aware of the dispute, but played delay tactics, conspiracies and obstruction of enjoyment of his rights.

I took trouble to learn the contents in **Application No. 58 of 2019**. I must say that, this is one of the unfortunate applications to

be registered and entertained by the Tribunal. First of all, it is silent in mentioning Muleba Academy Institute in its Application Form for want of specific location of the disputed land. It contained general statements in paragraph 3 of the Application Form with regard to land location and address. Secondly, the Application displays the dispute arose at Agazi hamlet, Nshamba Ward within Nshamba Village Muleba District, without any mention of size, boundaries or neighbors.

However, the execution was stayed at Muleba Academy Institute contrary to the requirement of the law in Regulation 3 (2) (b) of the **Land Disputes Courts Act Regulations of 2003** and precedent in **Daniel Kahuga v. Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015; **Aron Bimbona v. Alex Kamihanda**, Misc. Land Case Appeal No. 63 of 2018; and **Ponsian Kadagu v. Muganyizi Samwel**, Misc. Land Case Appeal No. 41 of 2018. The perusal further shows that the sale agreement between Mr. Stewart and Duguza was not attached in the Application to justify the transaction between the dual parties. However, paragraph 6 II of the Application Form it is shown that the land was acquired on 14th February 2019 whereas the judgment of the Primary court was delivered on 9th April 2018. It is also surprising that it is this

Application which had produced **Misc. Application No. 164 of 2019**, which ordered stay of execution emanated in **Civil Case No. 21 of 2018** and was blessed by the District Court.

During the hearing of the hearing of this Revision, Mr. Josiah Nsangira, a lay person, was surprised, on how a learned person like Mr. Stewart could enter into a contract of land sale while well aware of the court decision and execution order. I am also surprised with the trend of this matter as is depicted from the history of the dispute as was narrated by Mr. Nsangira. Anyone would have appreciated his history and sequence of events leading to this revision. He must be protected by this temple of justice, as I am going to do.

Having said so and considering interest of justice to the parties, and taking regard objection proceedings have their course, I have formed an opinion to set aside all proceedings and quash all decisions, emanated from the two (2) Applications filed in the **District Land and Housing Tribunal for Muleba** in **Land Application No. 58 of 2019 and Misc. Application No. 164 of 2019**, as they are intended to frustrate rights of Mr. Nsangira. I therefore order the execution emanated in **Civil Case No. 21 of 2019** to proceed with immediate effect, unless there is any other lawful order of this court. As the defects were partly caused by the **District Land and Housing**

Tribunal in Muleba and since this Revision was initiated *suo moto* by this court, I hesitate to award costs in this Revision. Each party shall bear its costs.

It is so ordered.




F.H. Mtulya

Judge

11.03.2021

This Ruling was delivered in chambers under the seal of this court today in the presence of the parties: Mr. Josiah Nsangira, Mr. Duguza Fustus Chapakazi, Mr. Anesius K. Stewart and Mr. Reinhold Tirutangwa Mujuni, learned counsel for Mr. Stewart.




F.H. Mtulya

Judge

11.03.2021