

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LAND CASE REVISION NO. 04 OF 2021

(Arising from Consent judgment dated 9th April, 2021 in Land Application No. 11 of 2021 before Mwanza District Land and Housing Tribunal for Mwanza at Mwanza)

THE REG. TRUSTEES OF TANZANIA FIELD EVANGELISMAPPLICANT

versus

AUGUSTINE G. MPEMBA

(by his const. attorney BENEDICTO MPEMBA)1ST RESPONDENT

GODLIGHT LATIA KIMARO2ND RESPONDENT

RULING

18th & 30th August, 2021

RUMANYIKA, J.:

With respect to consent judgment and decree, in favour of Augustine G. Mpemba (the 1st respondent) dated and issued on 9/4/2021 by the District Land and Housing Tribunal for Mwanza at Mwanza (the DLHT), the application for revision was brought under Section 43 (1) (b) of the Land Disputes Courts Act Cap 216 RE 2019. It is supported by affidavit of Pius Rwegasira whose contents, on behalf of The Reg. Trustees of Tanzania Field Evangelism (the applicant) Mr. I. Mushongi learned counsel adopted during the hearing, by way of audio teleconference held on 18/8/2021.

Messrs Joseph Madukwa and S. Sangawe learned counsel appeared for Augustin G. Mpemba (by his constituted attorney Benedicto) and Godlight Latia Kimaro (the 1st and 2nd respondents). I heard them through mobile numbers 0764 463 958, 0748 610 592 and 0767 991 966 respectively.

Mr. Mushongi learned counsel submitted that the DLHT denied the applicant right to be heard as the latter owned a radio station therein whose interest the respondents also knew much as, although against others on that one had such a land case following the consent judgment and decree the stranger applicant having had been forcefully evicted. We pray that the impugned decision and proceedings be set aside and nullified respectively. Stressed Mr. Mushongi, advocate.

Mr. Madukwa advocate submitted; (1) that being registered trustees the applicant should have proved ownership on the disputed house (Section 9 of the Trustees Incorporation Act Cap 318 RE. 2002 refers) and where need be, have the property in their name after all the radio belonged to the 1st respondent much as previously the case was only between the present respondents. He who alleges must prove. That the issue of non-joinder of the applicant and right to be heard it shouldn't have been raised and the case reported still pending in this court had no nexus

to the instant application. We pray that the application be dismissed. Mr. Madukwa learned counsel further contended.

On her side, Ms. S. Sangawe learned counsel submitted that only the 2nd respondent, with respect to the disputed house a mere care taker the 1st respondent's invitee he was sued in the DLHT much as was not duty bound to notify the present applicant. The application lacked merits and it is liable to be dismissed stressed the learned counsel.

In his rejoinder, Mr. Mushongi learned counsel submitted that with contents of paragraphs 2 and 3 of the supporting affidavit the applicant's had sufficiently demonstrated his interest much as through Civil Case No. 53 of 2020 now pending in Mwanza resident magistrate's court the issue of who owned the radio station was between the applicant on one side and the 1st respondent & Others on the other. Now that it is an undeniable fact that only the respondents were involved in Land Application No. 11 of 2021 which gave rise to the impugned consent judgment and decree, the central issue is whether the present applicant had insurable interest in the disputed premises such that his non joinder could vitiate the DLHT'S proceedings. The answer is yes for two main reasons;

One, from the outset having been invited and dully assigned, the 2nd respondent was a mere care taker of the house. It is very unfortunate that what prompted, if at all the former to resist until such time, but through a consent judgment he made a paradigm U- turn then the DLHT ordered him to give vacant possession perhaps only the 1st respondent and the present applicant for that matter knew. After all until such time by virtue of the impugned consent judgment and decree which one in my considered view it excluded the rest of the world except the 2nd respondent nor did it, on behalf of the latter the present applicant claim interest or title.

Two; on close perusal of the records more so at page 5 of the typed ruling issued by the DLHT on 20/03/2020 in Application No. 381 of 2019 between the Mailande Augustine Mpemba and Pius Rwegasira and 2 Others, which I am obliged to take judicial notice, not only the applicant's interest in the disputed premises was farfetched, but also their interest was as old as the tribunal's records. The ruling, in the chair's words reads thus:-

...It is also clear that the respondents are the members of the body of Trustees of Tanzania field evangelism Church who own the radio "KWA NEEMA FM RADIO" which conducting

the radio programs on the suit premise ... on
behalf of the body of Trustees of Tanzania Field
Evangelism Church ... (the underline is mine)

Meaning that with regard to the disputed premises (namely house on Plot No 385 Block "LL" located at Kiloleli "A" Street, Ibungilo Ward Ilemela district); like the 1st respondent and may be some others, too the applicant had interest much as also from the records a copy of certificate of incorporation S/N 3326 in favour of the applicant issued on 14/12/2007 in Dar es salaam by The Administrator general of Trustees it could not escape my eye. When only that one is said, it cannot, at this stage be safe for this court with 100% certainty to say that the applicant had no interest in Land Application No. 11 of 2021.

Like he was on cross road, with greatest respect Mr. J. Madukwa, learned counsel at times in his submissions he used the terms individual's right to sue or being sued and individual interest as one and the same however the thin borderline might be. I think on that one the learned could not be more incorrect frankly. Unlike individual's right which one, once alleged it must on balance of probabilities be proved, his interest only needs be demonstrated or shown and the test here is not one beyond

reasonable doubts either just like however remotely might be a party's cause of action needed not be adequately but sufficiently felt by any reasonable tribunal.

In the upshot, the application is granted with costs. The entire records are, with immediate dispatch remitted to the DLHT but before another competent chair with a new set of assessors this time around with the present applicant also impleaded. It is so ordered.

S. M. RUMANYIKA
JUDGE
26/08/2021

The ruling delivered under my hand and seal of the court in chambers this 30/08/2021 in the absence of the parties.



S. M. RUMANYIKA
JUDGE
30/08/2021