

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPLICATION NO. 30 OF 2021

(Arising from the District Land and Housing Tribunal for Mwanza at Mwanza in Misc. Appl. No. 54/2009 and Misc. Appl. No. 241B of 2019)

**ASHA MAGOTI MAGERE (Administratrix of
the estate of the late HAMISI ASILIO)..... APPLICANT**

versus

**HASSAN KAPULI1st RESPONDENT
KARAMA SALEHE MANSOOR.....2nd RESPONDENT
ROCK CITY TAKERS LTD.....3RD RESPONDENT**

RULING

9th & 30th September, 2021

RUMANYIKA, J:.

The two-in one application, although, according to records it was under a certificate of urgency filed on 25/3/2021, pursuant to my order of 9th April, 2021 otherwise not urgent, it was brought under S. 14(1) of the Law of Limitation Act and Sections 79(1) (a) and 95 of the Civil Procedure Code Chapters 89 and 33 RE. 2019 respectively for the court to see into it and satisfy itself as to correctness, legality and propriety of the records of the District Land and Housing Tribunal (the DLHT) importantly so on the

issues of the trial tribunal's jurisdiction and the subsequent sale of the applicant's house No. 015/053 situated at Msumbiji area, Ilemela district (the house). Following it all including an order of the sale of the house, the application for extension of time and revision is supported by affidavit of Asha Magoti Magere whose contents during the hearing were adopted.

Messrs D. Kahangwa and P. Bomani learned counsel appeared for Asha Magoti Magere (Administratrix of the estate of the Late Hamis Asilio) (the applicant) and Karama Salehe Mansour (the 2nd respondent) respectively. Hassan Kapuli and Cocky City Takers Ltd (the 1st and 3rd respondents) respectively they appeared in person.

When the application was, by way of audio teleconference called on 9.9.2021 for hearing, as, though duly served the 3rd respondent did not appear, for that reason, and pursuant to my order I dispensed with his appearance hence, only with respect to the latter the ex-parte ruling. Those present, I heard them through mobile numbers 0713 459 908, 0755 988 097 and 0766 500 051 respectively.

Mr. D. Kahangwa learned counsel submitted that actually the dispute arose from a tort not a land case therefore the trial ward tribunal

had no jurisdiction just as the DLHT lacked jurisdiction to issue the subsequent order including execution of the decree much as also, the appellant's house was sold below the market value the appellant having had been ordered to pay the 1st respondent shs. 2.80m only what the points of illegality (the case of **Baltazar Kinasha v. Paula Benard Mingi**, Misc. Land Appeal No. 69 of 2020 Hc, at Dar es Salaam (unreported). That is all.

The 1st respondent submitted that he was misled and therefore went to the DLHT for execution. That is it.

On his side, Mr. P. Bomani learned counsel submitted that the DLHT was right because, unlike the other torts, the decree being executed arose from a tort committed on a house. That is all.

The central issue is whether the trial ward tribunal had jurisdiction. At least it was not disputed that indirectly though the decree executed in the DLHT it arose from what I could term constructive trespass on land committed by the appellant. In that regard, part of the ward tribunal's record reads thus:-

... Mlalamikaji .. alimlalamikia jirani yake Hamisi Hasili kwa kuchimba shimo pembeni mwa nyumba yake, shimo hilo lilisababisha nyumba yake kupasuka ... Bwana Hamisi Hasili alikiri mbele ya baraza kuwa atafanyia matengenezo nyumba hiyo lakini hadi sasa hajaifanyia matengenezo, uharibifu unaendelea kuongezeka.

Meaning that as were neighbors and the appellant dug a pit which caused cracks and continuous damage to the respondent's house, the appellant admitted the wrong and promised to fix it but he defaulted hence the case, judgment and a decree the execution of which now it had led to appellant's house being sold.

I entertain no doubts as the common law also had it that any person who collects, brings, accumulates, manufacture or who, in this case digs a pit so negligently that it caused harm to neighbor in law, such person commits a tort. Whether the act was done on a piece of land or, like in the present case on a house it is immaterial.

Like Mr. D. Kahangwa learned counsel, precisely so in my view argued, with greatest respect to Mr. P. Bomani, advocate by any definition

that one was worth the name not a land dispute but purely tortious. It follows therefore from its inception the trial ward tribunal had no jurisdiction.

It is trite law moreover, that where, for a certain case, in this case there was pasiansi ward the District Land and Housing tribunal specialized for land matters no other court had jurisdiction to entertain such case (case of **Bathazary Kinasha vs. Paula Bernald Nindi**, Misc Land Appeal No. 69 of 2020 Hc at Dsm, unreported suffices the point of illegality to dispose of the appeal.

Moreover, even for the sake of assumption the decree of shs. 805,000/= was properly procured, which is not the case, the impugned auction and sale was not legal because yet another illegality the worth shs. 50,000,000/= house was sold only for shs. 3.20million.

In the upshot, the applicant is extended time and proceedings of the two tribunals below are nullified and quashed. The DLHT's decision is set aside if the need persists the 1st respondent may wish to institute a case in a court of the lowest grade with competent jurisdiction. The application is granted with costs. It is so ordered.

Right of appeal explained.


S.M. RUMANYIKA

JUDGE

25/09/2021

The ruling delivered under my hand and seal of the court in chambers this 30/09/2021 in the absence of the parties.


S.M. RUMANYIKA

JUDGE

30/09/2021

