

IN THE HIGH COURT OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

LAND REVISION NO. 2 OF 2020

*(From the Decision of the District Land and Housing Tribunal of Mbinga District at
Mbinga in Misc. Land Application No. 41 of 2018)*

MAIKO ELIAS NYANDINDI..... APPLICANT

VERSUS

BENO PROTAS NDUNGURU..... RESPONDENT

RULING

13.09.2021 & 11.11.2021

U. E. Madeha, J.

Having been aggrieved with the decision of the District Land and Housing Tribunal (herein DLHT) for Mbinga in Misc. Application No. 41 of 2018, delivered on October 13, 2020, which originated from land case No. 12 of 2016, from Amani Makolo Ward Tribunal, within Mbinga District. The applicant (the judgement debtor) decided to file the revision in order to challenge the decision of the DLHT. The application was filed in accordance with sections 43 (1) and (2) of the Land Courts Disputes Act, Cap. 216 R.E.2019, and 79 (1) and (2) of the Civil Procedure Code, Cap. 33 R.E. 2019. The application is supported by the affidavit sworn by the applicant. The

respondent successfully sued the applicant before the Amani Makolo Ward Tribunal for trespass to land. The trial tribunal ordered the applicant to pay compensation for the use of the land. The respondent filed an application for the execution of the order of the trial tribunal before the DLHT of Mbinga to enforce the order. Before the proceedings came to an end on July 23, 2018, the applicant prayed to withdraw the application with leave to refile so that he could conduct the valuation report to get the proper value of the compensation for the disputed land.

The application was withdrawn on September 14, 2018. The applicant refiled his application as it was ordered by the DLHT on September 24, 2018, the new application continued in the same file with the same case number. DLHT of Mbinga ordered the judgement debtor to pay the decree holder the sum of Tshs. 18,054,000/= and to vacate the suit land within 14 days from the day of the order. In view of the grounds of revision raised, the issues are, first, whether there was a procedural irregularity relating to the DLHT execution proceeding. Second, whether or not the valuation report complies with legal requirements to qualify as an exhibit.

Starting with the first issue, whether there was a procedural irregularity relating to the DLHT execution proceeding, Mr. Raphael Matola, the applicant

learned advocate, submitted that Misc. Application No. 41 of 2018 filed at the DLHT of Mbinga, which was withdrawn, was supposed to be filed in a fresh case record and not to proceed with the proceedings in the same case record. The chairman of the DLHT of Mbinga entertained two applications by using the same case file proceedings and giving the same case number, that is, Misc. Application No. 41 of 2018. The application was withdrawn at the instance of the applicant that made the end of the said application. If any party is interested or wishes to file it again, the tribunal can neither take continuation of the withdrawn order nor continuing with the same case record, as done in this suit at hand. The executing court now has two orders in the same case record. In Misc. Application No. 41 of 2018, there is the withdrawn order dated 16.8.2018 and the other order dated 13.10.2018. This is a procedural material irregularity. He prayed that this court nullify the proceedings and order of the DLHT dated October 13, 2020.

Mr. Zuberi Maulidi, the respondent's learned advocate argued that the matter before the DLHT was an execution proceeding. It is lawful for the Tribunal to proceed with the matter on the same file. The application for execution did not constitute any illegality in law, and the same does not

prejudice the applicant in any way, because this is an internal judicial arrangement which is not prohibited by any law.

Starting with Regulation 17 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003, the law allows the applicant to withdraw the matter if he wishes to do so. The effect of withdrawing the matter is to finalise the matter, this ends litigation. As a general rule, withdrawing from a case means the case has come to an end. This was emphasised in the case of **Emmanuel Eliazry Versus Ezironk K. Nyabakari**, Land Appel No. 56 of 2018 High Court Land Division Dar es Salaam.

The records of the DLHT show that when the respondent re-instituted the application, the same file was used with the same case number as if it was just adjourned and not withdrawn. The matter was withdrawn with leave to refile for the valuation to be carried out to ascertain the amount of compensation the decree holder is entitled to. There was an order of the DLHT which allowed the applicant to refile his application to exercise his legal rights as it was granted to him by the DLHT. But for the DLHT to proceed with the subsequent application in the same file was not the proper

procedure due to the fact that when the matter is withdrawn, it marks the end of litigation.

Coming to the second issue, as to whether the valuation report admittedly meets the requirements of the law, The applicant learned advocate Mr. Raphael Matola told this court that the major issue before the parties was only on boundaries, and not the six acres of land as it was decided by the DLHT. The applicant argued that the DLHT ordered the applicant to pay Tshs 18,000,000/= as compensation for the use of the respondent's land, measured six acres, by using the purported valuation report, which does not fulfil the requirement of a valid valuation report. He prayed to the court to nullify and dismiss the order of the executing Tribunal.

The applicant advocate submitted further that, the law requires all valuation reports prepared by a private or government institution valuer to be authorised by a Chief Government Valuer, as per section 7 of the Valuation and the Valuer Registration Act No. 7 of 2016, and he supported his argument with the case of **Ore Corp Tanzania LTD vs. Mathias Shileka** High Court, Land Appeal No. 19 of 2020 (unreported). The court went through the purported valuation report and discovered that there was only the town valuer stamp, no signature or stamp to show if the chief

government valuer had certified this valuation or authorised the council valuer to evaluate on his behalf as the law requires as per section 8 (3) of the Evaluation and Valuer Registration Act No. 7 of 2016.

Mr. Zuberi Maulidi, submitted that Section 7 of the valuation and valuers' Act No. 7 of 2016, does not support the applicant's advocate's submission because he thinks that the provision confers power to the Chief Valuer only in a circumstance where the valuation was not properly conducted. In the case at hand, there are no circumstances that necessitate the chief valuer to exercise the said power as the applicant failed to substantiate to what extent the valuation in question was not conducted properly by addressing his complaints to the proper forum. The cases of **Ore Tanzania Ltd versus Mathias Shileka**, High Court Land Appeal No. 19 of 2020 and **Mtweve versus Chief Executive Officer, Tanzania Road Agency, and Attorney General**, Land Case No. 154 of 2018 (Unreported) cited by the applicant advocate are distinguishable from the circumstances of the case at hand, where the valuation was conducted by an authorised government valuer.

In his rejoinder, the applicant leaned council contended that the valuation report, which was prepared by a valuer, was supposed to be

expunged from records. It is their prayer that this court be pleased to revise the proceedings and the order of the tribunal for being nullity and that the purported valuation report, which was prepared, tendered and relied upon by the executing Tribunal is contrary to the law, hence the validity and the evidence value of the valuation report is questionable as submitted in their submission in chief.

The DLHT of Mbinga ordered compensation of Tshs 18,000,000, which exceeds the jurisdiction of the Ward Tribunal. If you look at the Ward Tribunal's jurisdiction in entertaining land matters, the jurisdiction does not exceed the limit of Tshs 3, 000,000. In the valuation report at hand, there is also the cost of a disturbance allowance. I find the cost is very high compared to the law that gives pecuniary jurisdiction to the Ward Tribunal to hear land claims. To give more emphasis to section 15 of the Land Disputes Courts Act, Cap 216 (R.E. 2019). I hereby quote:

"15. Notwithstanding the provisions of section 10 of the Ward Tribunals Act, the jurisdiction of the Tribunal shall in all proceedings of a civil nature relating to land be limited to the disputed land or property valued at three million shillings."

A valuer from Mbinga District Council was sent to evaluate the land and found that the market value of the crop grown at Mji Mwema Street for 2015 to 2016 was Tshs 90,000 for sack. Under normal circumstances, no sack of maize is sold for more than Tsh 50,000.00 at Songea. The costs have been much higher than the realities of life. In that sense, there is no proper valuation of property conducted. I hereby expunge this valuation report from the DLHT records. In conducting a valuation, one must be focused on the facts and realities of the subject matter.


It is a cardinal principal of the law that, any valuation has to be conducted and certified government by the chief valuer or he can authorise the council valuer to conduct the same on his behalf, but if you go through the purported written report, there is no signature or stamp to show the involvement of the chief government valuer, himself or by another valuer under his authorization.

Therefore, in view of the stated omission, the District Land and Housing Tribunal proceedings, and orders are nullities. I quash and set aside the District Land and Housing Tribunal proceedings and orders. Accordingly, I allow the revision. Parties are at liberty to institute a fresh application if they so wish before the District Land and Housing Tribunal before a different

chairman. I make no order as to costs because the problem that led to the determination of the revision was caused by the Tribunal.

DATED at **SONGEA** this 11th day of November, 2021




U. E. MADEHA
Judge
11.11.2021