

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

LAND REVISION NO. 3 OF 2018

(Arising from the Ruling of the District Land and Housing Tribunal for Dodoma in
Application No. 6 of 2016 and Misc. Application No. 15 of 2016 at District Land and
Housing Tribunal for Dodoma)

BODA AWADH AHMED..... APPLICANT

VERSUS

1. ZAINABU MAGELA MAYONGA

(Administratrix of the estate of HAMIS RAJABU MAZOYA)

2. ISSA KALUNGA

3. KENETH KOMBO

4. SALAMA MUSA

5. HABIBU HASHIMU MUSSA

6. WAZIRI MAJUTO

7. MAJEMBE AUCTION MART LTD

RESPONDENTS

RULING

2/12/2021 & 3/12/2021

MASAJU, J

The Applicant, Boda Awadh Ahmed, filed in the Court a Chamber Summons Application made under Section 43 (1) (b) of the Land Disputes Courts Act [Cap 216] for Revision of Land Application No. 6 of 2016 and Miscellaneous Land Application No. 15 of 2016 of the District Land and

Housing Tribunal for Dodoma at Dodoma against the Respondents, Zainabu Magela Mayonga (the Administratrix of the estate of Hamis Rajabu Mazoya), Issa Kalunga, Keneth Kombo, Salama Musa, Habibu Hashimu Mussa, Waziri Majuto and Majembe Auction Mart, the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents respectively.

The Chamber Summons Application is supported by the Affidavit sworn by Elias Michael Machibya, the learned counsel for the Applicant. The Respondents contest the Application, they filed their Counter Affidavit in the Court.

When the Application was heard in the court on the 11th day of November, 2021 both parties were represented. The Applicant was represented by Mr. Nkumuke Yongolo, Advocate while the Respondents were in service of Mr. Fred Kalonga, Advocate.

The Applicant prayed to adopt the Affidavit sworn by his learned counsel to form part of the submissions in support of the Application in the Court. The Applicant submitted that the gist of the Application is in paragraphs 2-11 of the Affidavit. That, the legal issue pertinent to this Application is that the Applicant was denied the right to be heard as so expounded in **DPP VS. Yasin Hassan@ Mrope** (CAT) Criminal Appeal No. 202 of 2019, Iringa Registry. That, it was not right for the trial Tribunal to order the suitland to be sold to the 5th Respondent Habibu Hashimu Musa, the spouse to the 4th Respondent, Salama Musa when the trial was still on. That, the 5th Respondent was dropped from the dispute allegedly because the suitland had already been bought in the name of his wife, Salama Musa, the 4th Respondent. That, the trial Tribunal ordered costs against the Applicant for the withdrawal of the 5th Respondent from the dispute. That,

as a result of the said costs, the trial Tribunal ordered the suitland to be sold so as to cover the cost for the withdrawal of the 5th Respondent from the land dispute. That, the Applicant was not aware of the order for the sale of the suitland. That, it was illegal for the trial Tribunal to order the sale of the suitland prior to the conclusion of the trial between the Applicant and the 4th Respondent amongst others.

The Applicant prayed the Court to grant the Application, quash and set aside the impugned decision by the trial Tribunal by revising the said decision under Section 43 (1) (b) of the Land Disputes Courts Act [Cap 216] accordingly. That, it was also illegal for the trial Tribunal to dismiss the land dispute with costs allegedly for having been taken by events.

On their part the Respondents contested the Application by praying to adopt their Counter Affidavit to form part of the submissions against the Application in the Court. The Respondents argued that the 5th, 6th and 7th Respondents are misjoined in this Application since they were not party to Land Application No. 6 of 2016. That, the 5th, 6th and 7th Respondents were party to Miscellaneous Application No. 15 of 2016, which has since been decided by the Court that it was time barred and dismissed accordingly. That, the suitland was sold in Miscellaneous Application No. 15 of 2016. That, the Applicant's attempt to overturn it was dismissed in the Court for want of time. The Respondents prayed the court to dismiss the Application with costs for want of merit.

In Rejoinder, the Applicant argued that it was lawful for the Applicant to incorporate the 5th, 6th and 7th Respondent to this Application according to **Abraham J. Kisange V. Tenene Mwambungu and another** (HC) Land Appeal No. 13 of 2014. That, the court is mandated to revise the proceedings

under section 43 (1) (b) of the Land Disputes Courts Act [Cap 216]. That, both Application were before the same chairman. The Applicant prayed the court to grant Application.

That is what was shared by the parties in support of, and against the Application in the Court.

There is no dispute that a parcel of land of about $\frac{3}{4}$ acres at Mundemu village, Bahi District which was the subject matter in the land Application No. 6 of 2016 before the District Land and Housing Tribunal for Dodoma at Dodoma was attached and sold by the same trial Tribunal in a Miscellaneous Land Application No. 15 of 2016 which was an Application for costs after the Applicant dropped the 5th Respondent from the Land Application No. 6 of 2016 when the Land Application No. 6 of 2016 was still pending and had not been heard on merit by the same trial Tribunal. Thus, there was still a dispute of ownership concerning the said land as between the Applicant and the 1st-4th Respondents in the very tribunal. The Applicant's prayer before the trial tribunal that the Land Application No. 6 of 2016 be referred to the Court under Section 77 of the Civil Procedure Code, [Cap 33] for guidance on the predicament was rejected by the trial tribunal allegedly for want of reasons as it dismissed the Land Application No. 6 of 2016 for allegedly being overtaken by events.

The Court is afraid that the trial tribunal's action essentially was a technical denial of the Applicant's right of audience or right to be heard contrary to Article 13(2) (6) (a) of the Constitution of the United Republic of Tanzania, 1977 [2005 Edition] and the principle of natural justice.

There is, therefore, zero doubt that the trial tribunal acted unjudicially thereby denying the Applicant the constitutional basic right to be heard, which right also forms part of the principles of natural justice.

That said, the Court is also mindful of the fact that the 5th - 7th Respondents who were not party to the Land Application No. 6 of 2016 between the Applicant and the 1st - 4th Respondents have been wrongly impleaded in this Application. They are hereby struck out of the Application accordingly. Save for this intervention, the meritorious Application is hereby granted accordingly.

Pursuant to the Court's revisionary powers under section 43(1) (b) of the Land Disputes Courts Act, [Cap 216 RE 2019], the Ruling of the trial Tribunal dated the 22nd day of May, 2017 as between the Applicant and the 1st -4th Respondents is hereby nullified, quashed and set aside accordingly.

The original record is hereby remitted back to the trial tribunal for the matter (Application No. 6 of 2016) to be heard *inter partes* as between the Applicant and the 1st -4th Respondents accordingly as from where it had been prior to the impugned Ruling. The Miscellaneous Land Application No. 15 of 2016 before the trial tribunal has been brought to the Court through the back door. The Court hereby declines to consider it.

The parties shall bear their own costs.




GEORGE M. MASAJU

JUDGE

3/12/2021