

IN THE HIGH COURT OF TANZANIA

SHINYANGA REGISTRY

AT SHINYANGA

LAND APPEAL NO. 31 OF 2021

JOHARI IDDY KIBANDANI.....1st APPELLANT

RAYIDA M. RWEIKIZA.....2nd APPELLANT

VERSUS

CRDB BANK PLC.....1st RESPONDENT

DEVELOPMENT AND LIFE RELIEF

ASSOCIATION (DELERA).....2nd RESPONDENT

DEUS DERICK KAHENDAGUZA.....3rd RESPONDENT

EVELYN SIMWANGA.....4th RESPONDENT

NYANGE AUCTION MART CO. LTD.....5th RESPONDENT

MKASIWA AUCTION MART COURT BROKER....6th RESPONDENT

[Appeal from the decision of the District Land and Housing Tribunal of
Shinyanga at Shinyanga.]

(Hon. P.L.S. Lekamoi, Chairman.)

dated the 13th day of July, 2021

in

Misc. Land Application No. 142 of 2021

JUDGMENT

11th & 20th April, 2022.

S.M. KULITA, J.

This is an appeal from the District Land and Housing Tribunal of Shinyanga at Shinyanga. In a nutshell, the story behind this appeal is that, the 1st Appellant had purchased a landed property from the 2nd Respondent. The purchase contract, went wrong. Due to that, the 1st Appellant decided to institute a case, Land Application No. 45 of 2014, at the District Land and Housing Tribunal of Shinyanga, for her to be refunded the purchase price. In it, she joined 2nd Respondent and his Directors who are the 3rd and 4th Respondents herein. In that case, the 1st Appellant became successful.

In fulfilling the judgment that has been decided in her favor, the 1st Appellant again instituted a Misc. Application No. 83 of 2015 seeking for attachment and sell of the now disputed landed property. She was again successful. The disputed landed property was sold in an auction to the 2nd Appellant.

Aggrieved with that decision, the 1st Respondent, who claims that the disputed landed property has been put to her as collateral, filed Misc. Land Application No. 142 of 2021 at the District Land and Housing Tribunal for Shinyanga seeking for three orders, **first**, extension of time to appeal against Misc. Application No. 83 of 2015, **secondly**, setting aside of the selling of the disputed house, **thirdly**, any other relief the tribunal would deem fit to grant. The application was heard together with the preliminary

objections in it. At the end, the preliminary objections were all dismissed, the 1st Appellant was ordered to be evicted from the disputed house and the 3rd Respondent was reinstated therein.

That said decision aggrieved the appellants, hence appealed to this Court with 6 grounds of appeal. But in the course of submitting them, the appellants prayed to withdraw two grounds and remained with only four, as hereunder: -

- 1. That the learned Chairman of the District Land and Housing Tribunal for Shinyanga erred in law and in fact in dismissing the preliminary objections on point of law filed by the first Respondent without giving plausible reasons for doing so.*
- 2. That the learned Chairman of the District Land and Housing Tribunal for Shinyanga erred in law and in fact in ordering for eviction of the 2nd Applicant from the premise located on Plot No. 247 Block "C" Title No. 30873 at Nyasubi area within Kahama Municipal Council purchased by the 2nd Respondent without her being refunded back her purchase price.*
- 3. That the learned Chairman of the District Land and Housing Tribunal for Shinyanga erred in law and fact in*

in ordering for eviction of the 2nd Appellant and the reinstatement of the 3^d Respondent in suit premise located on Plot No. 247 Block "C" Title No. 30873 at Nyasubi area within Kahama Municipal Council while neither the 1st Respondent nor the 3^d Respondent prayed for such relief.

- 4. That the Ruling and Drawn Order issued by the learned Chairman of the District Land and Housing Tribunal for Shinyanga in Misc. Land Application No. 142/2021 is too vague and contradictory for ordering the 2nd Appellant to pay the 1st Appellant the amount being claimed by her within 6 months while the 1st Appellant claims nothing from the 2nd Appellant.*

In this Appeal, Mr. Geofrey Tuli, learned Advocate represented the Appellants, whereas Mr. Godfrey Daniel Goyayi, Advocate represented the 1st Respondent, Mr. Deus Derick Kahendaguza, 3rd Respondent was unrepresented. On 23th November, 2021, the matter was scheduled for hearing through written submissions. Only the Appellants, 1st respondent and the 3rd respondent complied with it.

Submitting in support of the appeal, specifically ground number one, Mr. Tuli was of considered opinion that, the trial Chairman erred in determining the preliminary objections. He centered his argument on preliminary objection number five that sought to challenge Misc. Land Application No. 142 of 2021 for being omnibus. To it, he said that it contained a prayer for extension of time under the Law of Limitation Act, and a prayer for setting aside the sale of the landed property under the Civil Procedure Code and the Land Disputes Courts Regulations. To him, those prayers are different, arise from different supporting laws, have different time limit and the ground to be considered in granting or refusing the same are different. With that stand, Mr. Tuli was of the considered opinion that, the same was incompetent. To support his argument, he cited the case of **Leonard Faustine v. Makufuli Motors Limited, Labour Revision No. 78 of 2019 HC Mwanza** (unreported).

Concerning the second ground of appeal, that the 2nd appellant was ordered to be evicted without being refunded her purchasing price, Mr. Tuli submitted that, the 2nd appellant was forcefully evicted; **first**, before being refunded her purchasing price and **secondly**, before the expiration of 6 months period within which the trial Tribunal ordered for the refund of her purchasing price for the disputed landed property. Mr. Tuli added

to this that, the 2nd Appellant does not know the fate of her money and the tribunal order does not state as to who should refund her money.

With respect to ground number three of appeal, Mr. Tuli submitted that, it was wrong for the trial Chairman to grant relief that was neither prayed by 1st Respondent nor the 3rd Respondent before the tribunal. This was in accordance with the order to evict the 2nd Appellant and thereby reinstate the 3rd Respondent in the disputed house. He insisted his stand by stating that, the Misc. Land application No. 142 of 2021 had no such prayers. He cited the cases of **Dr. Abraham Israel Shuma Muro v. National Institute for Medical and Attorney General, Civil Appeal No. 68 of 2020, CAT at Mwanza** and that of **Magnus K. Laurean V. Tanzania Breweries Limited, Civil Appeal No. 25 of 2018, CAT at DSM.**

Concerning the last ground of appeal Mr. Tuli insisted that, the decision of the District Land and Housing Tribunal in Misc. Land Application No. 142 of 2021 is vague and contradictory. He explained that, the same condemns the 2nd Appellant to pay the 1st Appellant within 6 months. On that he said, as the 1st Appellant claims nothing from the 2nd Appellant, he formed a considered opinion that, the ruling is vague.

Mr. Goyayi, Advocate for the 1st Respondent replied the first ground of appeal to the effect that, firstly, the appellant in his submission in chief diverged from the ground raised. He condemned him submitting on the matter which was already decided, leaving the ground as raised. As according to the ground of appeal itself, Mr. Goyayi stated that, the preliminary objections were determined and reasons were given out for dismissing the same. He asked this court to make reference to page 11 to 13 of the decision in proving his assertion. Secondly, Mr. Goyayi submitted that, ground number one of appeal is misconceived. He said that, it seeks to challenge a preliminary objection. He formed an opinion that, the same is interlocutory hence cannot be challenged. He cited the case of **JUNACO (T) LTD and JUSTIN LAMBERT v. HAREL MALLAC TANZANIA LIMITED, Civil Application No. 473 of 2016, CAT at DSM** to support his argument.

Concerning the 2nd ground, Mr. Goyayi stated that, the appellants in their written submissions have changed the contents without leave of the court. He said that in the ground of appeal, eviction was averred to have been done against the 2nd Applicant while in submission was referred as 2nd Appellant. He added that, the house was said to have been purchased by the 2nd Respondent while in the submissions it was changed to 2nd

Appellant. He went ahead stating that, as such, what has been raised in the second ground of appeal lacks merit. He explained that, the 2nd Applicant was never ordered to be evicted from the disputed house and that the 2nd Respondent had never purchased the disputed house.

As for the sake of replying what has been submitted in chief concerning 2nd ground of appeal Mr. Goyayi stated that, since the court nullified and set aside the sale of the disputed house, to him, it could be improper to leave the 2nd Appellant residing therein while she is not a rightful owner of the house. Thus, eviction was a proper relief.

Concerning the refund of the 2nd Appellant, Mr. Goyayi submitted that, the tribunal made an order that the 2nd Appellant be refunded her purchasing price, as per page 16 of the decision. With existence of this order, he was of considered opinion that, the Appellants' second ground of appeal lacks merit. He further stated that, as the house in dispute was sold to compensate the 1st Respondent, then it follows that, it was upon the 1st respondent to refund the 2nd Appellant's purchasing price.

Concerning ground number three of the appeal, Mr. Goyayi replied to the effect that, in Misc. Land Application No. 142 of 2021 the Applicant made a total of three prayers. He mentioned the third one being "any other relief the tribunal deems just and fit to grant", with this he said that

all other reliefs that the chairman has granted fall under this prayer. He cited the case of **Anthony Ngoo and Davis Anthony Ngoo v. Kitinda Kimaro, Civil Appeal No. 25 of 2015 CAT at Arusha** to show that even the eviction order in the said Misc. Land Application No. 142 of 2021 falls under such a prayer.

As for the 6th ground of appeal Mr. Goyayi submitted that, the same is argumentative. He said this is contrary to Order XXXIX, Rules 1 and 2 of the Civil Procedure Code [Cap 33 RE 2019]. In reply to the submission in chief by the appellants Mr. Goyayi stated that, the same were clerical errors that can be rectified through section 96 of the Civil Procedure Code [Cap 33 RE 2019]. He stated that, what he believes is that the intention of the trial tribunal was to order the 1st Appellant to pay the 2nd Appellant.

In his reply the 3rd Respondent submitted on the first ground of appeal that, omnibus applications are encouraged. He cited the case of **MIC Tanzania Limited v. Minister for Labour and Youth Development and Attorney General, Civil Appeal No. 103 of 2004, CAT at DSM** to strengthen his argument. He added that, even if it would be wrong, the same is cured through the overriding objective principle. He then joined hand with the submission by the 1st Respondent that the preliminary objections are interlocutory, hence cannot be appealed.

Concerning the last ground of appeal Mr. Tuli rejoined that, the court should note that the 3rd Respondent has conceded to this ground. He further said that, both the ruling and its drawn order condemn the 2nd Appellant to pay the 1st Appellant within 6 months. He stated that, this is vague, as the 1st Appellant claims nothing from the 2nd Appellant.

This was the end of all parties' submissions.

I have earnestly gone through both parties' submissions, authorities supplied and the available records, as well, I have taken into consideration all the rival issues. The following are the determinations and findings of the grounds of appeal that have been put and submitted before me.

Concerning ground of the appeal number one in which the Appellants faulted the trial chairman for dismissing their preliminary objections without giving plausible reasons. With this, they centered their argument on the preliminary objection number five that challenged the Misc. Land Application No. 142 of 2021 for being omnibus. I have read the decision of the tribunal at pages 12 and 13, the trial chairman agreed that the application is omnibus, but through the case of **Pride Tanzania Limited v. Mwanzani Kasatu Kasamia, Misc. Commercial Cause No. 230 of 2015** he ruled that, omnibus is encouraged to minimize multiplicity of cases.

The issue is, was that determination a plausible reason for dismissing that preliminary objection? The 1st and 3rd Respondents herein did not dispute that the application No. 142 of 2021 was omnibus but they assigned different reasons to justify it.

The 3rd Respondent stated that, it was interlocutory to appeal on the Preliminary Objection. Meanwhile, the 1st Respondent joined hand to it and added that, the same is curable through overriding objective principle.

The Respondents, argument that appealing to the preliminary objection at this stage is interlocutory is totally misconceived. This is because, the appellants are challenging the said preliminary objections that were overruled in the Misc. Land Application No. 142 of 2021 but the said matter is already fully and finally determined by that court. As that said matter is no longer existing before that trial court, it is right for the same to be appealed at this appellate court.

In accepting the omnibus application, the Chairman has cited the case of **Pride Tanzania Limited** (supra) which was decided in 2015. Meanwhile the appellants have cited the recent case of **Leonard Faustine** (supra) that was decided in 2019 in discouraging omnibus

applications. With these authorities alone, it is easy to conclude that, currently, the omnibus applications are discouraged.

I have also gone through the Court of Appeal cases on the very same issue. In the case of **Rutagatina C.L. V. The Advocates Committee and Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010 CAT, DSM** (Unreported) it was held to the effect that, the reliefs sought in one application that are originating from different laws, have different time frame of filing them and have different reasons in acquiring them, cannot be lumped together in a single application.

In the case at hand, the appellants have claimed that the original case, Misc. Land Application No. 142 of 2021 of the District Land and Housing Tribunal of Shinyanga at Shinyanga, had two different reliefs that had been prayed; The Appellants averred that, the said applicant had the first prayer for extension of time that arises from the Law of Limitation Act and, secondly, had a prayer for setting aside a sell of the disputed house that arise from the Civil Procedure Code and the Land Disputes Courts Regulations. The Respondents did not dispute this fact.

Moreover, the same reliefs sought have different time frame and the reasons for qualifying or disqualifying to acquire them. These facts also never disputed by the Respondents.

With this observations and according to the dictates of the cited case of **Rutagatina C.L.** I find it that, it was improper for the Applicant therein to file such omnibus application. Had the trial chairman deeply directed his mind to this end, he would not have reached into that decision. The proper procedure was for the Tribunal's Chairman to strike out the said Misc. Application No. 142 of 2021 for being omnibus as per the cited case of **Rutagatina C.L.** This could only be the good and plausible reasoning.

On that note, I find the first ground of appeal with merit.

With this determination, I find no need of dealing with the remaining grounds of appeal, as the same will just be an academic exercise. As all orders that the trial tribunal has made in Misc. Application No. 142 of 2021 emanated from the incompetent application, the same fall with it.

It is therefore ordered that the parties have to revert to their positions before the decision in Misc. Land Application No. 142 of 2021

was delivered. If the 1st Respondent is still interested, she has to file a proper application according to the laws before the said tribunal.

In upshot the appeal is hereby allowed. Respondents to bear costs of the case.



S.M. Kulita
JUDGE
20/04/2022

DATED at Shinyanga this 20th day of April, 2022.



S.M. Kulita
JUDGE
20/04/2022