

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
LAND REVISION NO. 05 OF 2020

(From the Land Appeal decision of the District Land and Housing Tribunal for Rukwa District at Sumbawanga in Land Appeal No. 56 of 2020 Originating from Land Case No. 08 of 2020 of Muze Ward Tribunal)

PAUL BIHEMA.....APPLICANT

VERSUS

1. DOMINA ISAMYA
2. JOVITA MIZIMU

.....**RESPONDENTS**

RULING

Date of Last Order: 25/06/2022

Date of Ruling: 04/08/2022

NDUNGURU, J

This land revision application by the applicant, Paul Bihema is brought under **section 41, (b) of the Land Disputes Courts Act, Cap 216 RE 2019.**

The application is supported by the affidavit sworn by the applicant Mr. Paul Bihema.

The applicant prays for this court to call, inspect, revise and set aside the Judgement and its subsequent orders of the District Land and Housing Tribunal for Rukwa in application No. 08 of 2020 dated so as to

satisfy itself as to the material errors, legality, propriety, and correctness, of the proceedings, judgement and respective orders.

In opposing the application, both respondents, Domina Isamyia and Jovitha Mizimu filed their counter affidavits sworn by themselves respectively.

Before making my mind on the submissions made by the parties, I believe a brief resume of facts on this matter is worth making. It is in record that, the 1st respondent Domina Isamyia herein instituted suit at Muze Ward Tribunal against Jovitha Mizimu, 2nd respondents in Land Case No. 08 of 2020. The suit was in respect of the unsurveyed Plot located at Muze area within Sumbawanga District where 1st respondent claimed to be the lawful owner of the plot which also, she asserted that 2nd respondent trespassed therein and sold the disputed land without her consent. After hearing of the Land Case, the 2nd respondent was declared the lawful owner of the disputed land as she possessed the same for a long time undisturbed. Dissatisfied the 1st respondent appealed to the District Land and Housing Tribunal for Rukwa where it overturned the decision of the trial tribunal and went on declaring the 1st respondent the lawful owner of the disputed land.

When the 1st respondent was in the process of executing orders emanating from Land Appeal No. 56 of 2020 in respect of disputed land

through Ward Executive Officer, the applicant discovered that 1st respondent was declared lawful owner of the said disputed land by District Land and Housing Tribunal for Rukwa. The applicant claimed to have bought the disputed land from the 2nd respondent on 03rd May 2020. It is contention of the applicant that he was not a party to the proceedings at both the Muze Ward Tribunal and the District Land and Housing Tribunal for Rukwa. Therefore, he was denied an opportunity to be heard and joined in the proceedings of the original land dispute at the trial tribunal and as well the appellate tribunal in which he had an interest.

The applicant was not happy with the decision delivered by the tribunals below, hence this application for land revision.

When the matter came for hearing before this court, Ms Neema Charles learned advocate who represented the applicant prayed to argue the application by way of written submissions whereas the prayer was granted. Each party filed their respective submission as scheduled by the court.

In support of the application Ms Neema Charles prayed to adopt the contents of affidavit sworn by Paulo Bihema. Learned advocate submitted that the 1st respondent successful filed Land Dispute No. 08 of

2020 against 2nd respondent claiming the land dispute which was belong to 2nd respondent before purchased the said land to applicant who was not joined as a necessary party to the land dispute No. 08 of 2020 after being purchased the said land from 2nd respondent.

Ms. Neema further submitted that Muze Ward Tribunal delivered its judgement on 29th day of June 2020 in favour of 1st respondent and following that 2nd respondent being aggrieved by the said decision lodged an appeal before the appellate tribunal which was registered as land appeal No. 56 of 2020 without informing the applicant. She submitted further that the applicant was not aware on land dispute between 1st and 2nd respondents as he was not served with any notice or summons to appear at Muze Ward Tribunal or appellate Tribunal for Rukwa until the date he found that the land dispute belongs to 1st respondent after being informed by the Ward Executive Officer of Muze village that he should vacate from 1st respondent land since he was declared the lawful owner of disputed land.

Ms Neema insisted that failure to file land revision at the appellate Tribunal for Rukwa at Sumbawanga was not due to his negligence rather he was not aware with original land dispute No. 08 of 2020 of

Muze Ward Tribunal and land appeal No. 56 of 2020 of the appellate tribunal for Rukwa at Sumbawanga.

It is her firm contention that since the applicant was not joined as necessary party with 2nd respondent so as to be given an opportunity to be heard in land dispute No. 08 of 2020 of Muze Ward Tribunal renders the proceedings nullity.

She was of the strong view that non joinder of the buyer who is necessary party to the disputed land render the procedure nullity. He fortified his position to the case of **Juma Kadala vs Laurent Mnkande** [1983] TLR 103 HC.

Further Ms Neema contended that Muze Ward Tribunal had no jurisdiction to determine the matter as the applicant purchased the same in consideration of eight million (Tshs. 8,000,000/=) the matter which was supposed to be filed at the appellate tribunal.

Finally, she prayed for the application be allowed based on the relevant authorities above.

1st respondent, in reply submitted that on balance of probability the disputed land was proved to be his property as the evidence adduced was heavier than the other as per the case **of Hemed Said vs**

Mohamed Mbitu [1984] TLR 113. She, however submitted that 2nd respondent was a mere invitee on the suit land who cannot be protected by the limitation period.

1st respondent submitted that at the appellate tribunal she was declared the lawful owner of the disputed land after reversing the decision of the Ward Tribunal.

It was her further contention that this court lacked jurisdiction to entertain this revision as the applicant is a stranger to the proceedings for both tribunals below. She cited the case of **Hugh Oswald Kasembe & Another vs Teddy Martin & Others**, Land Appeal No. 61 of 2019, HC.

1st respondent further submitted that it was a duty of the 2nd respondent to apply for third party notice at the ward tribunal in order to serve notice or summons to the applicant, that was not done and implies 2nd respondent had no good title to the disputed land.

Again, it was her further contention that the applicant was negligently for his failure to file application for revision to the tribunal.

1st respondent insisted that there is no error on face of records as the 2nd respondent and the applicant were aware with the proceedings

at Muze Ward Tribunal in Land Dispute No. 08 of 2020, thus provision of **section 45** of the Courts (Land Dispute Settlements) Act No. 02 of 2002 should prevail.

As regards the issue of jurisdiction, 1st respondent submitted that the claim by the 1st respondent before the ward tribunal falls within the pecuniary jurisdiction of the ward tribunal.

Finally, 1st respondent insisted that she was declared lawful owner of the disputed land, and there was no irregularity touching the decisions of the tribunals below. Thus, she prayed for the application be dismissed with costs.

On the other side of the 2nd respondent, prayed to adopt first her counter affidavit sworn by herself and she went on conceding with the applicant's application as he sold the disputed land to the applicant who was not joined as necessary party.

2nd respondent submitted that the applicant has a right over the disputed land since he was a buyer of the said land which the appellate tribunal declared the 1st respondent the lawful owner without considering her evidence.

It is her contention that in a suit for recovery of land sold to a third party the buyer should be joined with the seller as a necessary party. To fortify her position, she cited the case of **Juma B. Kadala vs Laurent Mnkande** [1983] TLR 103, HC. She further submitted that the consequences of commencing with the case in absence of a necessary party renders the proceedings nullity as per the case of **National Housing Corporation vs Tanzania Shoe Company and Others** [1995] TLR 251

She conceded the fact that the Ward Tribunal of Muze lacked pecuniary jurisdiction to determine the land dispute worth value of Tshs. 8,000,000/= . She admitted to have sold the said land to the applicant on 2020.

In the end, she prayed for the application be allowed.

I have considered the submissions by the parties, pleadings and the law. Let me address first the issue of non-joinder of necessary party, whether or not there was a necessary party. Then, what is the legal effect of determining the suit without a necessary party. The same if is determined affirmatively will be capable of disposing of the entire revision without addressing other raised issue.

It is very clear that the question of joinder of parties may arise either with respect to plaintiff or defendants. Particularly, the joinder of plaintiff is regulated by **Rule 1 of Order 1** of the Civil Procedure Code, Cap 33 RE 2019 according to which all persons may join in one suit as plaintiffs in whom the right to relief alleged to exist in each plaintiff arises out of the same act or transaction; and the case is such of a character that, if such person brought separate suits, any common question of law or fact would arise. On the other hand, under Rule 3 of Order 1, all persons may be joined as a defendant against whom any right to relief which is alleged to exist against them arises out of the same act of transaction; and the case is of such a character that, if separate suits were brought against such person, any common question of law or fact would arise.

As regards necessary party our law recognizes its existence to a suit before the court and the importance of joining him where he is not joined. It gives powers to the court to join such necessary party. The provisions of **Order 1 rule 10 (2)** and **Order 1 rule 9** of the Civil Procedure Code.

In the case of **Abdullatif Mohamed Hamis versus Mehboob Yusuf Osman and Fatna Mohamed**, Civil Revision No. 6 of 2017 Court of Appeal defined as follows;

".....a necessary party is one whose presence is indispensable to the constitution of a suit and in whose absence no effective decree or order can be passed. Thus, the determination as to who is a necessary party to suit would vary from a case to case depending upon the facts and circumstances of each particular case. Among the relevant factors for such determination include the particulars of the non-joined party, the nature of relief claimed as well as whether or not, in the absence of the party, an executable decree may be passed."

In the instant case, as per the applicant's affidavit and evidence on records there is no denial that the applicant was not a party to the trial tribunal proceedings in Land Dispute No. 08 of 2020 and he was not aware of such dispute to the tribunal, except during the execution process as he pleaded in paragraphs 3, 4 and 5 of affidavit, thus could not get a chance to file revision in the District Land and Housing Tribunal for Rukwa at Sumbawanga against it.

It is a settled principle that where a party was not a party in the proceedings before the Tribunal/Court, and he has interest in the suit property, and he cannot appeal, his only remedy is to come to the Court above by way of revision. See the case of **Arcopar (O.M) S.A vs Harbert Marwa and Family Investments Co. Ltd, Simon Decker, Attorney General and Badar Seif Sood**, Civil Application No. 94 of 2013 CAT DSM.

Since, as I have just remarked, the applicant was not a party to the trial tribunal proceedings, the fact not disputed by the first respondent and as well 2nd respondent herein in their respective counter affidavits, thus was condemned unheard and in the circumstance, therefore no effective decree could be passed in his absence. In my consideration this is serious procedural irregularity that may occasion injustice to the applicant. The trial tribunal and the appellate tribunal erred in law for failure to afford the applicant and the right to be heard.

It is trite law that a party must be afforded with a right to be heard failure to afford a hearing before any decision affect the rights of any person. In the case of **Tan Gas Distributor Ltd vs Mohamed Salim Said**, Civil Application for Revision No. 68 of 2011, the Court of Appeal held thus;

"No decision must be made by any court of justice/body or authority entrusted with the power to determine rights and duties so as to adversely affect the interests of any person without first giving him a hearing according to the principles of natural justice."

The consequences of a breach of the principle renders the proceedings and decisions and /orders made therein a nullity even if the same decision would have been reached had the party been heard as it was held in the case of **Abbas Sherally and Another vs Abdul S/H.M Fazalboy**, Civil Application No. 33 of 2002, unreported. Therefore, I am in accord with the learned advocate for the applicant and the 2nd respondent that failure to accord the applicant chance to be heard in a circumstance where a decree passed affects his rights was a breach of natural justice and a violation of fundamental right to be heard under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977.

In view of the above, the only viable option for the applicant is to move the court by way of application for revision as it was done in this case. As it is now a settled law in our jurisdiction that a party to proceedings cannot invoke the revisionary jurisdiction unless it was

shown that the appellate process has been blocked by judicial process. See the case of **Halais pro- Chemie Industries Ltd vs. Wello A. G** [1996] TLR 269, **Chama cha Walimu Tanzania vs. The Attorney General** E.A.LR [2008] E. A 57.

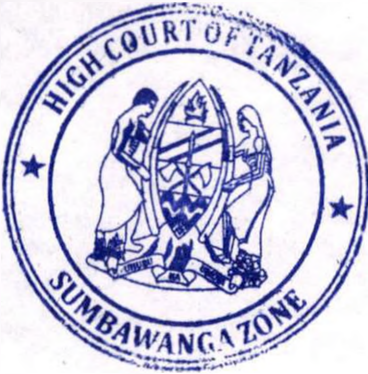
In this case, the applicant's advocate did avail to this court reasons for this application for revision as averred by the applicant in his affidavit. That the applicant was denied a right to be heard at the trial tribunal proceedings and that he could not have appealed against the decision issued in Land Dispute No. 08 of 2020 as he was not aware of the land dispute. That the decree passed if executed is going to affect the right of the applicant as he has bought disputed land from the 2nd respondent before instituting of the land dispute No. 08 of 2020 at the ward tribunal.

In view of the foregoing reasons, I find there is considerable merit in the application by the applicant and in my view no other remedy available other than to grant the revision as I hereby do.

This Court further order that the trial tribunal proceedings and appellate tribunal proceedings and orders in Land Dispute No. 08 of 2020 and 56 of 2020 respectively issued by the tribunals below are hereby quashed and set aside. A party with any claim is at liberty to

start afresh at the tribunal with competent jurisdiction. No order as to costs.

It is so ordered.



D. B. Ndunguru
D. B. Ndunguru

JUDGE

27.06.2022

Date - 04/08/2022

Coram - Hon. M.s. Kasonde – DR

Applicant - Present in person

1st Respondent - Present in person

2nd Respondent - Present in person

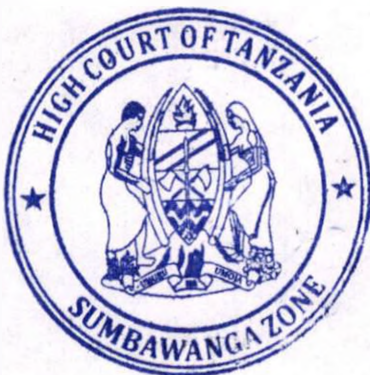
B/C - J.J. Kabata

Applicant: This matter comes for Ruling. We are ready.

1st Respondent: I am prepared

2nd Respondent: Me too.

Court: Ruling delivered in court this 4th day of August 2022 in the presence of the Applicant and both Respondents.



M.S. KASONDE

DEPUTY REGISTRAR

04/08/2022