

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY

AT TABORA

LAND REVISION No. 1 of 2021

*(Originating from Misc. Land Application No. 02/2021 of the District
Land and Housing Tribunal for Tabora at Tabora)*

SALU IKANGO ----- APPELLANT

VERSUS

1. HARUNA NDALI MWANZALIMA ----- 1ST RESPONDENT

2. FATUMA RAMADHANI ----- 2ND RESPONDENT

RULING

Date: 29/06/2022 & 15/07/2022

BAHATI SALEMA, J.:

The first respondent hereinabove named **Haruna Ndali Mwanzalima** instituted a Land Application No. 02 of 2021 before the District Land and Housing Tribunal for Tabora against the appellant **Salu Ikango** and 2nd respondent **Fatuma Ramadhani** praying the tribunal to declare him the lawful owner of the land and house in dispute.

In the course of the hearing of the application, the first respondent requested the tribunal to issue an injunction against the applicant herein from using the disputed land because the appellant had been cutting down trees and performing other activities on the said land.

Upon hearing of the application, the District Land and Housing Tribunal issued the following orders:

- I. Both parties were restrained from using the disputed land for agricultural activities, leasing, mortgaging, or sale pending the determination of the dispute;*
- II. The applicant was restrained from developing crops planted on the disputed land since he disobeyed the lawful order of the tribunal passed on 18/09/2021 by planting crops;*
- III. The applicant was allowed to use the disputed land for residence only;*
- IV. The applicant was restrained from cutting down trees in the disputed area until the finalization of the case, and*
- V. All parties to the dispute were ordered to obey the lawful orders of the tribunal.*

Aggrieved by the decision of the District Land and Housing Tribunal, Mr. Salu Ikango preferred this application for revision; he invited this Court to exercise revision powers against the ruling of the DLHT in Misc. Land Application No. 2/2021. The application was supported by an affidavit sworn by the applicant Salu Ikango.

The second respondent to this application is Fatuma Ramadhani, whose whereabouts were unknown till the date of hearing of this application;

on request by the parties, the court ordered the application to proceed *ex parte* against her.

In the affidavit, the applicant deposed that at the time the ruling was delivered he had already planted seasonal crops for his family's survival and that the time the tribunal visited *locus in quo*, it never stopped him from planting seasonal crops. He contended that the injunction caused injustice on his part as he would fail to provide for his family since he depends on the same land for agriculture.

When the application was called up for hearing, both parties appeared in person unrepresented; the applicant prayed the Court to adopt his affidavit to be his submission; the first respondent, on his part, prayed the court to give its decision according to justice.

Upon my scrutiny of the trial tribunal's record, it is on record that on 17/08/2021 the first respondent prayed the tribunal to issue a temporary injunction against the applicant, but before the learned chairman could give out the order, he decided to visit the *locus in quo* so that he could be in a good position to decide on the order requested. He ordered; I quote;

"Kwa maslahi ya haki mahakama itakwenda kwenye eneo lenye mgogoro kwanza kabla ya kutoa maamuzi ya zuiio."

The record reveals that on 18/10/2021 the tribunal visited *locus in quo* at Block Farm Village, Kakola ward, and upon digesting the observation, the learned chairman passed an order not to use the disputed land pending the determination of the application.

"Eneo lisiendelezwe kwa namna yoyote ile kusubiri maamuzi ya mahakama."

In the affidavit, the applicant contended that on 19/11/2021 when the ruling was delivered by the District Land and Housing Tribunal, he had already planted crops on the disputed land, but he did not tell the court at what time he planted the said crops because, from the date the ruling was delivered, the order restraining him from using the disputed land was already in place.

Taking a look at the tribunal's observation of the *locus in quo*, nowhere does it say that the disputed land had seasonal crops planted on rather it says;

"Eneo kwa sasa linatumiwa na mjibu maombi Namba 1 Salu Ikango na ni kweli amekata miti na kulima."

From the quotation above, no evidence supports the applicant's contention that the disputed land had seasonal crops earlier before the order was passed against using the said land.

Now the issue that remains for determination is whether the ruling and order of temporary injunction passed by the trial tribunal were lawful. Order XXXVII Rule 1 of the Civil Procedure Code, Cap. 33 Revised Edition 2019 gives the tribunal powers to grant a temporary injunction as the learned chairman did. It says: -

1. *Where in any suit it is proved by affidavit or otherwise*
 - a. *that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit or suffering loss of value by reason of its continued use by any party to the suit, or wrongly sold in execution of a decree; or*
 - b. *that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, loss in value, removal or disposition of the property as the court thinks fit, until the disposal of the suit or until further orders:*

Guided by a reference from the above-quoted section of the law, it goes without saying that the learned trial tribunal Chairman was proper to issue a temporary injunction pending the determination of the application before him, and he did the same in accordance with the law.

In the end, I find that there has been no error material to the merit of the case involving injustice so that this court may invoke its revisional powers. For the stated reason, the application for revision fails. I further remit the Misc. Application No. 2/2021 to the trial tribunal to continue with the hearing.

No order as to costs.



A. BAHATI SALEMA

JUDGE

15/07/2022

Ruling delivered in chamber on this 15th July, 2022 in the presence of both parties. Via virtual court link.



A. BAHATI SALEMA

JUDGE

15/07/2022

Right of Appeal fully explained.



A. BAHATI SALEMA

JUDGE

15/07/2022

