

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY

AT TABORA

CONSOLIDATED MISC. LAND APPLICATION NO. 18 & 19 OF 2022

*(Originating from Land Execution No. 8/2022 of High Court, Tabora Registry)*

HASHIM RUNGWE ----- 1<sup>ST</sup> APPLICANT

WORLD OIL (TANZANIA) LIMITED ----- 2<sup>ND</sup> APPLICANT

VERSUS

MRS. ZUBEDA AHMED LAKHA ----- 1<sup>ST</sup> RESPONDENT

HAJIBHAI KARA IBRAHIM ----- 2<sup>ND</sup> RESPONDENT

THE MINISTER FOR LANDS, HOUSING AND

HUMAN SETTLEMENT DEVELOPMENT ----- 3<sup>RD</sup> RESPONDENT

THE ATTORNEY GENERAL ----- 4<sup>TH</sup> RESPONDENT

THE SOLICITOR GENERAL ----- 5<sup>TH</sup> RESPONDENT

ALBERT SITTA T/A MEMO AUCTION

MART AND COURT BROKER ----- 6<sup>TH</sup> RESPONDENT

RULING

*Date: 10/08/2022 & 16/09/2022*

BAHATI SALEMA, J.:

This is an Objection Proceeding brought by the applicants herein **Hashim Rungwe and World Oil (Tanzania) Limited** challenging the validity and legality of the proceedings and subsequent eviction order made in Execution Case No. 8 of 2022.

The decree which was executed originated from the judgment of the Court of Appeal of Tanzania in Civil Appeal No. 238 of 2018 between the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents, whereby the Court of Appeal of

Tanzania declared the revocation of the right of occupancy and sub-division of Plot No. 153, Block A Lumumba Road, Kigoma Municipality to be illegal and announced the 1<sup>st</sup> respondent to be the lawful owner of the suit premises. The applicants claim ownership of the sub-divisions that the Court of appeal declared illegal.

The applications were made separately by way of chamber summons under Order XXI Rule 57(1)(2) Order XXI Rule 58, 59 and sections 68(e) and 95 of the Civil Procedure Code, Cap.33 [R.E 2019]

In their supporting affidavits duly sworn by Hashim Rungwe and Gervas Bidyanguze Director and Chief Executive Officer of 2<sup>nd</sup> applicant, they contended that the eviction order made by the Deputy Registrar in Land Execution Case No. 8 of 2022 is not valid because they have never been party to any case that involved the respondents and further, they are lawful owners of the properties that are about to be attached.

Both applicants are praying for the following orders;

- 1. That this Court be pleased to make an investigation on the matter and order that the applicants are not Judgment Debtors in Misc. Civil Application No. 8 of 2022 HC Tabora, Civil Case No. 15 of 1994 and Civil Appeal No. 238 of 2018 and that the properties known as Plot No. 153/B and 153/3 both located at Kigoma within Ujiji Municipality should not be liable for attachment or an*

*order of eviction as it belongs to the applicants who have interest on the same;*

- 2. That, this Court be pleased to make an investigation and order that the applicants have never at any time or at all acted as an agent of the 2<sup>nd</sup> Respondent or any other respondents in this matter;*
- 3. That, this Court be pleased to make an order restraining the respondents, their workmen/employees and/or agents from evicting the applicants from the suit property; and*
- 4. Costs of the application be provided for.*

For convenience and since the two applications emanated from Land Execution Case No. 8 of 2022; on 25/07/2022 this Court ordered the consolidation of Miscellaneous Land Application No. 18 of 2022 and Miscellaneous Land Application No. 19 of 2022.

When the application was called up for hearing, the first applicant appeared in person under the legal representation of Mr. Edward Molele learned counsel. The second applicant was represented by Mr. Respicius Didas learned counsel and Mr. Mabrouk Chubwa an officer of the 2<sup>nd</sup> applicant whereas on the respondents' side, the 1<sup>st</sup> and 6<sup>th</sup> respondents were represented by Mr. M. Mtaki senior counsel and the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> respondents were represented by Mr. Lameck Merumba learned senior State Attorney. As to the

second respondent, who was absent, the matter proceeded in his absence.

Since the applicants have called upon this Court to investigate the matter, the Court has to evaluate the evidence tabled by the applicants and see whether the applicants have established an interest in the claimed properties and whether this Court can give orders about the proceedings.

Submitting to the Court, Mr. Edward Mollel, learned counsel for the first applicant stated that, his client Hashim Rungwe owns Plot No. 153/B which he acquired from one Bera Kalumba on 10<sup>th</sup> March, 1994 and the said Bera Kalumba acquired the said land from its original owner one Mohamed Ladhu Jaffar who had the offer letter from 1981.

He further added that he applied for an official search at Kigoma Ujiji Municipality where the registry reads that Hashim Rungwe is the lawful owner of Plot No. 153/B.

On his side, Mr. Respicius Didas counsel for the 2<sup>nd</sup> applicant stated that the property in which the 2<sup>nd</sup> applicant is claiming interest was not among the disputed land and they have never been a party to any case until when they received a letter of attachment.

He submitted further that; the execution process initiated by Mrs. Zubeda has touched Plot No. 153/3 at Kigoma Areas which belongs

to the 2<sup>nd</sup> applicant. He added that the 2<sup>nd</sup> applicant's ownership of Plot No. 153/3 traces back to 1985 when it was first allocated to Mr. Gervas Bidyanguze and later to Nashon Bidyanguze as a guardian of Ilakoze Nashon Bidyanguze and World Oil (Tanzania) Limited.

Buttressing his argument, he referred to the case of *Sostenes Bruno Diana Rose vs Flora Shauri, Civil Appeal No. 249/2022* Mr. Respicius stated that an objection proceeding is designed to provide a remedy to a party whose property is at risk of being attached in execution of a decree to which he was not a party. He thus requested the Court to investigate since Land Registry's report clearly shows that the owner of Plot No. 153/3 is World Oil.

Also, speaking of the constitutional right to be heard, Mr. Respicius stated that the 1<sup>st</sup> respondent was aware of the existence of applicants in the disputed land but she chose not to sue them; he contends that all that was designed.

Responding, Mr. Mtaki submitted that the two applicants are beneficiaries of plots whose division was declared illegal by the Court of Appeal of Tanzania. Mr. Mtaki added that the only legal recourse available to the applicants is to sue whoever allocated the land to them because this court cannot declare them owners since the Court of Appeal has already declared a lawful owner.

Submitting on the official search made by the 1<sup>st</sup> applicant to the Land Registry at Ujiji Municipality, Mr. Mtaki contended that the

official search report does not mention the name of Hashim Rungwe rather one Hassan Rungwe who is not a party to this application. Moreover, Mr. Mtaki stated ownership of land cannot be traced in the town council rather the same is done only in the office of the land registrar. He added that Hashim Rungwe has no title proving ownership of the contested land he only owns transaction documents, which are not proof of title.

As to the second applicant, Mr. Mtaki submitted that the second applicant obtained the contested land in 1985, the time when Plot No. 153 was divided, and a division which the Court of Appeal declared illegal. Mr. Mtaki stated that since the Court of Appeal has declared the division to be illegal, this Court cannot fault the decision of the Court of Appeal.

As to allegations of inexhaustible development which have been made by the applicant in the contested land Mr. Mtaki submitted that this Court is not a proper forum and since the applicants were not subject to the appeal cannot be a point of any significance to make.

In a rejoinder, the applicants submitted that the first respondent was aware of the applicant's possession of the suit land but, for reasons better known to them, they did not call or join them in the case. Lastly, Mr. Respicius stated that the applicants are

lawful owners and they have come to show interest and possession. He prayed the Court to grant the application.

Having heard the rival arguments from both camps, before jumping into the core part of this application, I find it vital to make clear the description of Plots upon which the Court of Appeal of Tanzania declared illegal; the first paragraph to page 3 of the Court of Appeal reads in verbatim and I quote:

*"The official search showed that the plot on the suit premises had been subdivided into three plots to wit; Nos. 153/1, 153/2 and 153/3 and relocated to the first respondent Ladhu Jaffer and William Bidyanguze, respectively."*

It is clear that on 27/06/2022 the 6<sup>th</sup> respondent Albert Sitta a Court Broker T/A Memo Auction Mart and Court Broker was appointed and directed to execute Court orders.

On his part, the 1<sup>st</sup> applicant has objected to the attachment of Plot No. 153/B located at Kigoma Municipality. Having carefully gone through the record and the attachments appended to this application, it came to my understanding that Plot No. 153/B is not among the plots that the Court of Appeal declared illegal as it is not among Plot Nos. 153/1, 153/2, and 153/3.

Further, the 1<sup>st</sup> Applicant stated that Plot No. 153/B has been in existence since 1981, whereby one Mohamed Ladhu Jaffa owned the same until he transferred it to one Bera Kalumba. The applicants informed this court further that they have owned Plot No. 153/B since 1994, when they bought it from Bera Kalumba.

Upon my keenly perusal of the record, it seems that Plot No. 153/B is different from the plots described by the Court of appeal on page 3 of the judgment. Further, according to the official search report from the office of Kigoma Ujiji Municipal Council states that Plot No. 153/B Lumumba Road Kigoma Area is owned by HASSAN RUNGWE by letter of Offer of Right of Occupancy dated 02-July-1981.

The first applicant HASHIM RUNGWE has submitted different documents to prove his ownership of Plot No. 153/B, but upon a close examination, none of the documents submitted by him proves that he is the owner of any of the plots that were in the contest in Civil Appeal No. 238 of 2018. The official search report submitted by him states that Plot No. 153/B is owned by a different person known as HASSAN RUNGWE.

For the reasons stated hereinabove, I am inclined to believe that the first applicant is referring to a different property other than the one, this Court ordered its attachment.



Now turning back to the 2<sup>nd</sup> applicant, he claimed to be the owner of Plot No. 153/3 which is among the plots that the Court of Appeal declared illegal.

Objection proceeding is governed by Order XXI Rule 57 of the Civil Procedure Code, Cap. 33 [R.E 2019] which provides that;

*"57.-(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other respects, as if he was a party to the suit:*

*Provided that, no such investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed."*

The second applicant's counsel conceded that the Court of Appeal of Tanzania in Civil Appeal No. 238 of 2018 declared illegal Plot No. 153/3 which among other plots was subdivided from Plot No. 153 Block A Lumumba Road, Kigoma Ujiji Municipal. Along with the chamber summons, the learned counsel for the 2<sup>nd</sup> applicant attached a Certificate of Occupancy issued by the registrar of titles, the certificate entitles the 2<sup>nd</sup> applicant to the right of occupancy over Plot No. 153/3 which has an area of 472 square meters.

In a series of cases that preceded Execution Case No. 8 of 2022 there was no dispute that, plot No. 153/3 came into existence after the revocation of Plot Number 153A and subsequent subdivision, which later led to three separate plots 153/1, 153/2, and 153/3. The 2<sup>nd</sup> applicant has managed to prove to this Court that he currently owns a Certificate of Occupancy in respect to Plot No. 153/3 which its establishment was declared illegal.

In line with the decision of the Court of Appeal in Civil Appeal No. 238 of 2018, it goes without saying that the moment the Court announced the revocation and subdivision of Plot No. 153 to be illegal, all Certificates of Occupancy or letters of offer issued in respect of the said subdivision became obsolete, in other words, I may say that the Certificate of Occupancy that the 2<sup>nd</sup> Respondent holds is no longer operative as it represents a non-existing piece of land.

There is no doubt that the then plot No. 153/3 is still in the possession of the 2<sup>nd</sup> applicant, but since the Court of Appeal is the highest Court in the hierarchy of judiciary in the country has declared her possession illegal, the 2<sup>nd</sup> applicant has to move from the place so that the 6<sup>th</sup> respondent may execute orders of the court peacefully.

As correctly advised by the counsel for the 1<sup>st</sup> respondent, if the 2<sup>nd</sup> applicant wishes to seek justice, she could sue whoever granted her the land that belonged to another person.

In the premises, the application lacks merit and I hereby dismiss it with cost.

Order accordingly.



**A. BAHATI SALEMA**

**JUDGE**

**16/09/2022**

Ruling delivered under my hand and seal of the court in the Chamber, this 16<sup>th</sup> day of September, 2022 in presence of 1<sup>st</sup>, 2<sup>nd</sup> Applicants and in presence of 1<sup>st</sup>, 2<sup>nd</sup>, Respondents, via virtual court.



**A. BAHATI SALEMA**

**JUDGE**

**16/09/2022**

Right to appeal is hereby explained.



**A. BAHATI SALEMA**

**JUDGE**

**16/09/2022**

