

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
BUKOBA DISTRICT REGISTRY
AT BUKOBA

CIVIL REVISION NO. 04 OF 2022

(Originating from Civil Case No. 19 of 2022 at Karagwe District Court)

NGUVUMALI FARMERS CO OPERATIVE SOCIETY.....APPLICANT

VERSUS

STANSLAUS RWEIKIZA KAGANDE.....RESPONDENT

JUDGMENT

Date of Last Order: 07.09.2022

Date of Ruling: 23.09.2022

A.E. Mwipopo, J.

Nguvumali Farmers' Cooperative Society, the applicant herein, was sued by the respondent herein namely Stanslaus Rweikiza Kagande for recovery of debt and general damages in Civil Case No. 19 of 2017 at Karagwe District Court. The hearing proceeded in exparte following applicant's failure to appear and the trial District Court found in its exparte judgment that the respondent proved his claims. The trial Court ordered the applicant to pay Tshs. 18,000,000/= to the respondent as the total amount of the debt owed. The applicant filed Misc. Civil Application No. 16 of 2020 in the same Karagwe District Court to set aside exparte order, but the said application was dismissed for want of merits.

After dismissal of the application to set aside ex parte judgment, the respondent proceeded with execution and the applicant land located at Kanogo area was attached and sold on 12.05.2021 by Court Broker namely Maje Maje Auction Mart to one Johansen E. Kabuz. On 08.07.2021 the trial District Court received the certificate of sale.

The trial District Court on 25.04.2022 issued a summons to the applicant and respondent to appear in Court on 06.05.2022. When the parties appeared in Court, the applicant was informed that the respondent (decree holder) has complained that the applicant is trespassing to the suit land which was sold by auction to Mr. Johansen E. Kabuz on 12.05.202. The District Court ordered the applicant to produce the title of the sold land on 20.05.2022.

On 20.05.2022 the counsel for the applicant namely Mr. Rogate Assey, advocate, informed the District Court that the title deed of the sold land was not found despite efforts to trace it. He also told the Court that the execution was improper for failure to comply with procedures and the attached property does not belong to applicant. He further told the Court that the respondent is not a proper party to bring the application to stop the applicant from trespassing and to surrender the title deed of the sold farm. Following the issues raised by the applicant's counsel, the Court ordered the enforcement of the sale to be done by proper person and it ordered the applicant to surrender the title deed by

20.06.2022. The applicant was aggrieved by the order of the Karagwe District Court and he filed the present application for revision.

The application for revision was filed by Chamber Summons supported by affidavit of Mr. Rogate Assey, advocate for the applicant. In the Chamber summons, the applicant was praying for the Court to call for and examine records of Karagwe District Court in Civil Case No. 19 of 2017 so as to satisfy itself to the correctness, legality or propriety and regularity of the said proceedings. In paragraph viii of the applicant's affidavit, the applicant deposed that the application made by the respondent in Karagwe District Court claiming for certificate of title to be handled over to the respondent while knowing there was no lawful auction to effect such sale is misconceived and may lead to injustice to the applicant.

On the hearing date, the applicant was represented by Mr. Rogate Assey, advocate, whereas the respondent was represented by Mr. Samuel Angelo. The Court invited both parties to address the Court in respect of the revision filed.

The counsel for the respondent said that the application is made under section 79 (1) of the Civil Procedure Code Act Cap. 33 R.E 2019 as they are challenging the order of the Karagwe District Court dated 06.05.2022 before Hon. Haule, SRM. The counsel said that the applicant decided to bring application for revision since there are illegalities in the proceedings of the trial District Court and there is no chance of appeal after their effort to set aside exparte order and to

appeal was not successful. The said order which they are challenging in this revision was in respect of execution. The order was contrary to the law. The District Court ordered on 06.05.2022 the applicant to handle the certificate of occupancy of the applicant's farm to the respondent in execution process. The applicant tried to find the where about of the said certificate of occupancy and failed to locate it. The applicant also enquired to the registrar of title but the said certificate of occupancy was not located. It is obvious that the applicant could not comply with the Court order to handle the said certificate of occupancy.

Further, it was his submission that respondent made application to the court for the certificate of occupancy to be handed to him while he has no interest to the said property. According to the record of the case, the person who bought the land in public auction on 12.05.2021 is Johansen Kabuz. This means that the respondent has no interest whatsoever to the said farm of the applicant. The respondent has already been paid his dues after the auction. Thus, the right person has to file his claims to the District Court and the respondent has no claims whatsoever.

In his response, the counsel for the respondent said that the Karagwe District Court has already handled the issue of the respondent to make application in District Court without having any interest. The recorded show that on 20.05.2022 the applicant raised the same issues in the District Court that the

certificate of the farm in issue is not found despite the efforts and that the respondent is not a proper party to bring the application. The court ordered the applicant to file title deed or give report of where about of the title deed on 20.05.2022 and enforcement of the execution of the sale of the farm in issue through auction has to be brought by proper person. Thus, the said issue has already been properly decided by the District Court and it is not known the reason for the applicant to file the revision in this Court over the same matter which has already been properly decided by the District Court on 20.05.2022. Section 38 of Civil Procedure Code Act provides for matters of execution be handled with execution of court.

In his rejoinder, the counsel for the applicant said that the reason for bringing this application for revision is that after the District Court ordered the proper party to bring the application for handling of certificate of occupancy of the bought farm, still it proceeded to order the applicant to bring the title deed on 20.06.2022 while the application was brought to the District Court by party who is not proper. The District Court could not vacate its own order for the applicant to handle the title deed issue as result the same has to be handled by way of revision to this Court. The proper party may bring application to be handled with the title deed.

The issue for determination in the revision application is whether or not the application for revision has merits.

Under section 79 (1) of the Civil Procedure Code Act, Cap. 33 R.E. 2019, the High Court has revisional power over the decision of any subordinate Court to call for the record and make such order as it thinks fit in any case which has been decided by any court subordinate to it and in which no appeal lies thereto. The High Court may revise the decision of the subordinate Court if such subordinate court appears to have exercised jurisdiction not vested in it by law; to have failed to exercise jurisdiction so vested; or to have acted in the exercise of its jurisdiction illegally or with material irregularity. The revision power of the Court is only be invoked where there is no right of appeal. This was stated by the Court of Appeal in the case of **Transport Equipment Ltd vs. Devram Valambhia [1995] TLR 161**. It was held by the Court of Appeal that:-

"The appellate jurisdiction and revisional jurisdiction of the Court of Appeal of Tanzania are in most cases mutually exclusive; if there is a right of appeal then that right has to be pursued and except for sufficient reason amounting to exceptional circumstances there cannot be resort to the revisional jurisdiction of the Court of Appeal."

Similar position was taken by Court of Appeal in the case of **Augustino Lyatonga Mrema vs. Republic and Another**, [1996] TLR 267 where it was stated that to invoke the powers of revision there should be no right of appeal on

the matter, the purpose of this condition is to prevent the power of revision being used as an alternative to appeal. Despite the fact the Court of Appeal in above decisions was referring to its power of revision provided under the Appellate Jurisdiction Act, substantially the position in revisions are almost similar.

In the present case, the counsel for the applicant has said that the applicant decided to file revision application since he had no right of appeal against the order of the Karagwe District Court dated 06.05.2022 which was issued ordering the applicant to surrender the title deed of his land which was sold in execution of the trial District Court's decree. I agree that the said order is not among the orders appealable under Order XL of the Civil Procedure Code Act. Thus, the only available remedy to the applicant when he was aggrieved was to file the revision. For that reason, the revision was properly filed in this Court.

The applicant has submitted that the execution process was illegal for failure to follow the procedure and the respondent was not a proper person to apply for the order of the District Court to handle title deed of the sold land in execution of decree. On the applicant's submission on the illegality of the procedure for execution, the same could not be the ground for this revision since the applicant had avenue under Order XXI rule 88 to set aside the sale on ground of irregularity and he did not do so. The issue of legality of the execution procedure was never been raised in the trial Court by the applicant. In the case of **Hassan Bundala @**

Swaga vs. Republic, Criminal Appeal No. 386 of 2015, Court of Appeal of Tanzania at Bukoba, (unreported), it was held to the effect that:

"It is now settled that as a matter of general principle this Court will only look into matters which came up in the lower courts and were decided; and not new matters which were neither raised nor decided by neither the trial court nor the High Court on appeal"

Similar position was taken by the Court of Appeal in the case of **Hamis Bushiri Pazi and Others vs. Sauli Henry Amon and Others**, Civil Appeal No. 166 of 2019, Court of Appeal of Tanzania at Dar Es Salaam, (unreported), where at page 17 the Court held that:-

"We have noted however that, the appellants' submissions more particularly in paragraphs 4.2.2, 4.2.3 and 4.5.12 of the written submissions, seek to question the existence of attachment order and proclamation for sale which was neither raised in the pleadings nor evidence. Indeed, the said issue was not even adjudicated upon by the trial court. Therefore, since what was in dispute at the trial court was the legality and effectuality of the attachment and proclamation for sale and not their existence, we shall not, in our judgment, consider any submissions which purport to question the existence of the same."

From above decisions, this Court is not supposed to consider the point of illegality of the execution procedures which in reality the applicant did not submit about it. The said issue was not pointed by the applicant in his pleadings before

this Court. What the applicant did was just mentioning that there were irregularities in the execution procedures.

On the issue that the respondent was not a proper person to apply for the order of the District Court to handle title deed of the sold land in execution of decree, the counsel for the applicant submitted that the sale of the land was done through auction on 12.05.2021 and the land was bought by a person namely Johansen E. Kabuz as it is shown in the proceedings of the trial District Court at page 23. The said person was issued with certificate of sale and the Court recorded the same on 08.07.2021 which means that the sale became absolute.

The Civil Procedure Code Act provides in Order XXI rule 92 that where a sale of immovable property has become absolute and certificate specifying the property sold, the certificate shall bear the name of the person who at the time of sale is declared to be the purchaser, the date and the day on which the sale became absolute.

Further, the same Order XXI of the Civil Procedure Code Act provides in rule 93 that where the immovable property sold is in the occupancy of the judgment debtor or of some person on his behalf or of some person claiming under a title created by the judgment debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 92, the court shall, on the application of the purchaser, order delivery to be made by putting such

purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property and, if need be, by removing any person who refuses to vacate the same. The above cited law clearly provides that it is the purchaser who have to apply for the order of the Court to receive delivery of the property and, if need be, by removing any person who refuses to vacate the same. Thus, it was the purchaser who was supposed to file application for the applicant to submit the title deed and to order for the order to remove the applicant from the land. The respondent had no locus standi.

Locus standi is a right or capacity to sue or bring action against another or right to appear before the Court in a proceedings. The same is possible where a person has an interest in a proceedings. In the case of **Lujuna Shubi Balonzi vs. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 208 it was held that:-

"In this country locus standi is governed by Common law. According to that law in order to maintain proceedings successfully, a plaintiff or applicant must show not only that the court has the power to determine the issue but also that he is entitled to bring the matter before the court."

In another case of **Godbless Jonathan Lema vs. Mussa Hamis Mkangaa and 2 Others**, Civil Appeal no. 47 of 2012, Court of Appeal of Tanzania, at Arusha (Unreported), held at page 11 that in common law in order for one to succeed in an action, he must not only establish that his rights or interests were

interfered with but must also show the injury he had suffered above the rest. The Court of Appeal went on to quote with authority the decision of Malawian Supreme Court of Appeal in the case of **The Attorney General vs. Malawi Congress Party and Another**, Civil Appeal no 32 of 1996 whereby it had this to say:-

"Locus standi is a jurisdictional issue. It is a rule of equality that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say, unless he stands in sufficiently close relation to it so as to give a right which requires prosecution or infringement of which he brings the action."

From above cited decisions, a person have right to sue where her/ his right has been interfered and had suffered injury from the interference.

Back to this case, it was wrong for the respondent who has no interest whatsoever after he was paid his debt following the sale of attached land to institute the application in trial District Court. The person with locus standi to bring such an application was purchaser namely Johansen E. Kabuz. The record of the Karagwe District Court shows in page 26 of the typed proceedings after the applicant has raised the issue that the respondent has no locus standi to institute the application, the District Court made an order that the enforcement has to be done by the proper person meaning the purchaser. However, the District Court proceeded to make an order for the applicant to bring the title deed by 20.06.2022.

This was not proper as what was supposed to be done by the District Court is to struck out the application on condition that the proper party to bring the application.

Therefore, the proceedings of the Karagwe District Court in Civil Case No. 19 of 2017 from when the respondent made application for the applicant to handle title deed onwards is quashed and the orders thereto is set aside. The proceedings of the District Court which were quashed are from 06.05.2022 to 20.06.2022. The purchaser of the sold land may institute a fresh application in the District Court under Order XX1 rule 93 of the Civil Procedure Code Act if he is interested. Each party shall take care of his own cost. It so ordered accordingly.



A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

A. E. Mwipopo
Judge
23/09/2022

Court: The Judgment was delivered today in representative for the applicant and the counsel for the respondent.



A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

A.E. Mwipopo
Judge
23/09/2022