

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

LAND REVISION NO. 2 OF 2022

*(Arising from Application No. 2 of 2022 District Land and Housing
Tribunal of Kahama)*

STANTIL ELECTRO COMPANY LIMITED.....APPLICANT

VERSUS

ARTHUR THOBIAS MZOBORA.....1st RESPONDENT

ASIA MZOBORA2nd RESPONDENT

DICKSON T. KIYEGE @ MUSTAPHER.....3rd RESPONDENT

RULING

13th & 20th July, 2022.

S.M. KULITA, J.

On 31/08/2022 this court received the complaint letter from the Applicant's Director that the District Land and Housing Tribunal for Kahama which was entertaining her case in which she was the Applicant, Application No. 2 of 2022, made a decision to withdraw her case without herself being involved. According to her the said decision was made on 11/05/2022.

The case file comprises the said complaint letter by authored by the complainant, also the minute by the Hon. Judge In-charge ordering for the revision case to be filed, hence this application for Revision.

In this Land Revision Case which was filed *suo motto*, the court summoned the parties and they actually attended. The Applicant is represented by Ms. Regina Mashauri, the Principle Officer while the respondents appeared in person.

In her submission Ms. Regina Mashauri submitted that she lawfully purchased a land/plot located at Kahama from the 1st Respondent one **ARTHUR THOBIA MZOBORA** but she later on found the said plot trespassed by the 3rd Respondent (**DICKSON T. KIYEGE @ MUSTAPHER**) who had started to construct a structure on it. She lodged a case in that respect at the District Land and Housing Tribunal of Kahama which was registered as the Land Application No. 2 of 2022.

The applicant said that she had engaged an Advocate namely Ms. Angelina Kalenzi to represent her in that case. She further alleged that she was later on surprised to be informed by her counsel that the case has been withdrawn and the Tribunal ordered the Respondents to pay back her Tsh. 3,700,000/= that she had paid to the 1st Respondent as a consideration for the purchase of the

said plot. That incident led the applicant to lodge the complaint letter before this court that she had never consented to withdraw the said matter at the tribunal, hence this application for revision. It is the submission of the Applicant that she is not ready to receive the said money nor to surrender the said plot of which she believe to have purchased lawfully from the 1st Respondent and that she had not consented to settle the matter as it was so stated by the trial tribunal.

Replying the said submission by the applicant, the 1st Respondent **ARTHUR THOBIA MZOBORA** submitted that the suit land was his property and that he had sold it to the Applicant in April, 2020 at Tsh. 3,700,000/=. As for the Land Application No. 2 of 2022 District Land and Housing Tribunal of Kahama the 1st Respondent submitted that he had never attended to court for that matter and knows nothing about its settlement out of court.

The 2nd and 3rd Respondents namely **ASIA MZOBORA** and **DICKSON T. KIYEGE @ MUSTAPHER** respectively submitted almost the same thing that the suit land is a property of their relative namely Nyabwiza d/o Thobias Mzobora who lives in Dar es Salaam. They said that it was not the property of the 1st Respondent. They alleged that the said Nyabwiza d/o Thobias Mzobora has all the documents which prove her ownership status

over that property. They further averred that they convened a family meeting and agreed to refund the purchasing money to the Applicant as the fault of selling the said suit property was done by their relative, the 1st Respondent who has a plot over that same area but not the one he had sold to the Applicant.

They further said that the matter was then settled before the court in the presence of the Applicant's Advocate Ms. Angelina Kalenzi in which it was decided that the 3rd Respondent should refund the Applicant her Tsh 3,700,000/= that she had paid for the purchase of the suit property and the Applicant was ordered to leave vacant possession of the premise. That, they attempted to pay back the Applicant her purchasing price but she denied to receive the same. According to the 3rd Respondent the Applicant wanted to be paid more, to wit Tsh. 5,000,000/=, the amount which they were not ready to pay.

From the above submissions, the contents of complaint letter as well as the tribunal's records, there is no dispute that on the 11/05/2022, in the presence of Ms. Angelina Kalenzi, Advocate for the Applicant, also in the presence of the 3rd Respondent but in the absence of the other parties, Advocates for the 3rd Respondent Mr. Festo D.N. Lema addressed the tribunal that they have agreed with the Applicant to settle the matter out of court by refunding her the

Tsh. 3,700,000/= that she had paid for the purchase of the suit property. The Applicant's Advocate, Ms. Angelina Kalenzi had no objection, hence the Chairman marked the matter withdrawn by the Applicant. The issue is whether the matter was rightly withdrawn.

According to the records, particularly the tribunal's proceedings dated 11/05/2022, it is the Mr. Lema, Advocate for the 3rd Respondent (**DICKSON T. KIYEGE @ MUSTAPHER**) who initiated the issue of withdrawal of the case by addressing the court that they (he and the 3rd Respondent) have settled the matter with the Applicant, that the 3rd Respondent would pay back her (Applicant's) purchasing money and that the said applicant would vacate the premise, and by doing so, the matter would be settled. Advocate for the Applicant, Ms. Angelina Kalenzi just replied that she had no objection.

In that scenario, I don't think that Advocate for the Applicant, Ms. Angelina Kalenzi was right to concur with the submission of the 3rd Respondent's Counsel, Mr. Lema that they (he and the 3rd Respondent) have so agreed with the Applicant, without herself (Angelina Advocate) confirming from her client (Applicant), who was not in court on the material date, whether it was true. It thus

happened that the Applicant denies to have met and so agreed with the 3rd Respondent nor his Advocate, Mr. Lema.

In practice we expected Ms. Angelina Kalenzi herself, as the Advocate for the Applicant who intends to withdraw her case, be the first person to address the court that they wish to withdraw their case, instead of the Respondent's counsel to do so.

Further, in settling the matter like this, under **Order XXIII, Rule 3 of the Civil Procedure Code [Cap 33 RE 2019]** the parties have to sign a deed of settlement from which the decree will be extracted. This provision provides the instructions that after agreement or compromise of the parties to a suit a decree should be extracted. It provides;

"Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit"

Under the provision quoted hereinabove, a consent decree should follow upon the presence of the compromise order. The recording

of compromise is a question of substance. The court has to find out if really there is any agreement between the parties for compromise. The terms of the settlement must be carefully examined to see that the parties understood the terms of the compromise and to make sure that, there is no fraud or misrepresentation. Basically, when the court satisfies itself of the existence of an agreement resolving the dispute between the parties in relation to the suit before it, and when the parties appear to understand the terms of the compromise, which is not tainted with fraud or misrepresentation, a consent judgment is entered. It is from that judgment, a consent decree is extracted for enforcement purposes.

In the matter at hand, I don't see the deed of settlement, consent judgment nor the consent decree in the original record. As well, the proceedings are silent if the presiding Chairman did or said anything about it, which means that they were not even in progress to be extracted. Be it noted that the deed of settlement is used to be signed by both parties to the case. The fact that there is no deed of settlement in the record, I find this matter was not properly concluded by the tribunal as the final order does not constitute a lawful compromise between the parties.

Having so said I find the withdrawal of the original case, Land Application No. 2 of 2022 at the District Land and Housing Tribunal of Kahama is tainted with doubts for non-involvement of the Applicant herein, who was also the complainant in the tribunal.

Under the inherent revisionary powers vested to this court under **section 43(1)(a) of the Land Disputes Courts Act [Cap 216 RE 2019]**, I hereby quash the tribunal's proceedings dated 11/05/2022 which led to the issuance of the impugned decision. I further order the original case file, Application No. 2 of 2022 be remitted back to the District Land and Housing Tribunal of Kahama for continuation of entertaining the matter for the proceedings ended on 06/05/2022. This should be done before another Chairman with a new set of Assessors.

Order accordingly.


S.M. KULITA
JUDGE
20/10/2022

ORDERS;

1. The original case file to be remitted back to the District Land and Housing Tribunal of Kahama.
2. Mention before the District Land and Housing Tribunal on 10/11/2022 at 1000 hours.
3. Parties notified to attend.




S.M. KULITA
JUDGE
20/10/2022

