

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY
AT ARUSHA**

LAND APPEAL NO. 216 OF 2022

(C/F Land Application No. 112 of 2018 District Land and Housing Tribunal of Arusha at Arusha)

SAMWEL LEINDOI 1ST APPELLANT

JULIUS LEINDOI 2ND APPELLANT

VERSUS

SANGETI MEITAWAS 1ST RESPONDENT

FRED NGOWI 2ND RESPONDENT

JUDGMENT

26th July & 8th September, 2023

TIGANGA, J.

This appeal emanates from the decision of Land Application No. 112 of 2018 of the District Land and Housing Tribunal of Arusha at Arusha (the trial tribunal) in which the appellant herein unsuccessfully prayed for the declaration of ownership concerning a piece of land measuring 14 acres located at Loovilikun Village in Kisongo Ward within Arusha District (the suit land).

According to the trial tribunal's records, the appellants were bequeathed the suit land by their late father in 1991 and they have been using the same for cultivation since then. The appellants' late father had three wives, the 1st, 2nd and 3rd wives, the appellants were born from the

1st wife, and one Saibulu Leindoi is their stepbrother from the 3rd wife, and is now deceased. The record further shows that the said Saibulu had a dispute with the 1st respondent regarding the piece of land on which the 1st respondent with his Boma was residing at the time. The Kisongo Ward Tribunal vide Application No. 13 of 2007 declared Saibulu as lawful owner. The 1st respondent appealed to the District Land and Housing Tribunal, but the appeal was unsuccessful as the District Tribunal upheld the Ward Tribunal's decision.

Consequently, in the urge to execute the Ward Tribunal's decision, Saibulu demolished four houses which were 1st respondent's properties in urge to possess the suit land. However, the table turned as the 1st respondent successfully appealed against the said Saibulu vide Land Appeal No. 59 of 2009 filed in this Court. Hon. Sambo, J. among others, held that neither of them had *locus standi* to institute a case against properties involving their late father without being appointed the Administrator of the estate, and hence the property distributed to them as part of their inheritance. He thus nullified both the decision of the Ward and District Tribunals.

Following such decision, the 1st respondent herein filed Land Case No. 9 of 2011 in this Court claiming for compensation of his demolished

properties when the late Sabulu was executing his decree. Hon. Mwaimu, J. granted his prayers and awarded the 1st respondent a total of Tshs. 24,500,000/=, Tshs. 20,500,000/= being the compensation for demolished houses and Tshs. 4,000,000/= as general damages. In executing this Court's Decree in that particular case, the suit land in the current appeal was attached and sold via a public auction by First World Investments, Court Broker. According to the appellants, in the said auction, it was alleged that it was the 2nd respondent who won the bid, going through the record, specifically Annexure 7 in the 1st respondent's additional documents, titled Certificate of Sale of Land, it is one Fredrick Justin Lyaruu who emerged as the top bidder in an auction conducted on 17th November 2016 and now possess it as a *bonafide* purchaser.

In the appellants' application before the trial tribunal, and even in the current appeal, it is not clear as to why the 2nd respondent is party to this matter. There is no evidence showing cause of action against him.

The circle started all over again as the appellants filed their grievance to the trial tribunal claiming that, the suit land was wrongly attached and sold to realize what was awarded in the decree because the same did not belong to the late Saibulu. They claimed that the suit land was theirs and the late Saibulu, their brother, had another property also

bequeathed to him by their late father which would have been attached in satisfaction of the decree. The trial tribunal dismissed their application on the ground that, they had room to object to the attachment and sale when the same was advertised for 90 days and not wait until the property was sold and file this application. Aggrieved by the decision, they have preferred this appeal advancing two grounds as follows;

1. That, the learned trial Chairman erred in law and fact in holding that the suit land previously belonged to the late Saibulu Leindoi without any material evidence on record.
2. That, the trial Chairman erred in failing to analyze and consider facts adduced by the appellants which prove them as lawful owners of the suit property.

During the hearing which was by way of written submissions, the appellants were represented by Mr. Josephat Z. Msuya, learned Advocate while the 1st respondent appeared in person, unrepresented. The 2nd respondent did not bother to file his submission nor make an appearance hence, the hearing proceeded in his absence.

Supporting the appeal, Mr. Msuya submitted on the 1st ground of appeal that, the trial tribunal erred in holding that the suit land belonged to the late Saibulu Leindoi while there was no proof to support the same which was submitted by the respondents. He argued that when the suit

land was advertised for auction, they did not object because at the time they were not in Arusha and their relatives who were living near the suit land had no interest in the same. Despite that, none of them witnessed the auction taking place, they only became aware when the suit land was fenced.

The learned counsel further submitted that the time limitation for the land disputes is twelve years, thus, looking at the history, the dispute arose in the year 2016 and this matter arose in 2018 hence two years is not long enough to hold that the claim was time barred. He also argued that the trial chairperson erred in declaring the late Saibulu Leindoi as the lawful owner of the suit land based on the sole ground that, the appellant neither objected to the advertisement nor the auction of the suit land without considering the fact that, both the appellants were not notified on the same.

It was Mr. Msuya's further submission that, the appellant's late father bequeathed the suit land to them in 1991 with instructions that, the same be given to them after his demise, thus, the trial tribunal erred in holding that, their ownership is wanting for not being formerly distributed in accordance with probate and administration of estate laws as there was no probate cause ever opened in respect of their late father's

estate. He also contended that the 1st appellant had been peacefully using the suit land since 1991 when it was bequeathed to him until 2016, when the respondents trespassed therein, hence by virtue of adverse possession he should not be disturbed.

Mr. Msuya also averred that there is no evidence showing that the suit land was auctioned. That even the 1st respondent confessed to not being part of the said auction, even the local government leaders told the trial tribunal that, they did not witness any auction. Thus, in the absence of any document proving the auction the said procedure remains wanting. More so, the boundaries mentioned by DW3 are different from the one to the suit land auctioned. He prayed that this appeal be allowed with cost.

Opposing the appeal, the 1st respondent started his submission by giving the historical background of this matter as briefly hinted above. He further submitted that this Court being the 1st appellate Court has the duty to re-assess and re-evaluate the trial tribunal's evidence and give its own findings. He asserted that, when filing this application, the late Saibulu was still present but somehow for the reasons best known to themselves, they did not join him in this dispute. Furthermore, even in this matter, they have failed to join the Court Broker who supervised the auction. They also did not object to the whole procedure despite being aware of the

facts that, the suit land was attached and sold in an auction in the execution of court Decree issued in Land Case No. 9 of 2011. In that regard, they sat on their rights, and cannot shift the blame to the late Saibulu or rather shift the burden of proof regarding the whole execution process to the respondents. He urged, this Court to analyze the evidence and dismiss the appeal with cost.

In his brief rejoinder the appellants' learned counsel reiterated his earlier submission and maintained that, in Land Case No. 9 of 2011 the dispute was between the late Saibulu and the 1st respondent herein, hence, the appellants were neither a party nor notified when the execution proceedings ensued to its final. As a result, they did not object the same. He maintained that this Court allowed the appeal.

Having gone through the trial court's records as well as both parties' submissions, it is clear that, although the appellants prayed among others, to be declared owners of the suit land and the 1st respondent as well as the 2nd respondent according to them is a *bonafide* purchaser be ordered to give vacant possession of the suit land, their evidence at the trial tribunal as well as the submission made before this Court, they are challenging the attachment and sale of the suit land. In other words, they

are challenging the execution proceedings and its resultant orders and actions.

In the circumstances, there is no way that declaration of the ownership of the suit land will not touch and affect the decisions made by this Court in Misc. Land Case Appeal No. 59 of 2009, (Sambo, J.) between the late Saibulu Leindoi and the 1st respondent herein as well as Land Case No. 9 of 2011, (Mwaimu, J.) which was between the 1st respondent herein and the late Saibulu Leindoi and Tanzania Auction Mart, the latter being the decision in which the execution involving the suit land ensued.

By its nature, the matter at hand should be confined to objection proceedings. Order XXI Rule 64 of the **Civil Procedure Code**, Cap 33 R.E. 2019, (CPC) empowers the executing court to sell the property of the judgment debtor and to pay out of the sale proceeds, the decretal sum to the decree-holder. The said provision reads:

"Save as otherwise provided, every sale in execution of a decree shall be conducted by an officer of the court or by such other person as the court may appoint in this behalf and shall be made by public auction in the manner prescribed".

It is thus clear from Rule 64 of Order XXI of the CPC that every sale in execution of a decree has to be made by a public auction. The public auction has to be conducted by an officer of the court or by such other

person as the court may appoint and nobody else. Apart from that, Rule 65 of Order XXI of the CPC provides that, where any property is ordered to be sold by a public auction in execution of the decree, the court should cause a proclamation of the intended sale to be made in the language of such court. Subrule (2) of Rule 65 provides for the drawing up of a proclamation by the court after the issuance of notice to the decree-holder and the judgment debtor. In the absence of such a proclamation sale becomes incurable irregularity. See; **Balozi Abubakari Ibrahim and Another vs. Ms. Benandys Limited and Two Others**, Civil Revision No. 6 of 2015, CAT at Dsm.

Other procedures involve the court broker sending the report to the court indicating what transpired. At the end, the executing court issues a Certificate of Sale of Land under Order XX1 Rule 94 of the same law to the lawful purchaser. Looking at the appeal at hand, I take judicial notice that, all of the above requirements were adhered to in executing the decree in Land Case No. 9 of 2011 as gleaned from attachments of the additional documents filed by the 1st respondent at the trial court.

The 1st respondent herein successfully executed the decree of this Court through, First World Investment, the Court Broker, and the suit land was attached as the property sold in executing the decree. In the circumstances, of this Court, having the same jurisdiction has its hands

As I am *factus officio* to inquire on whether or not the said decisions, as well as the decree executed thereof, were erroneous or not. That being said even the trial tribunal erred in entertaining the dispute as a fresh suit without prior objection proceedings objecting to the attachment and sale of the suit land which was determined by the Deputy Registrar, on 09th February, 2016.

Consequently, its supervisory jurisdiction under section 43 (1) (5) of the Land Disputes Courts Act [Cap 216 R.E. 2019] revise the trial tribunal's decision and nullify it for want of jurisdiction. The appellant is advised to challenge the attachment and sale of the suit land before the competent Court subject to laws of time Limitation. Or rather challenge the prior decisions of this Court before the Court of Appeal, also subject to Laws of Limitation.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 14th day of September 2023



A handwritten signature in blue ink, appearing to read "J.C. Tiganga".

J.C. TIGANGA

JUDGE