IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL REVISION NO. 8 OF 2021

(Originating from Application No. 10 of 2012 in the District Land and Housing Tribunal for Karatu at Karatu)

MAGRETH MUNKA .....APPLICANT

VERSUS

MUNKA ZEBEDAYO KILERAI

(Administrator of the Estate of Simon Munka)..... RESPONDENTS

RULING

04/04/2022 & 23/05/2022

KAMUZORA, J.

This is a revision suo motu initiated by this court pursuant to the complaint letter lodged by the Applicant before this court and received on 17/03/2021. The gist of the complaint letter is such that, on 15/01/2021 the Chairman of the DLHT read the judgment in the presence of both parties and dismissed the application while granting the counterclaim as raised by the Respondent in favour of the Applicant. That, immediately after the pronouncement of the judgment the Applicant requested to be supplied with the copies of the said judgment and upon constant follow up the Applicant discovered that the said

judgment was not fully composed and there was no any signed judgment in record.

In the Applicant's original complaint and supplementary complaint received on 27/07/2021 it was insisted that the chairman read to the parties the judgment that was not fully composed and which did not discuss the issue of counter claim. The applicant thus calls upon this court to exercise its power under section 44(1) and (2) of the Land disputes Courts Act, Cao 216 of 2002 and call for the lower record inspect it and give directions to the same.

Parties were accorded chance to address the court on the matter and the Applicant was represented by Mr. Lengai Nelson Merinyo while the Respondent was ably represented by Ms. Fatuma Amir.

In addressing the court on the complaint Mr. Merinyo submitted that, the key point of the complaint is that there is no fully written judgment issued by the trial Tribunal. That, on 15th January 2021 when the Tribunal sat to deliver its judgment the Chairman dictated his words from the vacuum with the view of coming to compose the judgment in the future date. That, In the course of perusal of the records of the DLHT the counsel for the Applicant discovered that, the judgment on the part of the counter claim though was dictated to parties it was not

written in the handwritten judgment available in the file. That, immediately after the chairman had written the judgment on the application, he signed and proceeded to write the other side of the counter claim but he never completed. That the judgment which is available in the records shows that the Hon. Chairman had numbered pages by No. 1 to 16. When proceeding to write on the counterclaim he numbered it in alphabetical order but that part of the counter claim was not completed and signed to make part of the judgment.

Mr. Lengai further submitted that the chairman when reading the judgment dismissed the application and when proceeded to read the judgment the counter claim was granted in favour of the Applicant herein because the Applicant has been there for more than 30 years. However, that pronouncement was not there in the written judgment and as part of the counter claim was not completed.

Mr. Lengai claimed that, due to inconsistencies in the Tribunal judgement they sought for the intervention of this court under Regulation 19 (1) and (3) of the Land Dispute Court Act (DLHT) Regulation 2003, GN No. 174 of 2003 and section 43 of the Land Disputes Courts Act. Mr. Lengai was of the view that the act of reading uncompleted judgement contravenes Regulation 20 (1) of GN No. 174 of

2003 and Order XX Rule 4 of the CPC which require the judgement to be written down in the brief statement of facts findings on the issues, reasons for the decision and the decision the contents which lack in the judgment available on records. That, what is available is only introduction showing that the Respondent has lodged the counter claim on the reliefs that were itemised in roman numbers. He added that issues were also framed but no analysis evidence or finding of the issues or the decision thereon. For that he prays this court to find that there was no proper decision in the records.

To support of his argument, Mr. Lengai cited the cases of **Finca Microfinance Bank Vs Peter Makanji,** Civil Appeal No. 100 of 2001 HC at DSM (unreported) pg.10 to 11**, Atony Tangale Vs Republic,** Criminal Appeal No. 78 of 2017, HC, (unreported) pg. 1, 4 and 8 and **Emmanuel Kavira Vs Republic,** Criminal Appeal No 19 of 2020 (unreported) HC at DSM pg. 1 and 6 where the court discussed the significate of the judgement which is mutatis mutandis to what is under Order XX Rule 4. He claimed that the chairman in this case determined the counter claim but did not analyse the evidence used to determine the counter claim. He insisted that, failure of the chairman to consider

the counter claim reflect a danger to temper with the parties right and interest pronounced on the judgment.

Mr. Lengai also contended that Regulation 19 (1) of GN No. 174 of 2003 requires the Tribunal to issue its judgment within three months after conclusion of hearing. That, from 15th January 2021 to 26th July 2021 when the judgment was not yet produced to an end. He regarded the delay in delivering the judgment and composing incomplete judgment as a conduct which endangers the parties' rights. Mr. Lengai thus prays to this court for the following orders: -

1. That, this court invoke its powers under section 43 (1)(a) and (2) of the Land dispute Court Act to direct the Charman to complete his judgment in a similar manner it was read to parties on 15th January 2021. This includes the power of the court to waive the three months requirement of issuance of judgement.
2. In alternative to that prayer, quash the whole judgment and order another judgment to be written. This is due to the fact that the responsible Chairman was transferred to another registry.
3. To quash all the proceedings and the semi-written judgment and order retrial. This remedy will help to have a proper assessors' opinion during retrial because the existing assessors' opinion were

issued on 19th April 2020 and the judgement was delivered on 15th January 2021 several months from the date the assessors' opinion was gathered.

In her reply Ms. Fatuma submitted that, the complaints letters by the Applicant shows that the judgment was delivered to both parties on 15th January 2021. That, the Applicant was complaining for not being supplied with a copy of the judgment which is a fundamental right of the parties as per Order XX Rule 20 of the CPC. That, in this case the parties applied for copies of judgement and are yet to be supplied with same but the judgment was pronounced as per Order XX Rule 1 of the CPC which is similar to Regulation 19 of the GN No. 174 of 2003.

Ms. Fatuma claimed that the submission by the counsel for the Applicant is out of scope of what is raised as complaint in two letters referred. That, paragraph 4 of the letter filed in court 27th July 2021, does not contain the word dictate, as the word used is read. That, when you dictate it means, it is not written. She also pointed out that, the issue of assessor was not addressed in those letters and no prayer for retrial or content of the judgment or analysis of evidence. That, the hearing was to base on what is complained of in those letters thus, they were taken by surprise on what was submitted by the counsel for the

Applicant and denied the right to be heard. That, under those letters there is no complaint regarding the correctness, legality and irregularity either of the proceedings, findings, order or Judgment of the DLHT which can be the reason for this court to revise or quash the decision. To support her submission, Ms. Fatuma cited the case of **The Society Generally De Surveillance S.A Vs VIP Engineering and marketing Ltd,** TLR 2000 pg.156 where it was held that the court cannot invoke revisional jurisdiction where there is no complaint regarding the correctness or regularity of the proceedings of the DLHT.

She was of the view that, this court cannot revise the decision pronounced to the parties and the copies of which are yet to be supplied. That, under section 44 (1) of the LDCA RE 2019, the revision must focus on the incorrectness, illegality, impropriety and irregularity of the orders or proceedings of the DLHT. That, the cases cited by the counsel for the Applicant; **Finca Microfinance Bank**, it is Civil Appeal No 100 of 2001 and not civil revision hence distinguishable from the circumstances in this case. That, the case of **Antony Tangale** and the case of **Emmanuel Kavira,** are criminal appeals and not revisions and grounds for revision are different from the grounds of appeal.

Regarding the prayer made by the counsel of the Applicant that this court compel the chairman to complete the judgment in similar manner it was read to parties Ms. Fatuma was in agreement with that prayer and insisted that this court compel the chairman to complete the judgment for the parties to be supplied with their copies. However, she did not agree with the Applicant prayer that the judgment be re-read to parties. She was of the view that Order XX Rule 1 of the CPC and Regulation 19 (1) of GN No. 174 of 2003 does not direct the judgment to be read twice to the parties and that the prayer to read the judgment has no material basis.

In the alternative prayer, the counsel for the Respondent prayed for the same to be dismissed. She added that since there is a lacuna in GN No. 174 of 2003 as to who is responsible to compose a judgment, she referred Order XX Rule 3 of the CPC which require a judgement to be written or directed to be reduced into writing by the presiding magistrate or judge. That, the same can be altered based on the circumstances under section 96 of the CPC or on review and that the alteration can be on material error on records.

On the third prayer Ms. Fatuma submitted that this court cannot exercise powers of revision based on regulation 19 (3) of GN No. 174 of

2003. That, the provision deals with the judgment which is not pronounced to the parties. That, under Regulation 19 (1) of GN No. 174 of 2003 the judgement can be pronounced immediately or reserved for later date. That, in the instant case the judgement is already pronounced and not reserved.

On the allegation that the chairman was tempering with complainant's rights Ms. Fatuma submitted that, it is a serious accusation and allegation which needed the complainant to state the source of information supporting that claim that numbering the use of numerical and alphabet number was intended to temper with the rights of the parties.

On the prayers for this court to quash the proceedings and order retrial Ms. Fatuma submitted that, such prayers are not indicated in the complaint letters as they were brought in the submission in chief by the counsel for the Applicant. She therefore prays that instead of excising revisional powers this court should exercise supervisory powers under 43 (1)(a) and direct the Chairman to complete the judgment and to issue copies of the certified judgment to the parties for them to take necessary action.

In rejoinder Mr. Merinyo reiterated the rights pronounced to the parties were not included on the second part of the judgement on counter claim. Regarding the word dictated, he submits that it is only a vocabulary which does not form any principle of the law. On the assessors, opinion he stated that the same is pleaded in letter at the last paragraph. He also added that, this revision was preferred by this court suo motu under the provision of Regulation 19 (3) which allow the court to use section 43 of the Act. That, section 43 (2) gives court power to revise even when dealing with appeal. Mr. Lengai added that the counsel for the Respondent did not dispute to the fact that the judgment was not completed.

He reiterated that the complaint letters intended for court intervention to protect the parties' interest. That, the records are clear that the judgement which is in court records is not completed. To him the records are source of information proving that the conduct of the Chairman endangered the rights of the parties. He thus reiterated the prayers in the submission in chief.

Upon perusing the records of the District Land and Housing Tribunal of Karatu in application No. 10 of 2012 and upon hearing the submissions by the counsel for the parties I have discovered that there

is no complaint regarding the propriety or correctness of the proceedings of the trial tribunal. Thus, the prayer by the counsel for the applicant that the proceedings be quashed to allow the assessors to bring new opinion is baseless. The basis of the complaint resulting to the present revision is the propriety, legality and correctness of the judgment issued by the District Land and Housing Tribunal of Karatu.

I am much aware that every Magistrate or judge has got his or her own style of composing a judgment and what vitally matters is that the essential contents of a judgment should be there. For this see the case of **Amir Mohamed V. R** [1994] TLR 139. Again, Order 20 Rule 4 provides for the contents of a judgement and it read: -

> *"A judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision."*

It is clear from the records that the judgment of the trial court was incomplete as it was also discovered and well pointed out by the counsel for the Applicant. Apart from pointing out the issue on counter claim and points for determination no decision was made regarding the counter claim. Both counsel for the parties are also in agreement that the judgment of the trial tribunal was not complete, but their point of

difference is on the order to be issued by this court. While the Applicant's counsel prays that direct the Charman to complete his judgment in a similar manner it was read to parties on 15th January 2021 or in alternative quash the whole judgment and order another judgment to be written or quash all the proceedings and the semi-written judgment and order retrial, the counsel for the appellant insisted that this court should only exercise supervisory powers under 43 (1)(a) and direct the Chairman to complete the judgment and to issue copies of the certified judgment to the parties for them to take necessary action.

In the actual sense both parties are in agreement that the judgement composed by the chairman did not meet the criteria and set standards of a judgment as required by law. This contravened the law and the same cannot stand as the judgment of the Tribunal determining rights of the parties. In that regard, I do not agree with the proposal for an order to complete the judgement which does not meet the lagal standards.

It was also alleged that what was dictated by the Chairman on the date of judgment was not reduced into writing. That allegation is vital and requires the trial Tribunal to be given chance to assess all evidence

for both parties regarding the application and the counter-claim and compose a judgment with all contents of a judgment prescribed by the law.

That being said, in exercise of my revisionary powers under section 43(1)(a) of the Land Disputes Court Act, I hereby quash and set aside the judgment of the trial Tribunal and all orders arising therefrom. The original file be remitted back to the DLHT for the Chairman who heard the application or his successor if the responsible chairman is inoperative to compose a judgment and deliver the same within statutory prescribed time. Since this revision was raised suo motu by this court, no order for costs is granted. Order accordingly.

DATED at **ARUSHA** this 23rd day of May, 2022.

D.C. KAMUZORA

JUDGE