

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

LAND REVISION NO. 1 OF 2020

SUNGURA CEMENT COMPANY LIMITED.....APPLICANT

VERSUS

COMMISSIONER FOR LANDS..... RESPONDENT

JUDGEMENT ON REVISION

Mansoor, J.

20TH MAY 2022

This revision arises from the proceedings of the District Land and Housing Tribunal for Tanga "the Tribunal" exercising its powers given under section 50 of the Land Act Land Act, 1999, Cap 113 R. E 2002, for recovery of rent by the Commissioner for Lands. Section 50 provides:

50.-(1) Subject to the provisions of this section but without prejudice to any other remedy for the recovery of rent and interest payable under section 33, where any person who is liable for rent for a right of occupancy granted under this Act fails to pay such rent or any instalment thereof on the due date, an



authorized officer may serve or cause to be served on such person, a written notice calling upon such person to pay such rent or instalment together with interest, if any, within fourteen days of the service of the notice and, if at the expiration of such period of fourteen days, the rent or instalment and interest, if any, has not been paid, the authorized officer may cause a copy of the notice to be filed in the District Land and Housing Tribunal or District Court within the area in which the land to which the right of occupancy relates is situate, and upon such copy being so filed, it shall be deemed to be a decree passed by such Court against the person to whom the notice is addressed for payment by him to the President of the amount specified in such notice as being due from him together with such interest thereon at the Court rate from the date on which such notice is so filed till payment and such decree may be executed by the Court on the application made ex parte by the authorized officer, either by the issue of a warrant or in any other manner in which a decree passed by such Court may be executed, and the Court shall have jurisdiction to execute such decree notwithstanding that the amount involved may exceed the pecuniary jurisdiction of the Court.

- (2) *An application under this section shall be accompanied by-*
- (a) *a copy of the demand containing a certificate by the person, who served the same stating the time and place of service and the person on whom it was served.*
 - (b) *a certificate by the authorized officer of the amount due and owing, and upon production thereof the Court mentioned under subsection (1) shall have jurisdiction to grant such summary warrant and be executed in all respects as though it were both a warrant of attachment and a warrant of sale issued out of the Court of such magistrate.*
- (3) *Subject to subsection (1) of section 22 of the Land Disputes Court Act, filing of a copy of notice in the District Court shall apply where the District Land and Housing Tribunal has not been established or is not operational at the district level.*
- (4) *The notice required to be served under subsection (1) shall be served either by delivering a copy thereof to the person to whom it is addressed or by leaving a copy thereof at his usual place of residence or business or by publishing such notice in such newspaper or newspapers as the authorized officer may determine.*

(5) In this section "authorized officer" means the Commissioner for Lands and such other person as he may appoint in writing in that behalf.

Briefly, the facts of the case are that the Applicant owns a property which is a piece of land measuring 52 hectares located at Maweni Area in Tanga City registered as Plot No. 7 Block Industrial Maweni, in which the plaintiff is operating a Cement factory. The applicant claims that they have been regularly paying the land rent as assessed by Tanga Municipal Council, which was Tshs 23, 400,000 per year. The Applicant claims that they have never defaulted paying the rent, and they have been paying land rent from 2010 to 2017 in compliance with the invoices issued by Tanga City Council. The respondent started claiming that the applicant was in rent arrears as he was not paying the full amount of the land rents. Then, On 31st July 2019 the respondent through Tanga City Council served to the applicant a notice under section 50 of the Land Act, in which it was alleged that the rent was due against the applicant since 2018, and there was underpayments of rents from the years 2010 to 2017. The Notice required the applicant to deposit or pay

the rent for the years 2018, 2019 and 2020 amounting to Tshs 225,481,550/-, which amount included arrears from 2010 to 2017 and also interest. Immediately after receiving the notice, the applicant wrote a letter to Tanga City Council and by its letter dated 2nd September 2019, the Tanga City Council invited the applicant for discussions and negotiations. The meeting could not bear any fruits as the respondent through Tanga City Council insisted that there was underpayment of rents from the year 2010, and demanded payment in full. On 10th September 2019, the applicant sent a letter to the respondent seeking for clarifications of the notice for payments of land rents, and the respondent never responded. Surprisingly, on 03rd January 2020 the applicant was served with a notice by Fax Auction Mart and General Trading Court and Tribunal Broker demanding payment of the land rent arrears to the tune of Tshs 255,481,550 alleging that they were executing the Decree of the Tribunal. The applicant then rushed to court saying that the respondent did not comply at all with the provisions of section 50 of the Land Act to enable them to recover rent summarily under section 50 of the Land Act. Counsel Yona who is

representing the applicant argues that the respondent was required to file the Notice of Default first, and the decree ought to have been drawn by the Tribunal, then the applicant was required to comply with regulation 23 of GN No. 174 of 2003 when he applied for execution of the decree.

The respondent objected the application by filing the counter affidavit in which they admitted having served the notice to recover rent due, and that the invoice sent to the applicant for rent for the years 2010 till 2017 were underestimated and the applicant was required to pay the differences, he was also required to pay the full rents for the years 2018, 2019 and 2020. That the negotiations failed since the applicant refused to cooperate. The respondent opted to recover the rent summarily under the procedures given in section 50 of the Land Act, and that they fully complied with the procedures provided in section 50 of the Land Act.

The issue here is whether the respondent complied with the procedures for recovery of rent summarily as provided in section 50 of the Land Act. Section 50 of the Land Act shows that it is enacted to provide for collection of rents from persons granted with

the Right of Occupancy. The object of this section is to make available to the Government, in place of the existing lengthy procedure of a lawsuit, a summary procedure to enable them to realize arrears of rent as arrears of Land Revenue from persons issued with the Right of Occupancy who refuse to pay or hold back rent therefor. Section 22 (1) (g) of the Land Act provides that every person who is issued with the Right of Occupancy shall be required to pay Land Rents, it provides:

22.-(1) A granted right of occupancy shall be-

(a) granted by the President.

(b) in general, or reserved land.

(c) of land which has been surveyed.

(d) required to be registered under the Land Registration Act, to be valid and, subject to the provisions of that law and this Act, indefeasible.

(e) for a period up to but not exceeding 99 years.

(f) at a premium.

(g) for an annual rent which may be revised from time to time

Section 50 of the Land Act provides for a summary procedure for recovery of rent and of interests. Under the Land Act or in any other law there is no provision available, which provides that the proceedings carried out by the District Land and Housing Tribunal or the District Court in the exercise of the power given under section 50 of the Act can be questioned in or by any, court, either by way of an appeal or revision. However, by section 43 (1) and (2) of the Land Disputes Courts Act, Cap 216 R:E 2019, any order or proceedings of the District Land and Housing Tribunal can be revised by the High Court, and there was no exception given therein. Thus, this Court has the powers to revise the proceedings of the District Land and Housing Tribunal exercising its powers conferred by section 50 of the Land Act.

Rent will include arrears of rent. Rent is payable yearly as provided in section 22 of the Land Act. Again, rent not paid when due, is said to be in arrears. Section 50 of the Land Act provide for the procedure for recovering the arrears of rent. Section 50 provides

that where the arrears of rent "is payable" by any person the authorized officer may, at any time from the date on which rent accrued is due, serve upon the persons liable a notice of demand for the amount due. Section 50 provides that if the said amount is not paid to the competent authority within 14 days from the date of service of the notice of demand, the arrears shall be recoverable under summary proceedings provided in the same section.

For the provisions of section 50 to apply, the first condition is that the person who has been issued with the right of occupancy, the rent must be due, secondly, a notice of 14 days must be served on the person, thirdly, upon the expiry of the 14 days period, the authorized officer is required to file a copy of the Notice to the District Land and Housing Tribunal or District Court, fourthly the copy of the notice filed is deemed as the decree of the court, and fifthly, the decree shall be executed on the application made ex parte by the authorized officer either by issue of a warrant or in any other manner in which a decree passed by such court may be executed.

complied with by the Government and, by the District Land and Housing Tribunal. The learned counsel for the applicant said no procedure was followed, the Authorized officer did not file the notice, and did not obtain the decree before he applied for execution. I agree with the contention of the Advocate for the applicant, the procedure set out under section 50 of the Land Act was not followed at all. The Act contemplates that the authorized officer shall lodge the notice before the District Land and Housing Tribunal, and the Notice so lodged shall be deemed as the Decree. Perusal of the file of the District Land and Housing Tribunal does not show any proceedings when it received the notice. Nothing has been produced before the District Land and Housing Tribunal nor before this Court, showing that the Notice was lodged and received by the Tribunal, and thereafter recorded as the Decree of the Tribunal. It is sufficient to state that no valid order with regards to the lodging of the Notice and the extraction of the Decree was done by the Tribunal. Even the Notice itself does not show as to when it was presented before the Tribunal for filing, it bears no stamp or signature of the Tribunal's Registry Officer and bears no

date of filing. It is not known as to when this Notice was filed at the Tribunal.

Then after obtaining the decree, the authorized officer is required to apply for execution exparte either by issue of a warrant or in any other way a decree passed by such court can be excuted. Thus, there are two ways of executing the decree, one , the authorized officer may apply for execution by issue of a warrant and the application must be accompanied by a copy of the demand containing a certificate by the person who served the same stating the time and place of service and the person of whom it was served, and the certificate by the authorized officer stating the amount due and owing, and then the Tribunal was required to grant a summary warrant and the warrant would have been executed in all aspects as if it was a warrant of attachment and warrant of sale. On record, I have seen the application for execution, which is Misc. Application No. 59 of 2019 filed before the Tribunal on 30th October 2019 but the Application was not a warrant, and it was not accompanied with any of the two certificates mentioned in Section 50 of the Land Act. It is not clear

also if section 50 refers to demand and notice as one and the same thing. Again, the Tribunal did not grant a summary warrant as required under section 50 which would have been executed as a warrant for attachment and a warrant for sale.

Again, if the application for execution was filed under the procedures governing the District Tribunals, then section 23 of GN. 174 of 2003 would have been applied, which provides that the application of execution of the Tribunal's Decree should have been made in the appropriate forms and indicate the mode of execution sought to be carried out. Sub-regulation 3 of Regulation 23 requires the Chairman of the Tribunal to make an order requiring the Judgement Debtor to comply with the Decree within the period of 14 days , the judgement debtor is given the right to object or respond under sub-regulation 4 of regulation 23 before the Chairman passed the execution orders , the Chairman is also required under sub regulation 5 of Regulation 23 to consider the objection raised by the judgement debtor and make such orders as he may consider appropriate, and a party aggrieved may have the right to appeal to the High Court. Nothing on the record shows that



the procedures under Regulation 23 of GN No. 174 of 2003 were complied with.


That said, not only that there was total violation of the requirements shown in Section 50 of the Land Act, but there was also violation of Regulation 23 of GN No. 174 of 2003, thus the violation of the right to be heard, and this application calls for the interference of the High Court by way of revision.

Consequently, the Notice and the execution proceedings including Misc. Application No. 59 of 2019, and the order of Execution passed by the District Land and Housing Tribunal dated 11/12/2019 are hereby revised, quashed and set aside. The respondent shall bear costs of this application.

It is so ordered.

DATED AND DELIVERED AT TANGA ON 20th MAY 2022




L. Mansoor,
JUDGE
20/05/2022