

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

LAND REVISION NO. 2 OF 2020

(SUO MOTO)

ISSA SALEHE SHEKALAGHEAPPLICANT

VERSUS

MUSSA JUMA..... RESPONDENT

JUDGEMENT ON REVISION

(SUO MOTO)

Mansoor, J.

27TH MAY 2022

Briefly, the revision arises from the complaint of the Applicant by way of a letter dated 4th November 2019, addressed to the Deputy Registrar, High Court Tanga. After receiving the letter of complaint, the Judge in Charge, Hon. Mtulya, (as he then was) directed the Revision of the cases suo moto.

The Revision Suo moto involves the decision of the District Land and Housing Tribunal for Korogwe in Land Application No. 71 of



2011, filed by Mussa Juma vs Issa Salehe Shekalaghe. The land in dispute is measuring $\frac{3}{4}$ acres situate at Kwemashai Village, Ubiri Ward (then), now Kwemashai Ward, in Lushoto District in Tanga Region, herein referred to as "the disputed land".

The land was declared the clan land by the Ubiri Ward Tribunal in Land Case No. 23 of 2006, where one Saidi Abdallah Shekigenda sued Mussa Juma, who is the respondent in this Revision. Saidi Abdallah Shekigenda claimed to have purchased the piece of land from Issa Salehe Shekalage and his two brothers Juma Salehe Shekalaghe and Hamisi Salehe Shekalaghe. The decision of Ubiri Ward Tribunal was confirmed by the District Land and Housing Tribunal for Tanga in Land Appeal No. 107 of 2006, where Hon. B.K Kishenyi upheld the decision of Ubiri Ward Tribunal and declared the land to be the clan land, and that the vendors, i.e., Issa Salehe Shekalaghe, Hamisi Salehe Shekalaghe and Juma Salehe Shekalaghe had no power to sell the clan land to Saidi Abdallah Shekigenda. The vendors were ordered to refund to the purchaser the purchase price, and in the same decision, the respondent herein Mussa Juma was allowed to continue using the land since he was allowed by the clan members to construct his house. This

decision is still valid and was never challenged or reversed by any superior court.

Then, the Applicant herein initiated a fresh case at the Ubiri Ward Tribunal, over the same subject matter suing his brothers who were the co-vendors of the disputed land. It was Land Application No, 11 of 2007, Issa Shekalaghe was the Applicant/complainant and Juma Salehe Shekalaghe and Hamisi Salehe Shekalaghe were the respondents. Issa Salehe Shekilage was claiming to be the owner of the suit land, but the Ubiri Ward Tribunal dismissed his claim. Aggrieved, Issa Salehe Shekalaghe filed an appeal before the District Land and Housing Tribunal for Tanga, Appeal No. 95 of 2007, the appeal was determined exparte and an exparte judgement was issued on 21st April 2008, he won the appeal. The Chairperson of the District Land and Housing Tribunal only allowed the appeal, but he did not say or declare the suit land to belong to the appellant, he simply said, and I quote:

"Upon perusal of the record, I am inclined to agree with the submissions advanced by the counsel for the appellant. I only wish to point out that in the light of the

noted inconsistency the trial tribunal had no option but to disbelieve the respondents and their witnesses. I accordingly allow the appeal with costs."

The appeal that was allowed is to declare the respondents and their witnesses' evidence not truthful, and that they were not to be believed, but the fate of the dispute as to who owns the land was not decided on the appeal.

Then, Juma Salehe Shekilaghe and Hamisi Salehe Shekilaghe filed an appeal at the High Court, challenging the *ex parte* judgement of Land Appeal No. 95 of 2007, they filed Land Appeal No. 33 of 2008, where the appellants had prayed before the court to set aside the *ex parte* judgement because the matter in dispute was already determined by the competent Tribunal through Land Application No. 23 of 2006 by Ubiri Ward Tribunal and confirmed on Appeal, Appeal No. 107 of 2007 by the District Land and Housing Tribunal for Tanga. At page 5 of the typed judgment Hon. Judge Temba held that the suit entertained by Ubiri Ward Tribunal for the second time (Land application No. 11 of 2007) was not *res judicata* as parties in the latter case were different from the parties in the

previous case i.e., Land Application No. 23 of 2006, therefore the plea of res judicata was overruled, and the appeal was dismissed.

Having won the appeal, Issa Salah Shekalaghe applied for execution of the Decree of the exparte Judgement at the District Land and Housing Tribunal. Before the execution proceedings was determined, Mussa Juma filed a fresh land suit at the District Land and Housing Tribunal for Korogwe, which is Land Application No. 71 of 2011 suing Issa Salehe Shekalaghe and applied to be declared the owner of the suit land. The case was determined to its finality, and the suit land was declared the property of Musa Juma. Issa Salehe was aggrieved, and he applied for extension of time to file the appeal, it was Misc. Land Application No. 12 of 2015, before the High Court, Tanga, this application was struck out by Hon Judge Amour Khamis, because the Court was not properly moved.

Having failed to pursue the appeal, Issa Salehe Shekalaghe decided to complain by a letter, which is the subject of this Revision Suo moto.

In summary, there are three decisions which are all valid and never been overturned by the superior courts:

1. Decision in Land Application No. 23 of 2006 by Ubiri Ward Tribunal which declared the land as the clan land, and where Mussa Juma was allowed to use the land and built his house therein. This decision was confirmed by the District Land and Housing Tribunal in Land Appeal No. 107 of 2006.
2. The *ex parte* Judgement in Land Appeal No. 95 of 2007 issued by the District Land and Housing Tribunal for Tanga which declared Juma Salehe Shekalaghe and Hamisi Salehe Shekalaghe's evidence to be untruthful, and this decision was confirmed by the High Court in Land Appeal No. 33 of 2008, and
3. The decision passed by the District Land and Housing Tribunal for Korogwe in Land Application No. 71 of 2011, which declared Mussa Juma, the owner of the disputed land, and this decision was never challenged by Issa Salehe Shekalaghe on appeal.

This Court is obviously *functus officio* to revise the decision passed by the High Court in Land Appeal No. 33 of 2008 which decision had the effect of confirming the decision of the District Land and Housing Tribunal. The remedy available to Mussa Juma was to

apply for Revision, and not to file fresh suits over the same land. For these reasons, the subsequent proceedings filed by Mussa Juma against Issa Saleh Shekalaghe were not only res judicata but also an abuse of the Court processes, and by the Revisional powers conferred to this court, the proceedings, judgement, and decree passed by the District Land and Housing Tribunal in Land Application No. 71 of 2011, and its subsequent ancillary proceedings including the Taxation are hereby quashed and set aside.

The proceedings of the Ubiri Ward Tribunal in Land Application No. 23 of 2006, which declared the Land in dispute the clan land remains valid, and as held in that decision, Mussa Juma has been allowed to use and remain on the land and can only be removed once compensated by the clan.

As observed herein earlier, the decision of the District Land and Housing Tribunal for Tanga in Land Appeal No. 95 of 2007 was not clear and was ambiguous and so not capable of execution, as the Tribunal did not declare Issa Salehe Shekalaghe the owner of the disputed land, it only decided, which decision I have reproduced



herein above that the respondents in that case and their witnesses ought not to have been believed, and the appeal was allowed. There was no order passed by the Tribunal declaring the land in dispute to be the property of Issa Salehe Shekilanghe. Thus, the decision which decided on the ownership of the disputed land remains only one decision, which is the decision passed by the Ubiri Ward Tribunal, Land Application No. 23 of 2006, which declared the land in dispute to be the clan land. Whosoever is aggrieved with the decision passed by the Ubiri Ward Tribunal in land Application No. 23 of 2006, may find appropriate way to challenge it. As for now, the decision of the Ubiri Ward Tribunal is the only decision valid and unchallenged, which declared the land to be the clan land, and Mussa Juma, the respondent herein, was allowed to use it.

Accordingly, this Revision Suo moto is decided as hereinabove.

DATED AND DELIVERED AT TANGA ON 27TH MAY 2022



E. Mansoor
E. Mansoor, JUDGE

27TH /05/2022