

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT- LAND DIVISION

(MUSOMA SUB REGISTRY)

AT MUSOMA

Misc. LAND APPEAL No. 66 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Tarime
in Misc. Land Application for Revision No. 205 of 2020 & Originating from
Mukoma Ward Tribunal in Land Case No. 30 of 2014)*

JAMES KITANG'AWA MIRIGO APPELLANT

Versus

NMB PLC RESPONDENT

JUDGMENT

28.03.2023 & 28.03.2023

Mtulya, J.:

In the present appeal, the parties were in contest since 2014, but unclear on which party should execution of the decision in **Land Case No. 30 of 2016** (the case) resolved by **Mukoma Ward Tribunal** (the ward tribunal) should take its course. The parties were changing names from the case to various execution proceedings resolved by the **District Land and Housing Tribunal for Mara at Tarime** (the district tribunal).

According to the learned officers of this court, **Mr. Emmanuel Werema** for the appellant and **Dr. George Mwaisondola** for the respondent, the changes in names of the

parties were significant and caused error material to the merit of the case to cause injustice to the parties. During the hearing of the appeal today afternoon, the learned officers had short conversations and consultations, and finally agreed that it is vivid on the record that this court cannot resolve the appeal, unless it invoke section 43 (1) (b) of the **Land Disputes Courts Act [Cap 216 R.E 2019]** (the Act) to revise the record.

In justifying their thinking, the officers submitted that there are bundles of confusions and contradictions in the case and various applications related to the case that have caused more chaos than cure to the parties. In order to appreciate the present appeal and interpretation of the record by the officers, the background of the matter must be displayed, albeit in brief:

The appellant had initiated the case at the ward tribunal in 2014 against **NMB Bank (Rorya)-Ndugu Mororo Wambura (Afisa Mikopo)** and the ward tribunal had decided in favor of the appellant and finally awarded him a compensation of 1,600,000/= per month until receipt of the complained tittle deed of the appellant which was claimed to be in the respondent's custody.

In the ward tribunal, the record shows the following display:

Mdai: *James Kitang'arwa Mirigo.*

Mdaiwa: *NMB Bank (Rorya) - Ndugu Mororo Wambura (Afisa Mikopo).*

Madai: *Hati ya Nyumba Plot 53 Block C Kabwana.*

Majina: *Michael Orwa, Joash Warioba, Thinthi Nchwaga, Musa Matata, Leonida Waritu and Didakus Alfonse.*

Maelezo ya Mdai: *Mimi nilichukua Mkopo katika Benki ya NMB Tawi la Rorya Mwaka 2009 na kudhamini Nyumba yangu iliyoko Kabwana Plot No. 53 Block C na kumaliza Mkopo bila matatizo ndani ya muda tuliokubaliana. Nilipoenda kwa Ofisa Mikopo kuomba Hati yangu, kwanza alikataa...[baadae] kukiri kuwa hati hiyo ipo hapo Benki na kuomba nimpe muda afuatilie. Hayo ndio maelezo yangu.*

The record of the ward tribunal was silent in several aspects including: gender status of the members, time period in which the title deed was in custody of the respondent, and claim of compensation or any other prayer related to specific claims of compensation. However, the ward tribunal had decided that:

- 1. Mdaiwa amrejeshee mdai gharama zilizotumika kuendesha kesi Tshs. 30,000/= tu;*
- 2. Mdaiwa alipe fidia ya Tshs. 1,600,000/= kwa mwezi hadi alipokabidhiwa hiyo hati ikiwa ni pesa za*

*usumbufu na kukwamisha biashara iwapo hati hii
angedhamini kwenye taasisi nyingine; na*

*3. Mdaiwa pia alipe gharama za kashfa kwa familia yake
iliyosababishwa na Benki.*

However, the ward tribunal was silent on where exactly got the figures and whether it had the mandate to proceed with the complaint on a registered land and the amount ordered to be paid by the respondent. It is unfortunate that the ward tribunal was uncertain on who was sued in its jurisdiction as to whether: NMB Bank (Rorya) or Ndugu Mororo Wambura or both parties, and if it is NMB Bank (Rorya), was it interpreted as NMB Bank PLC or as a specific branch of NMB at Rorya. This is the origin of the present appeal has it brought the parties into confusions and contests on proper names of the parties and which party the execution should take its course.

Following the decision of the ward tribunal, the appellant had filed execution proceedings at the district tribunal in **Misc. Land Application No. 243 of 2017** (the application) against NMB Bank which had invited protest from NMB Bank and finally was struck out for want of proper names of parties in the case. The appellant then approached the ward tribunal and lodged **Application No. 2 of 2020** praying for rectification of the names

from **NMB Bank (Rorya)-Ndugu Mororo Wambura (Afisa Mikopo)** to **National Microfinance Bank PLC (NMB PLC)**. After full hearing of the application, the district tribunal, at its final page of the decisions, had resolved that:

- 1. Jina la Mdaiwa katika Hukumu ya tarehe 5/4/2016 katika Shauri Na. 30/2014 ni National Microfinance Bank PLC; na*
- 2. Tawi la NMB Rorya ni Tawi halali la NMB PLC na Wambura Mororo alikuwa Afisa Mikopo wa NMB PLC katika Tawi la NMB PLC Rorya.*

It was unfortunate that in all the proceedings of the application before the ward tribunal, the respondent or Ndugu Mororo Wambura were not invited to cherish the right to be heard. Similarly, the prayer of the appellant and the order of the tribunal did not match each other. Following the amendment, the respondent was surprised to hear another execution proceedings in **Misc. Application No. 179 of 2020**, which had received a point of preliminary objection on non-existing entity, not capable of being sued. This dispute remained unsolved to date as it ended on 25th February 2022 without any reply of the protest from the district tribunal.

To put the record proper, the respondent had preferred **Misc. Application No. 204 of 2020** before the district tribunal praying for stay of proceedings in **Misc. Application No. 179 of 2020**, pending determination of **Misc. Land Application for Revision No. 205** which was filed in the district tribunal originated from the original **Case No. 30 of 2014**, which was resolved at the ward tribunal.

The **Misc. Application No. 204 of 2020**, ended its proceedings on 9th September 2021 without any determination and the record is silent on what transpired after the indicated date. It is **Misc. Land Application for Revision No. 205**, which was determined to the finality and was protested in this court with five (6) reasons of appeal, and within ground four (4) and five (5) there are ten (10) sub questions to be replied by this court. It is from these fifteen (15) questions in total, which prompted officers of this court to have conversations and discussions and prayed this court to invoke its powers under section 43 (1) (b) of the Act to revise and make any such order as it thinks fit as it appeared there were material errors that moved into the merit of the case and had caused injustice to the parties.

I have perused the record of the present appeal and glanced all indicated five (5) case files brought in this court in: Land Case No. 30 of 2014 resolved by the ward tribunal; Application for Review No. 2 of 2020 resolved by the ward tribunal; Misc. Application No. 179 of 2020 pending in the district tribunal; Misc. Land Application No. 204 of 2022 pending in the district tribunal; and Misc. Land Application for Revision No. 205 of 2020 resolved by the district tribunal.

From the record it is vivid that there are a lot of confusions and discrepancies that even if this court decides the instant appeal in favour of any party, it will cause more chaos than justice to the parties. Similarly, the contest which brought the parties in the present appeal had not resolved the issue of identity of the party NMB PLC, which is in contest as to whether it is a legal entity capable of suing or being sued. This in any case, would bring more chaos at execution stage, which had brought the parties in this court.

According to the officer of this court, Mr. Werema, the origin of the confusion was caused at the ward tribunal in the case where the appellant had sued NMB Bank (Rorya) and Mr. Mororo Wambura appeared and defended the case for the respondent. In his opinion, Mr. Werema submitted that all other

subsequent applications and protests were initiated by the initial case at the tribunal and that even the present appeal is not executable as NMB PLC is non-existing legal institution.

The submission of Mr. Werema was supported by Dr. Mwaiondola arguing that the dispute on proper names of the parties and non-existing legal entity is significant and that this court has mandate, under section 43 (1) (b) of the Act, to produce appropriate orders for proper record of the tribunals below.

The final decision of the district tribunal which was brought in this court for scrutiny is No. 205 of 2020 which had resolved the dispute in favour of the respondent and at page 4 of the ruling, pronounced on 10th June 2022, had reasoned that:

Mjibu Maombi alishitaki mtu sie kwenye Maombi Namba 30 ya Mwaka 2016 [2014]. Alitakiwa kufungua shauri upya na kushitaki mtu sahihi na sio kuomba kubadilisha majina ya wadaawa.

Finally, the district tribunal had quashed both decisions of the ward tribunal in No. 30 of 2014 and No. 2 of 2020 for want of proper record. However, the decision of the district tribunal in Application No. 205 of 2020 had displayed non-existing party NMB PLC. Following the fault, the learned officers of this court,

Mr. Werema and Dr. Mwaisondola had conversations and agreed that this court cannot be positioned to pronounce a winner or loser in the dispute as the same will lead more chaos during execution proceedings in the lower tribunals.

The record in the present appeal is vivid that the ups and downs of the parties have caused more confusions than cure hence the prayer of learned officers of this court praying for this court to invoke section 43 (1) (b) of the Act is appropriate. There is vivid display of a bunch of material errors which go to merit of the case from when it was initiated in 2014. As of current, the proper way to do justice to the parties is to set aside all proceedings and decisions delivered in both tribunals below in favour of fresh and proper names of the parties.

Having said so and noting the need of proper application of laws and want of proper names of the parties in the dispute and smooth execution of the results of the dispute, I am moved to invoke section 43 (1) (b) of the Act, and hereby quash all proceedings, decisions and any orders emanated from the following disputes: Land Case No. 30 of 2014 resolved by the ward tribunal; Application for Review No. 2 of 2020 resolved by the ward tribunal; Misc. Application No. 179 of 2020 pending in the district tribunal; Misc. Land Application No. 204 of 2022

pending in the district tribunal; and Misc. Land Application for Revision No. 205 of 2020 resolved by the district tribunal

Any party who is still interested in the contest may wish to file fresh and proper suit in appropriate forum in accordance to the current laws regulating the matter. I do so without costs as the wrong was initiated by the appellant, but blessed by both lower tribunals.

Before I pen down, I would like to thank Mr. Werema and Dr. Mwaisondola for their appreciation of section 66 of the **Advocates Act [Cap. 341 R.E. 2019]** and new enactment in section 3A & 3B of the **Civil Procedure Code [Cap. 33 R.E. 2022]**. They were indeed participating and assisting this court in searching justice to the parties. The appeal was easily resolved partly from their interpretation of facts and law on the record of the lower tribunals.

It is so resolved.





F. H. Mtulya

Judge

28.03.2023

This Judgment was delivered in Chambers under the Seal of this court in the presence of **Mr. Werema Emmanuel**, learned counsel for the appellant and **Dr. George Mwaiondola**, learned counsel for the Respondent.



F. H. Mtulya

Judge

28.03.2023