

IN THE HIGH COURT OF THE REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND REVISION NO. 6 OF 2022

(Application for Revision of the Ruling and drawn order in respect of Land Application No. 66 of 2019 in the District Land and Housing Tribunal for Singida at Singida and pursuant to the order of the Hon. Masaju, J. dated 23rd May, 2022 in Misc. Land Application No. 67 of 2020)

THE NATIONAL HOUSING CORPORATION APPLICANT

VERSUS

SILVANUS JOHN KESSY (As administrator of the estate of

the late John A. Kessy **1ST RESPONDENT**

THOMAS MCHAKI **2ND RESPONDENT**

JOSEPH JOHN KESSY..... **3RD RESPONDENT**

BAHATI MUSHI **4TH RESPONDENT**

RULING

31st July & 4th October 2023

KHALFAN, J.

The applicant made this application under section 43 (1) of the Land Disputes Court Act, [CAP. 216 R.E 2019] (the Act), whereby he prayed that this Court be pleased to call for and inspect the record of The District Land and Housing Tribunal for Singida at Singida (hereinafter referred to as trial tribunal) in Land Application No. 66 of 2019 for the purposes of satisfying itself as to the correctness, legality or propriety of the proceedings, judgment and decree; also, to quash the



said ruling and drawn order of Hon. Chairperson Sululu, dated 9th April 2020.

The applicant also prayed for the costs of this application and any other relief(s) and directions as this Honourable Court may deem fit to grant in the interest of justice.

The applicant, in his affidavit declared that, he was not a party to the said Land Application No. 66 of 2019 and has never been served with any documents from the trial tribunal to defend its interest as the legal owner by operation of law. However, he has seen serious illegalities which merit the attention of this Court, to wit, being not party to Land Application No. 66 of 2019, the applicant cannot appeal against the ruling and drawn order in Land Application No. 66 of 2019 also deprived of the right to be heard on the matter adversely affecting the applicant. Hence, for the interest of justice, the prayers sought in the chamber summons be granted.

When the matter was called on for hearing, the applicant was represented by Mr. Aloyce Sekule, Learned Principal State Attorney and the 1st respondent, was represented by Mr. Isaya Nchimbi, Learned Advocate. The applicant started by adopting the affidavit to form part of his submission; he continued to state that; this is an application for revision, the application made under section 43 (1) of the Act, and any



other enabling provisions of the law. He prayed to be guided on the decision made by the trial tribunal whereby the applicant was not part of the case. Hence, he applied for this court by way of revision. He submitted that the applicant was not given the opportunity to defend the public property.

The trial tribunal was informed that the property, which is Plot No. 34 Block J, Ipembe Street within Singida Municipality does not belong to the 1st respondent. Therefore, the amendment should be made for National Housing Corporation to be joined as party; but on page 2 of the ruling, the Hon. Chairperson refused to join the National Housing Corporation. On the same circumstance, the Hon. Chairperson went ahead to declare that the 1st respondent is the lawful owner of the said Plot No. 34 Block J, Ipembe Street within the Singida Municipality.

Mr. Sekule added that, the trial tribunal erred in law by doing so because its duty was to ensure that the applicant was supposed to be joined so as to reach a just decision. However, according to the Land Disputes Courts Act, 2019, which was amended by Act No. 11 of 2005, section 37 (2) states that:

"Where the High Court is not operational within any given district, the Land and Housing Tribunal shall have the



jurisdiction to determine disputes involving public corporations specified under subsection (1) (d). [Acts No. 11 of 2005 s. 29; 13 of 2017 s. 9]"

So, the Chairperson had the jurisdiction to determine. Mr. Sekule said the other issue which casts doubt on his ruling, is for his denial to allow the applicant to be joined as the necessary party. In such a scenario, if it appears that an individual is mentioned to have an interest, the court is supposed to guide itself to call upon that individual such that both sides should be heard and thus leading the court to give a just decision.

Mr. Sekule cemented his arguments by submitting that in such circumstances, there is a guidance which was given by the Court of Appeal, in the case of **Tanzania Railways Corporation (TRC) v GBP T. Ltd**, Civil Appeal 218 of 2020 (unreported), CAT at Tabora; it was stated that:

"(2) The court may, at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court



may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

Mr. Sekule averred that the quoted case above was similar to the circumstances of the case at hand. In the end, the CAT set aside the entire proceedings. Also, the Chairperson erred by making declaratory order that the house was surrendered; hence no proper trial was made. He thus prayed for this Court to quash the said ruling and drawn order made in Land Application No. 66 of 2019 and prayed that the applicant be joined because it was an interested party and the Commissioner for Lands to be joined as a necessary party. He prayed for trial tribunal's ruling to be set aside and the matter be remitted before the trial tribunal.

In reply, Mr. Nchimbi contested all what was submitted and prayed for this Court to adopt the counter affidavit of the 1st respondent and be part of his submission. He argued that, the main issue submitted by the applicant's advocate, is the denial of the trial tribunal to join the applicant as a necessary party. Although the parties prayed the applicant to be joined as a party, the trial tribunal rejected and the applicant stated that, even the court itself had the jurisdiction to do so because it was notified.



Mr. Nchimbi added that, the trial tribunal was right to do so. Since not every prayer is necessary to be granted as prayed; this is because; the 2nd respondent, Thomas Mchaki, during his written statement of defence, claimed that the said house in dispute belonged to him. But, when the matter was scheduled for hearing, he said that he had surrendered the house to the applicant which means he had no interest in the said house. By saying so, there was no any dispute, which then led the trial tribunal to give such ruling.

Secondly, Mr. Nchimbi further argued that, the party who requested to be joined was not the applicant but instead it was the 2nd respondent, who prayed to be joined as he did not even have the mandate to do so, as there is no anywhere in the proceedings in which he has mentioned the applicant. Moreover, he did not have any evidence to show that the house belonged to the applicant. He further argued that, the party to be joined must be raised on the pleadings or application; but the applicant was not raised, so how can it be added?

Mr. Nchimbi continued to state that, for the party to be joined in the pleadings, is the discretion of the court and this is why on page 14 of the **Tanzania Railways Corporation (TRC) v GBP T. Ltd**, (supra), in the 1st and 2nd paragraphs, the word may and not shall is used.

Therefore, the court was right to do so. On the other hand, the applicant had other avenues to pursue, such as they could have challenged the decision of the trial tribunal by way of objection proceedings, or they could pursue their right by filing a fresh suit. Thus, it is not right for them just to complain.

On the issue of the right to be heard, Mr. Nchimbi had the following to say: that, the applicant was not a party to the application; secondly, the 2nd respondent was heard, as a result he declared himself that the house did not belong to him.

Mr. Nchimbi concluded by contending that, what the applicant's advocate contended that the applicant and the Commissioner for Land be added, as for this case, it is better for him to speak on himself and not on any other person to be joined as stated in his affidavit at 10th paragraph (b) (i). Therefore, he prayed his prayer to be dismissed. Since the Commissioner for Land is a stranger. Consequently, the arguments submitted by the applicant do have neither illegality nor irregularity caused by the trial tribunal in Land Application No. 66 of 2019.

Hence, he prays for this court to dismiss this application and uphold the ruling given by the trial tribunal.



In rejoinder Mr. Sekule averred that, the word notified signal's that the trial tribunal was notified. Also, the National Housing Corporation was mentioned, as an institution, how long does it take to call them? Also, the Commissioner for Lands is the custodian of the land; it does not need to be in the pleadings.

Hence, Mr. Sekule declared that there was a serious illegality by not calling the applicant and in the case of **Tanzania Railways Corporation (TRC) v GBP T. Ltd**, (supra), he claimed, the circumstances were similar to the matter at hand. The Commissioner for Lands was not a party but was joined, the Municipal Council was not a party but was joined despite the fact that they were not party to the pleadings. So, the circumstances to be joined are all about the duty one has. That is the gist to join a party to make justice be done. In addition, he argued that the application can be made by oral or written application and in this case, the application was orally made.

Mr. Sekule concluded by submitting that, in respect to other doors or avenues, he wished to remind the advocate that the applicant filed the objection proceedings. This is found on page 3 of Hon. Masaju's, J Ruling (NHC 3), last paragraph.



Hence, there are a lot of illegalities, because the necessary party was not present and the applicant was not given the right to be heard. So, we pray for this application to be allowed with costs.

After going through the submission filed before the Court and hearing all the advocates of the parties, I found one issue to discuss in this application, that is whether it is important for the applicant herein to be joined as a necessary party in the Land Application No. 66 of 2019 before the trial tribunal and that failure to do so amounts to serious illegalities hence this application.

According to the ruling delivered by Hon. Chairperson Sululu under the Land Application No. 66 of 2019, on 1st page, I quote:

"...the learned Counsel for the Respondents Mr. Cosmas Luambano informed the Trial Tribunal that, the 1st Respondent surrendered the suit premise located on Plot No. 34 Block J, Ipembe Street within Singida Municipality to National Housing Corporation upon being called by Kamati ya Kitaifa ya Uhakiki wa Mali za Serikali. He went on to inform the Trial Tribunal that the suit premise is no longer the property of the 1st Respondent herein but he is just a tenant therein. With due regard he prayed that the applicant be ordered to amend his application and join National Housing Corporation in this application as



necessary party respondent being the owner of the suit premise..."

From what I have gathered from the respective ruling of the trial tribunal is that, the Hon. Chairperson was told by the respondents' advocate about the importance of the applicant as a necessary party to be joined in the trial at the tribunal, the prayer which had not been granted according to the amendment made to the Act.

However, this Court finds that, for the conclusive and fair determination of the dispute like that could not be attained without impleading the applicant as a necessary party of the said case as provided under Order 1 Rule 10 (2) of the Civil Procedure Code, [CAP. 33 R.E 2019]. This was emphasised in the case of **Farida Mbaraka and Farid Ahmed Mbaraka v Domina Kagaruki**, Civil Appeal No. 136 of 2006 (unreported), where the Court said:

"Under this rule, a person may be added as a party to a suit (i) when he ought to have been joined as plaintiff or defendant and is not joined so; or (ii) when, without his presence, the questions in the suit cannot be completely decided."

Yet, in this case at the trial tribunal, the 1st respondent declared by himself that, he was not the owner of the said house, he was just a tenant and the owner was the applicant and wished the applicant to be



joined as a necessary party since the matter would not be completely decided, but the trial tribunal denied the 1st respondent's prayer. (See the case of **Nuta Press Limited v Mac Holdings & Foma Industries Limited**; Civil Appeal No. 80 of 2016, CAT at Dar es Salaam).

Even if the 1st respondent failed to pray for such amendment in order for the applicant to be joined as the necessary party, it is settled law that, once it is discovered that a necessary party has not been joined in the suit and neither of the parties is ready to apply to have such party added, it is incumbent on the court to have such party added. (See: **Tanga Gas Distributors Ltd v Mohamed Salim Said and Two Others**, Civil Revision No. 6 of 2011 (unreported)).

Therefore, it was mandatory on the trial tribunal to be keen enough and require the respondents to amend the pleadings and join the applicant which was alleged to be the owner of the said plot and 1st respondent just being a tenant. But it is well known that no party can be forced to sue a defendant that he/she does not want to implead. That is correct and indeed, the applicant has that unfettered prerogative and freedom not to join a party who does not feel like joining, but if a party not joined is a necessary party, for resolving all issues raised by the pleadings, then the solution is provided by Order 1 Rule 10 (2) of the Civil Procedure Code, [CAP. 33 R.E 2019] which provides that:



"The court may, at any stage of the proceedings, either upon or **without the application of either party** and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that **the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.**"

Hence, as the 1st respondent raised the issue of joining the necessary party, and said the importance of the said party in the trial as the applicant in the Land Application No. 66 of 2019 as his absence will lead to such issues of importance to remain unresolved; then the trial tribunal cannot fold its arms and assume a role of an onlooker, a bystander or a passer-by only because parties are resistant or unwilling to apply to join a necessary party or parties. See: **Tanzania Railways Corporation (TRC) v GBP (T) Limited**, Civil Appeal No. 218 of 2020 (Unreported).

However, according to the Act, which was amended by Act No. 11 of 2005. Section 37 (2) states that:



"Where the High Court is not operational within any given district, the Land and Housing Tribunal shall have the jurisdiction to determine disputes involving public corporations specified under subsection (1)(d). [Acts No. 11 of 2005 s. 29; 13 of 2017 s. 9]"

Also, according to page 4 of the Land Application No. 66 of 2019 ruling, the Hon. Chairperson stated that:

"The learned counsel's prayer that the applicant be ordered to amend his application by joining National Housing Corporation as a necessary party cannot be granted as according to amendment made to the Land Disputes Courts Act (supra), parastatal institutions National Housing Corporation being one of them cannot be sued before these Tribunals but to the High Court."

Consequently, the trial tribunal should have required the respondents to amend the pleadings and join the applicant as the necessary party. This is because; the Court or Tribunal has a duty to take an active role by taking matters on itself and adding such a party or parties to the proceedings in order to facilitate effective and complete adjudication and resolution of all the issues of controversy presented before it.

Notwithstanding, the trial Chairperson knowing that he had no jurisdiction to entertain the matter involving the applicant, he should



have advised the parties to withdraw the matter before it to include the applicant as a necessary party and accordingly, reinstitute the same to the High Court.

In the upshot and for the foregoing reasons, in the exercise of this Court's powers of revision conferred upon under section 43 (1) of the Act, [CAP. 216 R.E 2019], I hereby set aside the entire proceedings, judgment and decree of the Land Application No. 66 of 2019 at the trial tribunal and direct any interested party to file the matter in the Court with competent jurisdiction. In the circumstances, I make no order as to costs.

Dated at Dodoma this 4th day of October, 2023.




F. R. KHALFAN

JUDGE

4/10/2023