

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB-REGISTRY

AT ARUSHA

LAND CASE NO. 32 OF 2023

VUSINDAWA LAVUYE PLAINTIFF

VERSUS

STEPHANO NAIGIMA.....1ST DEFENDANT

LESIKARI NAIGIMA.....2ND DEFENDANT

SAIBULU NAIGIMA..... 3RD DEFENDANT

PINIEL NAIGIMA..... 4TH DEFENDANT

RULING

7th & 19th June 2024

MKWIZU: J:

The dispute between the parties has a long history. The plaintiff, a resident of Arusha claims to be the legal owner of a 20-acre un-surveyed land located at Ndosoiito Kati area, Muriet ward within Arusha City claiming to have inherited the land from his late father Lavuye Loilole Laiza in 1979. It appears that there was a trespass on the land. In 2002, the plaintiff successfully filed a criminal case, No 3483 of 2002, against the defendants and others. The defendants were ordered to pay 5000/= or serve a four-month jail term.

Contending ownership of the same land, the defendants filed an application (No. 47 of 2009) against the plaintiff in the Tarrant Ward tribunal, they went through the District Land and Housing Tribunal to this court through Land Appeal No. 27 of 2010 in which the entire proceedings were on 20/12/2012, nullified by this court with an order for a fresh trial. Instead of returning to the trial ward tribunal, the defendants initiated a new suit (Land Application No. 117 of 2013) in the district land and Housing Tribunal. The application was opposed on the reason that the defendants should have complied with the court's order for a re-trial instead of filing a fresh suit. The defendants, who were applicants at the time, criticized the court's order, claiming that it was impractical to commence a re-trial before a magistrate as ordered when the matter was initially determined by a ward tribunal chairperson.

On March 7, 2014, the tribunal ruled in favour of the plaintiff, stating that it did not have jurisdiction to decide the matter. It, however, advised the parties to request a review of this court's order, which directed a new trial to be held before a magistrate instead of another chairperson.

After receiving advice, the plaintiff filed a revision application with the Court of Appeal in hopes of receiving justice. Unfortunately, he missed

the deadline to apply. As a result, he unsuccessfully filed Misc. Land application No. 97 of 2019, to request an extension of time to file the revision before this court. This application was dismissed on 20th August 2021 for lack of merit leaving the original retrial order intact.

Tirelessly, the plaintiff has come to this court with this fresh suit. It is the plaintiff's averment that the value of the property has increased and, as a result, a new trial cannot be held by either the trial ward tribunal or the district land and housing tribunal, as previously expected by this court. Since the defendants continue to trespass and breach, he believes that a new suit is necessary and can provide justice to all parties involved. Therefore, he is requesting judgment and decree as follows:

- i. Declaratory order that the Plaintiff is the lawful owner of the Farm in dispute, which is situated at Muriet Ward, Nadosoito Kati Area within Arusha City.*
- ii. A declaratory order that the defendants herein above, their agents/ servants/workmen and any other person(s) acting under them to be trespassers in the suit land*
- iii. An order of perpetual injunction against the Defendants, their agents, servant/ workmen, third parties and any other person(s) acting under them to restrain them from (i)*

entering into possession and or trespassing in the suit property mentioned herein above(ii)erecting, occupying and or building any house in the said suit land(iii) leasing and or conducting business in the said land(iv) selling the suit land to unknown third parties

- iv. An eviction Order against 1st 2nd 3rd and 4thdefendants, their agents, Servants, third parties and another person(s) acting under them to restrain them from claiming ownership over the suit properties*
- v. General damages for illegally occupying the property in dispute and causing mental anguish to the plaintiff*
- vi. Costs of the suit and any other relief as the court may deem fit and just in the circumstances*

The defendants deny the claims and assert their ownership of the property through inheritance since 1974. They argue that the plaintiff was given the land in July 1984 after a disagreement with his father, who had initially chased him out of their home. The plaintiff stayed with his father-in-law until 1987 when he requested the land from the defendant for the construction of his boma and farming. The defendants further argue that the plaintiff has no rights over the land to date, which is why he did not

bring up the matter again after the court ordered a retrial almost eleven years ago.

A few days before the final pretrial conference, as I was reviewing the case file to familiarize myself with the facts, I discovered an issue regarding the competence of the suit. Specifically, I questioned whether, based on the facts narrated above, the plaintiff's case was properly before the court. Since neither party had raised this point, I requested the parties to address the court on this issue.

During the court proceedings, Mr John Mseu, a learned advocate, represented the plaintiff, while Ms Christina Kimale, also a learned advocate, represented the defendants. Both advocates acknowledged the existence of a valid order for a retrial of the suit issued by this Court on 20th December 2012. However, they held different opinions regarding the status of the suit before the court.

Mr. Mseu argued that the suit before the court is competent on three grounds. First, they could not proceed with a retrial due to the passage of time from 2012 when the trial order was issued to 2023. Second, he pointed out that the amendment of section 13(3) of the Land Dispute Act, effected on 17/1/2021 by the Written Laws, (Miscellaneous Amendment Act) No 2 of 2021, had limited the trial tribunal's powers to mediation

only, making a retrial court not preferable. Third, he mentioned that a change in the value of the suit's property has made it impracticable to comply with the court order. These arguments echoed the plaintiff's statements in paragraphs 13 and 14 of the plaint crafted as follows.

13. that to date neither the plaintiff nor defendants have instituted the anticipated review as suggested by the district land and Housing tribunal and or started afresh those proceedings as were ordered by the High Court. Taking into account the circumstances of the said suit, the time factor and the change in the value of the property in dispute, the plaintiff could not have preferred and or initiated the proceedings afresh as ordered.

14. that the plaintiff is also aware that the property as it stands today, cannot be filed in the Ward Tribunal and or District Land and Housing Tribunal s anticipated earlier by the High Court due to its pecuniary Jurisdiction vis-a-vis value of the subject matter in dispute

Ms. Kimale, counsel for the defendant, had a different view. She argued that the retrial in this matter should have taken place immediately after the court's order dated 20/12/2012 in Land Appeal No 27 of 2010. She believed that the order was unrelated to the value of the subject matter

and therefore its compliance was mandatory. According to her, the retrial order is still valid and therefore the suit is incompetent.

I have carefully considered the arguments presented by both parties. The main issue that needs to be resolved is whether the plaintiff's suit is appropriate given the circumstances explained above. It is undisputed that the plaintiff's claims are the same as those brought before the Terati Ward Tribunal in Misc Application No 47 of 2009, involving the same defendants and subject matter. It is also clear that both parties were instructed to undergo a new trial before the trial tribunal on 20/12/2012 in Misc. Land Appeal No 27 of 2010. It is admitted that neither the plaintiff nor the defendants followed this order. The only attempt to challenge it occurred after a delay of seven (7) years, in 2019, when the appellant applied for enlargement of time through Misc. Land application No. 97 of 2019 - to file revision against the decision in Land Appeal No. 27 of 2010. The plaintiff's eagerness to pursue his rights diminished after the rejection of his application for condonation on 20th August 2021, only to reappear on 24th May 2023 with this new suit. I am not persuaded by this dreadful procedure adopted by the parties in this case, employing excuses in discount of the court order. I don't think this is permissible and I am not prepared to be so convinced. There is no way this court can disregard its

previous, valid order and proceed to adjudicate the matter anew. I am inclined to believe that this constitutes an abuse of the judicial process which, if permitted, may encourage not only repetitive, burdensome, and groundless actions against the same opponents concerning a matter already addressed by the court, but also provide a gateway for the abuse of court orders.

It is a well-settled law that, Court orders from a competent court are binding irrespective of their correctness until overturned by another competent court. Both parties must comply with the order, and it is not optional to ignore it. The decision can be challenged through review, revision, or appeal. The Court of Appeal in Kenya in **A.B. & Another v R.B.**, Civil Application No. 4 of 2016 [2016] eKLR once held:

"Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The Constitution states that the rule of law and supremacy of the Constitution are foundational values of our society. It vests the judicial authority of the state in the court and requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to

law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law."

Again, in **Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County (Ex Parte David Mugo Mwangi)** [2018] eKLR, the Court made the following observations;

*"It must however be remembered that Court **orders are not made in vain** and are meant to be complied with. **If for any reason a party has difficulty in complying therewith, the honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order.** Once a Court order is made in a suit the same is valid unless set aside on review or appeal." (Emphasis added)*

As indicated above, court orders are not made in vain, If for any reason a party has difficulty in complying therewith, the noble thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. The plaintiff had two options in this matter, either to comply with a retrial order or challenge it either through review, revision or appeal I within the time prescribed by the law but not to abandon the process and come up with a fresh matter. The lapse of time stated by the plaintiff's counsel does not under the circumstances justify noncompliance

with the court order or the filing of a fresh matter. The arguments on delays and the reasons thereof would only have been ideal in an application for an extension of time where the plaintiff would have been required to justify his inaction for over 11 years and not in this case.

The arguments about changing the law are irrelevant and seem to have been brought up as an afterthought. A change in law does not affect the binding nature of the order, which remains in effect until overturned by a competent court. Mr. Mseu has not cited any laws to support the plaintiff's position. After all, the Land Dispute Court Act was amended nine years after the retrial order.

I am concerned about the way the plaintiffs' counsel treated the court's order in this matter. He seemed to take it lightly as if he were choosing between wearing black on Sundays or yellow on Saturdays from his wardrobe. Court proceedings and orders should not be taken so casually. It is the court that overturns decisions, and parties are supposed to prove their case, not disregard the court's orders. Parties cannot take over the court's role in making legal determinations by deciding how to interpret court decisions and when to act on them. There is a higher duty on the parties to respect the law, follow procedural requirements, and act responsibly when dealing with their rights. In this case, the plaintiff failed to fulfil these duties. He ignored the court's directives and their right to

appeal against the court order. He also disregarded the advice given by the District Land and Housing Tribunal in No. 117 of 2013 by C.P. Kamugisha, chairman, on 7/3/2014, which directed them to rectify the errors on the court's order and go for a retrial as ordered. Additionally, he failed to provide any factual substance when applying for an extension of time to file a revision, which was done a decade after a retrial order, before Hon. Mzuna J. His actions show a deliberate disrespect for judicial processes.

I strongly believe that the plaintiff's current suit is an attempt to manipulate the system by shopping for a favourable court, which is not acceptable. Naturally, a party's delay, lack of interest, and lack of accountability lead to negative outcomes. And I believe, when court orders are not obeyed without consequence, enforcement is compromised, and the integrity of the courts and judicial authority is undermined. Accepting a plea of impracticality to comply with the order for any reason, a long delay, or a claim of change in the value of the subject matter after the court order would make court orders meaningless, more so in a situation like this where the plaintiff has ignored the order for years without plausible reasons. The plaintiff in this case should face the consequences of neglecting his rights for more than a decade. This decision should remind society members, prospective

litigants, and lawyers to engage in ethical litigation, and respect and abide by the law, legal process, and court orders short of which legal consequences will follow.

In conclusion, I find the plaintiff's case to be deficient and liable to be struck out, as I hereby do. The defendants are entitled to their costs.

Order granted accordingly.

Dated at ARUSHA, this 19th day of May 2024.




E.Y. MKWIZU

JUDGE

Right of Appeal fully explained.


E.Y. MKWIZU

JUDGE