

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE REVISION NO. 30 OF 2009

**(From the Decision of the District Land and Housing
Tribunal of Kinondoni District at Magomeni in Land
Case No. 61 of 2009)**

JOHN MJEMA APPLICANT

VERSUS

SHAMSA SALUM.. ..RESPONDENT

REVISIONAL ORDER

HON. NGWALA, J:

This matter is coming before this court for Revision under Section 43(1)(b) of the Courts (Land Dispute Settlements) Act, No. 2 of 2002. The Applicant made his application to this court for Revision on the Ruling and Order of Kinondoni District Land and Housing Tribunal dated 26th May, 2009. In his Written Submissions he moves this Court to call for records of the Kinondoni District Land and Housing Tribunal in Land Application No. 61 of 2009 and review the Proceedings, Ruling and Orders dated 26th day of May 2009 and 28th day of May 2009.

The applicant through his learned advocate Mr. Rutabingwa has submitted that the Tribunal was not properly moved as there was no application filed which should have been initiated by a Chamber Summons supported by affidavit, and that even on record the application is not backed by evidence that the respondent was sworn or affirmed.

The background of this matter, briefly, is that the respondent had on 19th February, 2009 filed an application at Kinondoni District Land and Housing Tribunal claiming arrears of rent and vacant possession of the suit premises. The said suit premises were occupied by the Applicant who made a tenancy agreement with one Mohamed Mackbel on 25th January 2008. Prior to this the Applicant in this Revision is allegedly to be a tenant of the Respondent the Administratrix of the estate of the late Salum Aklan Abdallah. The said Mohamed Mackbel was appointed to be an Administrator of the Estates of the late Zuwen Salim.

Prior to 25th May, 2009 the Magomeni Primary Court had ordered eviction of the Respondent from the suit premises in a Probate Cause No. 442 of 2007. On 25th May, 2009 the Respondent was forcefully evicted pursuant to orders given by the Magomeni Primary Court. The Respondent thereafter made an oral application to the Chairman of Kinondoni District Tribunal praying for restoration into the suit premises.

The District Land and Housing Tribunal, before Chairman J. Kaare entered a Ruling that *“whoever occupied the suit house be evicted without delay and the applicant (now respondent) be restored in the house before the day’s sunset.”*

This Ruling of the District tribunal was delivered on 26th May, 2009.

On 27th May 2009, Mr. Rutabingwa, the counsel for the applicant, unsuccessfully pursued the Tribunal to reverse its Ruling and Orders. They were aggrieved and preferred to file this application.

In her written submissions the respondent argued that the Magomeni Primary Court's decision in Probate cause No. 442 of 2007 is not final as there is a pending appeal there from to the Court of Appeal of Tanzania (i.e Civil Appeal No. 12 of 2010) following a Ruling by the High Court in PC Civil Appeal No. 91 of 2008.

She further argues that the applicant has no *Locus Standi* to challenge issues under probate matters which he was not a party; and that his advocate was present at the Tribunal in Ruling under the Land Application No. 61 of 2009 dated 26th May, 2009.

The great concern before this court is the Ruling of J. Kaare on the Land Application No. 61 of 2009. This Court cannot entertain allegations under Probate issues as there are proper forums dealing with the matter. I have gone through both proceedings and the Ruling. The Ruling reads as follows:

"There is this matter pending here in this Tribunal. The applicant has come today applying orally to be restored in the suit house as she believes she has been unlawfully

evicted from that house from a group of people [Sic] she did not recognize. Though the application was oral, due to its emergence I thought it proper to entertain and intervene in order to rescue the situation. I have no doubt that whoever evicted the applicant from the suit house did it without legal justification as there is a case involving that house pending in this Tribunal. I therefore order that whoever occupies that house be evicted without delay and the applicant be restored in the house before this sunset”

The learned Chairman thereafter drew an Order for eviction.

I am of the view that there is no need to go through the whole of application No. 61 of 2009. In the Proceedings of the Tribunal dated 25th May, 2009 the Corum show that the Assessors, the Respondent and his advocate did not attend before the tribunal proceedings. Only the applicant was present, and claims by the applicant were made orally. She claimed that early on that day a group of people who she did not recognize forcefully evicted her.

I fail to understand how and why the Tribunal Chairman entertained this application exparte without a Chamber Application and issuance of summons in accordance with Regulations 4 and 5 of the Land Disputes Courts (the District Land and Housing

Tribunal). G.N. 174 of 2003. I am of the view that such application and for any application made by a person allegedly being evicted in a suit premises by persons unknown to him, and the suit being pending in court, must be made by way of a Chamber Summons and or through a different case or suit. This suit might even be a criminal suit or a Civil Suit.

This application and its aftermath ruling and orders may be said, and I think it was the intention of the Tribunal Chairman, to be done under summary Procedures as provided under Order XXXV Rule 1(f) of the Civil Procedure Code 1966, Cap 33 [R.E. 2002] which reads as follows:

“This Order shall, where the plaintiff desires to proceed in accordance with the Order, apply to-

(a).....

(b).....

(f) Suits for the recovery of possession of any immovable property including any building or other premises where the right of the person seeking to recover such possession is not restricted by the provisions of the Rent Restriction Act, and suit for the recovery of rent, mesne profit or damage for unlawful occupation in respect of such immovable property, building or premises.”

Though the Civil Procedure Code does not give meaning of the word suit but it is my finding that an application for restoration of

possession of premises suffices to be called a suit. The Black's Law dictionary (8th Edn) defines the word Suit Synonymously with the word action thus:

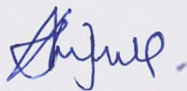
“an ordinary proceeding in court of justice, by which one party prosecutes another party for enforcement or protection of a right, redress, or the prevention a wrong or the punishment of a public offence, and if conducted to a determination will result in a judgment or decree.”

Moreover, *Dr. BASANT LAL BABEL's* Law Dictionary defines the word suit to mean a process instituted in a court of justice for recovery or protection of a right, the enforcement of a claim or the redress of a wrong; suing; petition; action in a law court.

So it is sufficient to say that an application for restoration into the premises in the Kinondoni District Land and Housing Tribunal in the Land Application No. 61 of 2009 was incompetent for Summary proceedings as no formal Applications like “Plaint,” “Application”, Chamber Summons Chamber/Application were filed as required by Rule 2 of Order XXXV of the Civil Procedure Code or in accordance with ***Regulation 4 and 7 of the Land Dispute, Courts (The District Land and Housing Tribunal) Regulations, 2002, G.N. No. 174 of 2003.***

The Tribunal chairman's reasoning that the matter had a nature of emergence thus rendering it proper for the court's intervention in order to rescue the situation is more moral than legal. In reality he defeated the principle of Natural justice which requires every party to be heard before a decision is arrived at (*Audi alteram partem*). It must be understood that our courts are, and ought to remain Courts of Law, not courts of morals.

I therefore rule out that the Tribunal's Ruling was saturated with irregularities. It defeated the principles of Natural Justice. For this reason I hereby quash the Ruling and Orders made and delivered on 26th May 2009. The trial to proceed before a different Chairman and set of assessors. I make no orders in this Revisions given the background of this suit. If the applicant wishes to restore or resume tenancy or any other claims, he should file the necessary applications before a Court or Tribunal of competent jurisdiction. No orders as to costs.



A.F. NGWALA

J U D G E

16/12/2010

16th December, 2010

Coram: A.F. Ngwala, J.

For Applicant: Mr. Brashi

For Respondent: absent

Court: Ruling (Revisional Order) delivered in court in the presence of the parties.

A.F. NGWALA

J U D G E

16/12/2010