IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 102 OF 2008

MUSSA KYEJU .....APPLICANT

Versus

MUSSA SELEMANI .....RESPONDENT

R U L I N G

FIKIRINI, J:

The parties in this application agreed to settle this matter out of court and come back to court to record the settlement.

However, on the 19th July 2012, no settlement could be recorded as the respondent came with a proposal when parties were about to sign the agreement. Parties requested for three days adjournment. Another date was set. On the 7th August, 2012, Mr. Brashi counsel for the applicant reported to court that the parties have not been

able to sign the agreement. The reason being parties did not agree on how the agreement is going to be fulfilled in the event the respondent fails to fulfill his obligation. The applicant through his counsel came up with two suggestions: one, the landed property be taken away from the respondent in case he fails to fulfill his obligation, and two, that the balance should attract interest until the amount due is paid.

According to Mr. Brashi the respondent was ready but his counsel was not and as a result no agreement was signed. In light of the above, Mr. Brashi was thus requesting for the court interference.

Reacting to the application, Mr. Mgerwa referred this court to a Court of Appeal decision in the case of Oyster bay Properties Ltd and Kahama Mining Corporation (Applicants/Decree Holders) v. Kinondoni Municipal Council and others (Defendants/Judgment Debtors) and Patrick Rutabanzibwa and others (Respondents) Civil Revision No. 4 of 2011. It is Mr. Mgerwa's argument that if the default clause is to be included in the deed of settlement, the rights of the parties will not be conclusively determined.

It was therefore Mr. Mgerwa's suggestion that the agreement be executed as it is. And the applicant could apply for the execution of the decree in the event the respondent defaults and not otherwise. He thus stressed that the initial agreement that the respondent has to pay the applicant the total of Tzs. 15,000,000 in three

installments of Tzs. 5,000,000 from September, October and November 2012. And in the even the respondent defaults the applicant could then resort to executing the decree of the court.

I have read the decision of the Court of Appeal. From that case it is obvious and I do concur that once the deed of settlement is recorded it becomes a decree of the court. This is on assumption that the recorded agreement is certain and capable of being made certain. According to the above cited case the agreement should therefore determine the rights of the parties conclusively.

Now coming to the application before this court, I am inclined to believe the same is the situation. That in the event parties in this application record deed of settlement that deed of settlement becomes a court decree. And therefore binding on parties and accordingly determine their rights conclusively.

Since the deed of settlement after being recorded is the same as court decree, I would thus expect in the event the respondent fails to pay the installments as agreed the applicant could then apply for the execution of the decree. With that in mind as a proper approach, I therefore have difficulties of both understand and agreeing to Mr. Brashi's arguments. That in the event the respondent's fail to honour the agreement then the landed property be taken away or in case of the balance due that balance should attract interest until the amount due is paid in full.

I totally share Mr. Mgerwa's concern regarding the introduction of such conditions. In my view these conditions will totally defeat the whole essence of settlement. My belief is that out of court settlement carries an amicable status which is different from full court hearing. The court hearing can have an element of punishment especially on the losing side. The court therefore whenever it gets opportunity to record settlement, it always cherishes it.

Moreover, the signing of the deed of settlement in my view would in all sense fully protect the applicant as there is a decree to be executed when need be. Inclusion of conditions would in my view cloud that cordiality. In addition, passing title on the landed property to the applicant would in my view not necessarily be easy as envisioned. For example: it would not be easy for the respondent to release the landed property if the balance due is only. Tzs. 5,000,000 out of Tzs. 15,000,000. But it would be easy for the applicant to file for the execution of decree on the balance due. Against that assessment I am convinced the deed of settlement without further conditions as suggested by Mr. Brashi should be the way to go.

In light of the above, I strongly feel and proceed to advice the parties to record what they have agreed on before and in the event the respondent defaults the applicant can then apply for the execution of the decree in court.

It is so advised.

Ruling Delivered this day 15th of August 2012 in the presence of the applicant and Mr. Daimu holding brief of both counsels.

P. FIKIRINI

JUDGE

15TH AUGUST, 2012

Right of Appeal Explained.

P. FIKIRINI

JUDGE

15TH AUGUST, 2012