

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

LAND REVISION NO. 16 OF 2011

(Arising out of Application no. 28/2011 before the District Land and Housing Tribunal for Ilala)

JAMES HUDSON NYATI.....APPLICANT

VERSUS

1. CHRISTOPHER BURTON NYATI	}	RESPONDENTS
2. ABDALLA SAID MASOUD		
3. RIMINA AUCTION MART & CO. LTD		

**JUDGEMENT**

**Latifa Mansoor, J.**

The Applicant has filed an application for stay of execution of the orders /decree issued by the Chairperson of the District Land and Housing Tribunal for Ilala “the Tribunal”. He also applied for revision of the Proceedings, Judgment and Decree of Application No. 28 of 2011 dated 10<sup>th</sup> March 2011. On 25<sup>th</sup> October 2011, Ngwala J had ordered that status quo ante be maintained hence the first prayer of the chamber summons was dealt with. The records show that Mr. Kariwa Advocate is representing the 2<sup>nd</sup> Respondent and has filed a counter affidavit opposing this application. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents are not represented and have never entered appearance; the court had ordered substituted service for the 1<sup>st</sup> Respondent but despite the service, the 1<sup>st</sup> Respondent never entered appearance. On 24<sup>th</sup> July 2012, when the matter came before me for hearing, Advocate Amour Khamis entered appearance for the Applicant, all the Respondents were absent. Advocate Amour

Khamis had prayed to argue the application by written submissions; he also undertook to notify Advocate Kariwa of the Orders of the Court which shall be issued. The Court had ordered that this application be heard by written submissions. The Applicant was ordered to file his submissions on 07<sup>th</sup> August 2012, the Respondents were ordered to file their Reply submissions by 24<sup>th</sup> August 2012. Advocate Amour Khamis had notified Advocate Kariwa of this Court Orders through a letter dated 1<sup>st</sup> August 2012 with Ref no. CC/72/2011/AK. The Applicant filed his submissions in time as ordered but the Respondents did not file any and no reasons for not doing so was given.

The application for revision was brought before this Court following the judgment and decree of Mwakibuja, the Chairperson of the Tribunal dated 10<sup>th</sup> March 2011 in Land Application No. 28 of 2011. The Parties to the application before the Tribunal were Mr. Abdallah Said Masoud as the Applicant (the 2<sup>nd</sup> Respondent in this Application) and Mr. Christopher Burton Nyati as the Respondent (the 1<sup>st</sup> Respondent in this Application). For the sake of clarity of what transpired before the Tribunal I will reproduce the proceedings of the Tribunal.

*Date 10/03/2011*

*Coram: R. Mwakibuja- chairman*

*For Applicant: Msemwa*

*For Respondent: in person*

*B/C Mary*

*Tribunal*

*The matter is for mention. Pleadings are complete.*

*Msemwa*

*The Respondent admits everything except costs of the suit and rent arrears. We pray the judgment in admission and the respondent to vacate and we are*

*ready to forgive him costs and rent arrears if he will vacate from the suit property*

**RESPONDENT**

*I pray for 21 days to vacate from the suit premises.*

**ORDER/JUDGEMENT ON ADMISSION**

*The applicant filed application asking for the following relief:*

- a) An order for the Respondent to vacate the suit premises known as and situate on plot No. 188 Block W with Certificate of Title No. 86499 at Ilala, within Ilala Municipality, Dar es Salaam.*
- b) Any other relief(s)*

*On reply the respondent admits to stay on the suit property unlawfully and he admits to vacate soon, but without being ordered to pay rent and cost of this application.*

*Mr. D Msemwa for applicant on 10/03/2011 when the case came for mention submitted that his client is ready to forgive the respondent cost and rent if he will vacate from the suit property. The respondent in reply asks to be given 21 days thereafter he will vacate peacefully.*

*In the circumstances I order that the respondent to vacate from the suit property within 21 days from today and the applicant not to claim costs and rent if the respondent shall vacate within that period.*

*Order accordingly.*

It has been submitted by the Applicant that before the High Court, Land Division, there is Land Case no. 157/2010 filed by Richard Hudson Nyati and James Hudson Nyati against Christopher Burton Nyati and Abdallah Said Masoud. The subject matter of this case at the High Court is the property situate on Plot No. 88 Block W, Ilala Dar es Salaam comprised in a Certificate of Title No. 86499, "the Property" the Property which was also the subject matter in Application No. 28/2011 before the Tribunal.



This Property belongs to the late Mary Agnes Beyard and forms part of her estate. Mr. Richard Hudson Nyati and Mr. Christopher Burton Nyati were appointed the Joint Administrators of the Estate of the Late Mary Agnes Beyard through Probate and Administration Cause No. 176/2006 by Ilala Primary Court. In Land Case No. 157/2010 pending before the High Court, Land Division, the Applicant in this Application and the Co-Administrator of the Estate of the Late Mary Agnes Beyard (1<sup>st</sup> and 2<sup>nd</sup> Plaintiff in the High Court Case) have prayed for a declaration, among other things, that the sale of the Property to Abdallah Said Masoud (2<sup>nd</sup> Defendant in the High Court Case) by Christopher Burton Nyati (1<sup>st</sup> Defendant in the High Court Case) on his own, without involving Richard Hudson Nyati, his Co- Administrator, was unlawful hence null and void. Christopher Burton Nyati has also filed a counter claim in Land Case No. 157 of 2010 and has stated that Mr. Richard Hudson Nyati is staying in the Property and collecting rent. He prayed that the rent collected by the Mr. Richard Nyati be remitted to him.

During the hearing of Application No. 28/2011 before the Tribunal, Mr. Christopher Burton Nyati had admitted that he is the one staying in the Property and also admitted that he will give vacant possession upon given 21 days to do so. Mr. Christopher Burton Nyati as well as Mr. Abdallah Said Masoud had colluded and concealed the fact that there is existing Land Case No. 157/2010 before the High Court, Land Division at which both of them are Defendants and that the case is regarding and involving the same subject matter as in the application before the Tribunal. The admission made by Mr. Christopher Burton Nyati before the Tribunal that he is the one living in the house is contradicting what he pleaded in his own counter claim filed at the High Court in Land Case No. 157/2011, where he claimed that part of the Property is occupied by Mr. Richard Hudson Nyati, his co-administrator, and that there are also living in the premises tenants and these tenants pay rent to Mr. Richard Hudson Nyati. Worse still, Abdallah Said

Masoud in his application in Land Application no. 28/2011 had given misrepresentation and misleading facts that there is a lease agreement between Mr. Abdallah Said Masoud and Mr. Christopher Burton Nyati. He has hidden the fact that since he bought the house from Mr. Christoher Burton Nyati, he was never given possession of the house, and the sale is challenged by the other heirs and the co-administrator of the late Mary Agnes Beyard at the High Court, Land Division. For clarity, I shall reproduce below the contents of paragraphs 4 9I to IV) of the Application:

- I. The Applicant is the lawful owner of all that suit premises situate at plot no, 88 Block W with Certificate of Title No, 86499 at Ilala, within Ilala Municipality, Dar es Salaam;
- II. That the respondent and the applicant had on 1<sup>st</sup> of April 2010 entered into six months lease agreement for a rent of 150,000 per month, which sum of Tshs 900,000 was paid by the respondent to the applicant.
- III. That upon expiry of the lease agreement on 30/09/2010, the respondent never gave notice of renewal and has remained quite without payment of any rent to date, now six months, a total of Tshs 750,000 has not been paid to date.
- IV. The respondent has been served with a notice dated 30/10/2010, which notice to vacate was received by the respondent on 5/11/2010, but has neglected and/or refused to heed thereto.

The Applicant in this matter, Mr. Abdallah Said Masoud had prayed for vacant possession of the Premises.

On his part, Mr. Christopher Burton Nyati, acting as the Respondent to this matter before the Tribunal had admitted all what was pleaded by Mr. Abdalah Said Masoud, acting as the Applicant.

As could be gathered from all the facts stated hereinabove, Mr. Abdallah Said Masoud and Mr. Christopher Burton Nyati had colluded in fabricating the facts giving rise to the cause of action in Application No. 28 of 2011 before the Tribunal in order to get an order of yielding vacant possession of the premises. They went to the extent of concealing the fact that both of them are the defendants in the High Court, Land Division for improper sale of the same suit Premises to each other. They have also given wrong information before the Tribunal that the relationship between them is that of a Landlord and a Tenant while in fact their relationship is that of a Seller and a Buyer. They have also hidden the fact that the premise were or are still occupied by tenants as well as Mr. Richard Hudson Nyati, and the tenants are paying rent to Mr. Richard Hudson Nyati.

The Application for Revision was made under Section 79 of the Civil Procedure Code, Cap 33 R: E 2002 and S. 41 Land Disputes Courts Act, Cap 216 R: E 2002.

Section 79 of the Civil Procedure Code, provides as follows:

*“79(1)- the High court may call for the record of any case which has been decided by any court subordinate to the High Court and in which no appeal lies thereto, and if such subordinate court appears-*

- a) To have exercised a jurisdiction not vested in it by law, or*
- b) To have failed to exercise a jurisdictions vested, or*
- c) To have acted in the exercise of its jurisdiction illegally or with material irregularity*

*The High Court may make such orders in the case as it thinks fit.*

Section 41 and 43 (1) and (2) confers power to this Court to hear revisions from or in respect of any proceedings in a District Land and Housing Tribunal in the exercise of its original jurisdiction. This Court is empowered under these sections to call for records of the District Land and Housing Tribunal and give directions as it considers necessary in the interest of justice and if it



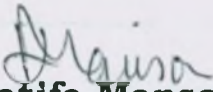
appears that there has been an error material to the merits of the case involving injustices, this court is empowered to revise the proceedings and make such decision as it thinks fit.

Clearly, the proceedings before the Tribunal were conducted with material irregularities and that they were tainted with fraudulently facts and misrepresentation presented by Mr. Abdallah Said Masoud as the Applicant in collusion with Mr. Christopher Hudson Nyati as the Respondent in that matter with the purposes of misleading the Tribunal in having it to give an order for vacant possession for the 2<sup>nd</sup> Respondent in this matter. The judgment and decree obtained as a result of fraudulent proceedings, material irregularities, misrepresentation and misconduct by the parties to the proceedings are also a nullity and must be quashed. By looking at the Proceedings of the Tribunal it clearly shows that the Chairperson of the Tribunal relied exclusively upon the fraudulent facts and misrepresentation of the parties in reaching to its decision. By looking at the records of the Tribunal and the pleadings of the parties in Land Case No. 157/2010 pending at the High Court, Land Division, this Court have identified fraud, misrepresentation and misconduct of the parties to the proceedings of Application no. 28/2011 and this renders the entire proceedings of the Tribunal a nullity. The judgment obtained through proceedings which were tainted with fraud, misrepresentation and misconduct is also a nullity.

I accordingly, quash the entire proceedings of the District Land and Housing Tribunal for Ilala in Land Application no. 28/2011 for being irregular and involving collusion, misrepresentation, misconduct and fraudulent facts presented to the Tribunal by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein, hence the Judgment and Decree obtained through fraudulently proceedings are also declared a nullity.

I however, do not agree with ground no. 3 of the application for revision that the Tribunal did not have pecuniary jurisdiction to entertain an application as the suit premises was sold at Tshs 200,000,000 as the subject matter before the Tribunal was lease and an application for vacant possession, and the rent per month as per the pleadings were Tshs 150,000. The Tribunal had jurisdiction to entertain the application, had it been a genuine application.

This application for revision is allowed with costs.

  
**Latifa Mansoor, J.**  
**14 September 2012**