

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 35 OF 2011

(From the Decision of the District Land and Housing Tribunal of
KINONDONI District at **MAGOMENI** in Land Case No. 105 of 2010)

PAULO LEKAMOIAPPLICANT

VERSUS

MARY ALICE CHIPUNGAHELO1ST RESPONDENT

RAMADHANI RAMADHAN DOGOLI.....2ND RESPONDENT

ZAITUN JUMA KAJEMBE3RD RESPONDENT

Date of Last Order: 12/8/2013

Date of Ruling: 20/8/2013

R U L I N G

MZIRAY, J:

This application is filed under section 43 (1) (a) and (b) of the Land Disputes Court Act [Cap. 216 R.E. 2002], section 68 (e) and 95 of the Civil Procedure Code [Cap. R.E. 2002]. The said application is supported by the affidavit of Paulo Lekamoi, the herein applicant.

The learned counsels for both parties agreed to argue the application by way of written submissions.

In support of the application MS, Bayona learned counsel for the applicant stated that, this application is for challenging the proceedings and decree and orders made by the District Land and Housing Tribunal for Kinondoni District in Land Application No. 105 of 2011. According to her, the 2nd and 3rd Respondents instituted objection Proceedings in execution, but the same was dismissed for non- appearance of the objectors, so execution process was carried out.

MS Bayona went on to state that the Trial Tribunal's decree violated the provisions of order XX, Rule 9 of the Civil Procedure Code [Cap. 33. R.E. 2002] by failing to describe sufficiently the landed property for the purpose of proper identification of the same. It is therefore submitted that execution of the decree came to be done in excess of the decree. According to the learned counsel the applicant owned a piece of land at the same locality adjoining the disputed land but separate from the disputed piece of land. Ms Bayona

further stated that in executing the decree of the Tribunal the first Respondent invaded the disputed land plus the Applicant's land measuring about half an acre and made it her property. It is the learned counsel's further contention that this was possible because the decree was vague as it did not describe sufficiently the landed property for which it was issued for the purpose of proper identification of the property. The Provisions of Order XX Rule 9 of the Civil Procedure Code Cap 33 R.E. 2002 and Mulla in his book the Code of Civil Procedure 16th Edn vol. 1, Butterworth's, 2001 at page 630, and also the case of V. **Chinna Lakshmaiah versus Samurla Ramaiah AIR [1991] AP 177**], were cited in support of the learned counsel's contention.

Submitting in reply the learned counsel for the respondent stated that the objectors namely the 2nd and 3rd respondents who are claimed to be owners of the land in dispute, did file objection proceedings during execution but the same was dismissed. According to him the objectors have never filed revision or fresh suit. Civil application no. 104 of 2008 (unreported) was cited in support thereof. The learned counsel therefore stated that the application

at hand is unmaintainable. According to him it is the Respondents who have a right and opportunity to file a revision before this court if they so wish.

Citing with authority Order XX Rule 6 and 7 of the Civil Procedure Code Act Cap. 33 R.E. 2002 the learned counsel stated that the decree in issue is valid because it is in conformity with the Judgment. According to him the applicant ought to have exercised his right of appeal and not revision because the applicant was a party to land application no. 105/2010.

In rejoinder the counsel for the applicant reiterated what she submitted in chief insisting that the applicant does not prefer this application on behalf of the 2nd or 3rd Respondents.

Having gone through the application, affidavit in support thereto, submissions of both parties and the entire record of this case, what I grasp from the record is that, the suit before the trial tribunal to wit Land Application No. 105 of 2010 was between the Applicant and the 1st Respondent. It has also been averred in the affidavit that the Applicant was not the owner of the Land in dispute but a mere

custodian and that the land allegedly belonged to the 2nd and 3rd Respondents. Judgment was entered in favour of the 1st Respondent. The 2nd and 3rd Respondents preferred objection Proceedings which were dismissed for want of prosecution hence the tribunal ordered for execution to proceed. The applicant further over red that, during the execution process part of his land which was not subject matter of the suit was grabbed by the 1st Respondent. It is from that background that this application for review was preferred.

In my view appeal could not be preferable in the circumstance because the property in issue here is not the property which was in dispute in Land Application No. 105/2011 it is a different property which was encroached in execution. Further to that the Applicant in his testimony did admit that he was not the owner of the disputed property in Land Application No. 105 of 2011, but a mere custodian. Having said all that the proper avenue to be taken in a situation like this was only revision.

Regarding the 2nd and 3rd Respondents since they were not parties to the original suit I think it was not proper to include them in revision stage. They have therefore been wrongly joined and whatever the outcome here will not affect them.

As for contravention with Rule 9 of Order XX of the Civil Procedure Code Cap. 33 R.E. 2002, I agree with the counsel for the applicant that the Decree in Land Application No. 105 of 2010 contravenes the provisions of Order XX Rule 9 of the Civil Procedure Code Cap. 33 R.E. 2002 because the decree did not describe sufficiently the landed property for which it was issued for the purpose of property identification and execution of the decree. The said Rule provides inter alia that:-

“9. Where the subject matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by a title number under the Land Registration Act, the decree shall specify such Title number”.

In the instant case the decree in issue did not specify the details of the property in dispute/ the decreed property the consequence of which caused execution to be done in a property, which was not subject to the case. Having said all that I find the decree and the whole execution proceedings to be null and void. I therefore order that a proper decree specifying the property in dispute be issued. Further to that I remit the record to the Lower tribunal for execution to be done in accordance with the law.

As the fault was done by the lower tribunal, no order as to costs.



R. E. S. MZIRAY

JUDGE

20/8/2013

Right of Appeal explained.



R. E. S. MZIRAY

JUDGE

20/8/2013