

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND REVISION NO. 14 OF 2019

(Arising from Misc Land Application No. 402 of 2017 of District Land and Housing Tribunal for ILALA at Mwananyamala House)

TABITHA MGANGA (Administratrix of the estate of the Late Wilfred Amanuel Mmari).....**APPLICANT**

VERSUS

AMON MASHAFI.....**1ST RESPONDENT**

FARB ASSOCIATES LTD.....**2ND RESPONDENT**

RULING

S.M. MAGHIMBI, J:

The application beforehand is lodged under the provisions of Section 41, 43(1)(a) (b) and 2 of the Land Disputes Courts Act, No. 2 of 2002 as amended by the Written Laws (Miscellaneous Amendments) [No. 2] Act No. 4 of 2016 and Section 79 (1)(c) of the Civil Procedure Code, Cap 33. R.E 2002. In her Chamber Summons, the applicant is seeking for the following orders:

1. That this Honourable Court be pleased call for the record for Revision or act in Revision of the decision of the District Land and Housing Tribunal for Ilala in Miscellaneous Land Application No. 402 of 2017, Amon Mashafi Vs. Tabitha Mganga as the tribunal has exercised its powers with material irregularity accessioned a failure of justice

because the Applicant was not party in the original proceedings and the property subject to sell is and estate property, therefore this Honourable Court invokes its revisional powers over the Tribunal and revise the proceedings of the Tribunal in order to satisfy itself to the correctness, legality and propriety of the Tribunal decision.

2. Costs of this Application to be borne by the Respondents.
3. Any other relief this Honourable court may deem fit to grant.

The application is supported by an affidavit of the applicant dated 22/05/2019. Service to the respondent was futile hence this application proceeded ex-parte. On the day of the hearing, the applicant was unrepresented.

Submitting on the merits of her application, the applicant's complaint was in the way her house is about to be sold. That initially at the Ward tribunal, she sued the 1st respondent who had trespassed to her land by building a boundary wall. The matter proceeded ex-parte and while the hearing was proceeding, there was a case against her that was lodged by his wife and his neighbor. She added that the trial Ward tribunal decided in her favor and she was told to go for execution at the District Tribunal. That when she arrived at the District Tribunal she found that there was already another case and the people at the registry there told her that they will give her an advocate.

The applicant submitted further that there were three cases at the DHLT some of which involved the respondent's wife. That the Chairperson of the DHLT insisted that they settle the matter amicably. She submitted further that DHLT delivered its judgment whereby the Chairman said he will not go against the decision of the Ward Tribunal Case No. 39/2014 and thereafter

she was ordered to pay costs of the suit. The applicant submitted further that when she attempted to appeal and sought aid from the Legal Service Centre, she was asked not to proceed with the appeal because she may be condemned to pay more costs. That she continued to seek for legal advice in vain. At the Legal and Human Rights Centre, she was advised to go and object the costs that were awarded.

Further that when she went to the hearing of the application for costs, she told the Chairman that she was not supposed to pay costs and that she could not afford it. The Chairman told her to pay the money in two installments and she told them she could not afford to that because the respondent was the one to pay her. Thereafter the order was issued that her house is to be sold so that the respondent could recover the amount of costs. The auction of the house was attempted twice but no one purchased the house and that is why she has come to this court. Her conclusive prayer was that this court nullifies the order for the sale of her house, she also prayed for costs of this application.

Having heard the applicant's submissions, I then perused the records of this application. Indeed the saddest part of this Revision is that the applicant's house which is situated at Tabata was sold on auction by a mere Bill of costs recovery for Tshs 448,000/=. However, the said notice said the house was to be sold in order for the applicant herein to pay the outstanding debt she has with the respondent while in actual sense, the sale was for recovering costs that the applicant owes to the respondent.

The records also reveal that on 28/11/2017, the auctioneer wrote to the applicant asking her to pay the outstanding amount of 448,000/- within 14 days or the house will be sold. Thereafter on 22/10/2018, an attachment

order was issued and again there is another letter dated 25/02/2019 addressed to the tribunal where the auctioneer reported that they could not sell the house because no purchaser emerged.

The procedures for execution of the costs that were followed were contrary to the provisions of Section 48(1)(e) of the CPC which provides:

*"Provided that, **the following shall not be liable to such attachment or sale, namely-***


*(e) **any residential house or building, or part of a house or building occupied by the judgment debtor, his wife and dependant children for residential purposes;**"*

As per the records, it is undisputed that the whole dispute that led to the Bill of Costs, execution of which is challenged herein, was revolving around the alleged trespass by the respondent to the appellant's property. And during proceedings it was revealed that the appellant's house subject to trespass was her matrimonial and residential home which she lived with her family. On this overwhelming fact that the property was a residential house of the applicant where she lived with her family, pursuant to the provisions Section 48(1)(e) of the CPC, the tribunal misdirected itself by ordering that the same house be sold in execution of an award of Bill of costs, let alone the fact that the amount to be executed was just Tshs. 448,000/=.

It is on the above grounds that I allow this application, revise the proceedings of the tribunal in Misc. Application No. 402/2017 by nullifying the sale of the applicant's property. It remains the property of the applicant and she should be left with peaceful enjoyment therein. This does not, however, exempt the applicant from paying the Tshs. 448,000/- awarded in the Bill of Costs. The amount should be paid in equal installments of

Tshs 90,000/= per months to be paid within 5 months. The applicant shall have her costs for this appeal.

Dated at Dar es Salaam this 12th day of March, 2021.


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S.M MAGHIMBI
JUDGE

