IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

LAND REVISION NO. 25 OF 2019
(Arising from Ilala District Land and Housing Tribunal in Land Application No.173 of 2012 and Misc. Application No.566 of 2018)

MARTIN MATIKU NYIRAHA .....APPLICANT

VERSUS

KIKOMBE MASUKA.....1ST RESPONDENT
MARY LUCAS TETI.....2ND RESPONDENT

Date of last Order: 19.03.2021
Date of Ruling: 03.05.2021

RULING

V.L. MAKANI, J

The applicant MARTIN MATIKU NYIRAHA has moved this court under section 14(1) of the Law of Limitation Act Cap 89 RE 2002 (**the Limitation Act**), section 79(1)(c) and 95 of the Civil Procedure Code Cap 33 RE 2002 (**the CPC**) and any other provision of the Law for the following orders:

1. *That this court be pleased to extend time within which the applicant may apply for the court to exercise its revisional jurisdiction against the record in Land Application No.173 of 2012 decided on 20.03.2017.*

2. *That this court may be pleased to call and examine the records and decision of Land Application No.173*

of 2012 and its execution proceedings in Misc. Application No.566 of 2018 and make findings that the chairman of the tribunal has in the exercise of its jurisdiction acted illegally and with material irregularity.

3. *Cost of this application.*

4. *Any other order the court may deem fit and proper to grant.*

The application is supported by affidavit sworn by the applicant herein. In response, the 1st respondent has sworn and filed his counter affidavit. The 2nd respondent did not enter appearance despite being served by publication, therefore the matter proceeded ex-parte against her.

It was the court's order that this application be argued by way of written submissions. The applicant's submissions were drawn and filed by Juma Nassoro, Advocate while the 1st respondent's submissions were drawn and filed by G and S Associates, Advocates.

Submitting in support of the application, Mr. Nassoro said that it is not fatal to combine two or more applications in one. He relied on the case of **Tanzania Knitwear Ltd vs. Shamshu Esmail (1989) TLR**

48. He said the applicant is not party in application No.173 of 2012 and Misc. Application No.566 of 2018 and added that, the decision of the said applications affect the interest of the applicant and the only remedy available to him is revision.

On the application for extension of time, Counsel said that the applicant was not aware of the judgment and decree in Land Application No. 173 of 2012 and its execution proceedings in Misc. Application No.566 of 2018 until 03.10.2019 when he obtained a copy of judgment and decree (**Annexure C** to the affidavit).

Further, he said that Application No.173 of 2017 was tainted with illegalities. He said that the Chairman of the Tribunal did not order the wise assessors to give their opinion in writing contrary to section 23 (2) of the Land Disputes Courts Act, Cap 216 and Regulation 19 (2) of the Land Disputes Court (The District Land and Housing Tribunal) Regulations,2003 (**Regulations**). He insisted that, even if they gave their opinion in writing, the same was not read over to the parties before delivery of the judgment. He relied on the case of **Edina Adam Kibona vs. Absolom Swebe (Sheli), Civil Appeal No.286 of 2017 (CAT)** (unreported). The counsel further stated

that the Chairman of the Tribunal did not give reasons why she differed with the opinion of the assessors. He said that at page 4 of her judgment the Chairman said that she sees the merits of the application contrary to the wise assessors, however she did not give reasons contrary to the requirements of section 24 of Cap 216. He added that the 1st respondent did not join the vendor, one TAWIEL MGHAMBAS in Application No.173 of 2012 as both the 1st and 2nd respondents claimed to have bought the suit land from him. He said therefore that TAWIEL MGHAMBAS was condemned unheard to have passed the title to the 2nd respondent who later sold it to the applicant. He said that the denial of the original owner's right to be heard affected the applicant's interest to the suit land because her vendor (2nd respondent) had no title. Further he added that the applicant did not disclose sufficient demarcations of his alleged plot. He did not state specific location of the area by size and boundaries. He insisted that such material irregularity resulted into another material irregularities in the judgment and decree. He added that, the 2nd respondent has a residential licence dated 2006 and the applicant purchased the suit land after making due diligence and therefore he is a bonafide purchaser. He said that the Chairman of the Tribunal did not consider the legal value of the Residential License and there was

no order regarding the status of the said License. Counsel averred further that, the application for execution does not specify the land which the decree is expected to be executed and even the judgment debtor in Application No.173 of 2012 is not residing in the house and has no interest whatsoever. He prayed for this application to be allowed with costs.

In reply, the counsel for the 1st respondent said that, combination of two applications in one as has been made by the applicant is untenable and renders the application incompetent and offends Order XLIII Rule 2 of the CPC. He further relied on the case of **Rutagatina C.L vs. The Advocates Committee and Another, Civil Application No.221 of 2005** at page 5. He said that the applicant has lumped and filed under one Chamber Application, different provisions of the law namely, section 14 (1) of the Limitation Act, section 79 (1) (c) and section 95 of the CPC. He insisted that under such circumstances the application is hopelessly incompetent to move this court. He said that it is only after the grant of extension of time that the applicant may lodge application for revision.

On the application for revision, he said that the Chairman of the Tribunal complied with mandatory requirements of the law relating to assessors. He insisted that the chairperson afforded the assessors with the chance to give their opinions. He said that the applicant in paragraph 2 and 4 of his affidavit confessed encroachment in the suit land. He said that the fact that the applicant purchased the suit premises prior to the conclusion of the case on 20/03/2017 is a proof that the applicant is a tress passer. Replying the issue of non-joinder of the vendor in land application No173/2012, he said that the vendor had expired long ago in 1990's. On the size and demarcation of the suit premises he said that the precise answer would have been given by the original vendor because when he sold the land the area was all bush and was subsequently documented for *Leseni ya Makazi No.ILA 009738* by the 2nd respondent as late as June 2006. He said that the Residential Licence was issued to the 2nd respondent out of ignorance of the Land Authorities as the 2nd respondent was a mere trespasser since it was an un-surveyed patch. He said that the applicant did not exercise due diligence in purchasing the suit land as he purchased the suit land on 26/10/2016 while there was a pending case at the Tribunal and the same was determined on 23/03/2017, a year after he had purchased the suit land. He said that the issue of

the 2nd respondent having no interest in the suit land is obvious since once the vendor sold the property to the purchaser, he naturally has to relinquish that property to the purchaser (applicant) who is currently the occupier. Basing on the above, he prayed for this application to be dismissed with costs.

In rejoinder, Mr. Juma reiterated his main submission and added, the application is tenable, and it does not offend Order XLIII Rule 2 of the CPC. He said that the cited case of **Rutagatina C.L** (supra) is distinguishable, and it was made before the coming into force of overriding objective principle. He said that in the said case it was impossible to combine application for extension of time and an application for leave to appeal under court of appeal rules for want of jurisdiction. He said that the applications at hand are related and heard by the same judge of the High Court. He said that the applicant having shown interest in the suit land has the right to file revision. He added that the tribunal did not direct legal representative of the late TAWEL MGHAMBAS to be joined in the suit. He prayed for the application to be granted with costs.

Upon closure of parties' submission, the court ordered parties to address on the tenability of the application for revision. However, Counsel for the applicant prayed for this court to give its decision basing on the submissions on record as Counsel for the 1st respondent was not available. The parties having waived their rights to be heard on the tenability of the application therefore, this court shall proceed with the merits of the application basing on the affidavits and submissions of the parties.

It is the 1st respondent's contention that, this application is untenable for combining two applications in one. As per the applicant's Chamber Summons that the applicant has two applications that of extension of time to file application for revision against Application No. 173 of 2012 and application for revision in respect of Land Application No. 173 of 2020 and its execution proceedings in Misc. Application No. 566 of 2018.

Generally, an application which is composed of two or more unrelated applications may be labelled omnibus and consequently struck out for being incompetent. On the other hand, an application comprising two or more applications which are interrelated is allowable at law. This

issue was well discussed in this court in **Tanzania Knitwear** (supra) where Hon. Mapigano, J. (as he then was) stated:

> *"The combination of the two applications is not bad at alw. I know of no law that forbids such a course. Courts of law abhor multiplicity of proceedings. Courts of law encourage the opposite".*

The case above was confirmed by the Court of Appeal in **MIC Tanzania Limited vs. Minister for Labour and Youth Development, Civil Appeal No. 103 of 2004** (unreported). In that case the Court of Appeal noted as correct the position in **Tanzania Knitwear** and stated:

> *"In the Tanzania Knitwear Limited case (supra), the application had united two distinct applications, namely one for setting aside a temporary injunction and another for issuance of temporary injunction. Objection was taken against such a combination on the ground that it was bad in law. Mapigano, J. (as he then was) held:*
>
> *"In my opinion the combination of the two applications is not bad at alw. I know of no law that forbids such a court. Courts of law abhor multiplicity of proceedings. Courts of law encourage the opposite."*
>
> *The learned Senior State Attorney in this appeal has invited us to disregard the holding of Mapigano, J. because we are not bound by it. Indeed, we are not bound by it and there is no direct decision of the Court on the issue. However, that cannot be a hindrance to us in our endeavours to ensure that substantive justice always prevails. After all, judicial process is not a discovery process but a creation process. Having so observed, we hold that the ruling of Mapigano, J. on the*

issue cannot be faulted, and we are respectfully in agreement with him."

In the case at hand, the applicant has combined two applications in one: an application for extension of time within which to apply to this court for extension of time to file application for revision; and secondly, upon grant of the extension of time, application for revision of the said judgment and decree. I am of the considered view that these two applications are interrelated and as such the applicant properly filed the two applications in one Chamber Summons in terms of **Tanzania Knitwear** and **MIC Tanzania** cases. As was elaborated the cited cases the rationale behind an omnibus application is to avoid unnecessary multiplicity of proceedings in order to administer justice effectively, efficiently and timely as was suggested by Hon. Mwambegele, J (as he then was) in the case of **Pride Tanzania Limited vs. Mwanzani Kasatu Kasamia, Misc. Commercial Cause No. 230 of 2015 (HC-Commercial Division-DSM)** (unreported). This court has followed this procedure in various instances, for example, in the case of **Gervas Mwakafwila & 5 Others vs. the Registered Trustees of Moravian Church in Southern Tanganyika, Land Case No. 12 of 2013** (unreported) and in **Tanzania Ports Authority vs, Ali Abdallah Mbelwa**

(Legal Representative of Ali Mbelwa), Misc. Civil Application No. 25 of 2015 (HC-Tanga) (unreported). The respondent has relied on **Rugatatina's case** (supra), however, the said case as was observed in the above cited cases, the Court of Appeal was struggling with the Court of Appeal Rules, 2009 and found that they do not provide for omnibus applications. For these reasons, it is my considered view that the application is therefore properly before this court.

The application for extension of time is based on the main reason that the applicant was not a party in Land Application No. 173 of 2012 and its execution proceedings Misc. Application No. 566 of 2018 and he became aware of these two applications on 30/09/2019. I have gone through the records of the Tribunal. Indeed, the applicant was not party to these proceedings. And since he alleged to have bought land situated on Plot No. ILA/UKG/MZZ 34188 Mazizini under Residential License No. ILA 009738 (the **suit land**) from the 2nd respondent on 28/10/2016, he therefore has interest in the said land. The applicant after becoming aware of the said applications did promptly filed this application on 10/10/2019 which in my view is reasonable time. the fact that the applicant was not aware that there was Land Application

No. 173 of 2012 and its execution proceedings Misc. Application No. 566 of 2018 and he became aware only on 30/09/2019 is sufficient reason for grant of extension of time. In that regard, I invoke the discretionary powers and hereby grant extension of time for the applicant to file application for revision.

The supervisory and revisionary powers of this court are found under section 43(1) (a) (b) and (2) of the Land Disputes Courts Act CAP 216 RE 2002. The said provision states:

> *"(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court:*
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> *(a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;*
>
> *(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit.*
>
> *(2) In the exercise of its revisional jurisdiction, the High Court shall have all the powers in the exercise of its appellate jurisdiction."*

Indeed, the above provision empowers this court on its own motion or upon application by parties to call the record of the Tribunal at any time, conduct inspection and give directions if it considers necessary for the ends of justice.

At the Tribunal the 1st respondent was declared the lawful owner of the suit land and he was also awarded TZS 10,000,000 as damages. The decision of the Tribunal was given on 20/03/2017 and at that time the suit land was already sold to the applicant herein by the 2nd respondent. As we have stated above the suit land was sold on 28/10/2016 and the applicant was not aware of the case and he was not even made a party as a purchaser. In that respect there was an irregularity which curtailed the rights of the applicant as a purchaser. In any matter concerning ownership of land where a third party has surfaced by way of purchase of the suit land then the said party becomes a necessary party by virtue of the said purchase. The applicant therefore was supposed to be a necessary party so as to preserve his right as a bonafide purchaser.

Now what are the consequences of such irregularity? In the case of **Tang Gas Distributors Limited vs. Mohamed Salim Said & 2 Others, Civil Revision No. 6 of 2011,** the Court of Appeal observed:

> *"....it is now an accepted principle of law (see MULLA's treatise (supra) at p. 810) that it is a material irregularity for a court to decide a case in the absence of a necessary party. Failure to join a necessary party, therefore, is fatal (MULLA at p.1020)."*

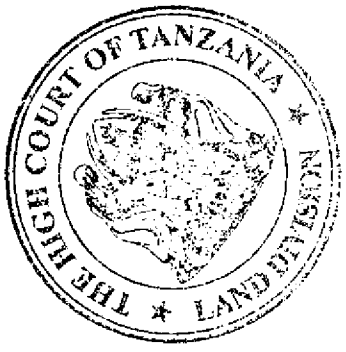
The Court of Appeal went on stating:

> *"we accordingly nullify, quash and set aside the proceedings in the High Court of 16th May, 2011 as well as the judgment, decree and orders emanating therefrom...Finally, we order that the applicant and all interested parties (eg. Abdallah Said and Mehbood Bukhari) be added in the suit as necessary parties and the pleadings be amended accordingly"*

I have also noted that the execution proceedings would also be problematic as observed by the applicant as there is no proper description of the suit lan

In exercise of the revisionary powers endowed in this court under section 43 of the Land Disputes Courts Act, the application for revision is granted with costs. The proceedings of the Tribunal in Land Application No. 173 of 2012 and its execution proceedings Misc. Application No. 566 of 2018 are hereby nullified, and the judgment,

decree and orders emanating therefrom are quashed and set aside. It is further ordered that the pleadings be amended to add in the application the applicant herein. The matter is accordingly remitted back to the Tribunal for re-trial before another Chairman and new set of Assessors.



V.L. MAKANI
JUDGE
03/05/2021