

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

MISC. LAND APPLICATION NO. 736 OF 2020
(Originating from Execution No. 06 of 2020)

FLORA GORDON KAKUMWELA.....APPLICANT

VERSUS

AMANI WEMA MTENGWA.....1ST RESPONDENT

GORDON KAKUMWELA MWAIPALU.....2ND RESPONDENT

Date of Last Order: 23/06/2021

Date of Ruling: 30/06/2021

R U L I N G

MWENDA, J:

This application is for investigation of claim to, and objection to attachment of, attached property and postponement of sale brought under Order XXXI Rule 57(1) and Order XLIII Rule 2 of CPC [Cap 33 R.E 2019]

This application originates from a dispute between the first and the second respondents over blockage of a pathway. The first respondent and the second respondents are neighbors residing at Kawe mzimuni in kinondoni District. At one point in time the second respondent built a wall/fence on the first respondent's pathway thereby blocking him. The second Respondent filed a land case No. 46 of 2015 at Kawe Ward Tribunal which was decided in his favour. The first respondent was aggrieved by that decision and appealed to the District Land and Housing

Tribunal in land appeal No.9 of 2016. In this appeal the entire proceedings and judgment of the Ward Tribunal at Kawe were quashed. The first respondent successfully filed a fresh Land case No. 110 of 2018 against the second respondent at Kinondoni District Land and Housing Tribunal. The second respondent again appealed to the High Court Land Division [land appeal No. 78 of 2019] where his appeal was also dismissed.

Following the dismissal of the appeal above the applicant one Flora Gordon Kakumwela filed this application. It is important to note that the applicant is a daughter/related to the second respondent. She has filed this application alleging ownership of the disputed land and objects execution No.06/2020 pending in High court for failure to implead her to the proceedings which were conducted when she was a minor. She alleges that she was neither notified of the filing of Land Application No. 110 of 2018 nor made a party and that the second respondent was only a guardian /a father and not the owner of the land in dispute.

When this matter came before this court for hearing the parties prayed to argue by way of submissions, this prayer was granted and all have complied accordingly.

The applicant in her written submission prayed to adopt the contents of the affidavit attached to the chamber application. She asserted that she was not aware of the land matters until when she was informed by her father the second respondent. It was then wrong to adjudicate the matter without joining her as a party and the kinondoni Municipal Council. She prayed this application to be granted and cost be provided for.

The second respondent submission was in support of the applicant's

prayer. Mainly he narrated how the dispute started at ward level .For the purpose of this application I find it irrelevant to consider. He prayed the applicant's application to be granted.

The first respondent through Legal and Human Right Centre opposed this application and prayed to adopt the counter affidavit and form part of his submission. In the his submission he stated that the applicant was a party to the Land Application No.110 of 2018 as she was fully represented the 2nd respondent , her father and that the applicant was fully aware of the dispute. She thus was represented by the first respondent perfectly and she is bound automatically by the judgment.

Having summarized submissions by the parties the issue in this matter is whether there are sufficient grounds for this court to investigate the property subject to demolition order [execution No.06 of 2020].

This application is brought under Order XXI rule 57(1), this order reads:-

57.-(1) *"Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other respects, as if he was a party to the suit"*

In this matter it is clear that the applicant is the second respondent's daughter. It is also not in dispute that the applicant was a minor and his father i.e. the second respondent was in control of her un surveyed area where the wall in dispute was erected. It is important to note that the wall in question was built when the applicant was a minor and for that matter

the wall is not a property she originally possessed as evidenced by residence license No. KND029954 annexed to the affidavit. In other words the said wall is not one of her properties and she cannot seek refuge under O.XXI r.57(1). Also by executing the execution order No. 06 of 2020 by demolishing the wall there won't be any injustice on the part of the applicant.

In her submission the applicant allege that she was not aware of Land Application No.110 of 2018 and was never impleaded as a minor with her father as a next friend as provided by Order XXXI RULE 3(1). I have taken cognizance of this point but since the record show she knew about this matter and that her father being in control of the area as evidenced by residence license (supra) she cannot be prejudiced in any way. By impleading her with her father as a next friend would not have brought a different outcome of the matter.

From the foregoing this application fail for want of merits.

It is thus dismissed and each party shall bear their own costs.

It is so ordered.

DATED at DAR ES SALAAM this 30th June 2021.




A.Y. MWENDA
JUDGE
30/06/2021