IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 55 OF 2020

(Arising from Misc. Land Application No. 449/2020, of the District Land and Housing Tribunal for Temeke)

ACCESS BANK TANZANIA LIMITED.....APPLICANT

VERSUS

HAMIS SAID BOGA.....RESPONDENT

RULING

Date of Last Order:30.06.2021

Date of Ruling: 27.8.2021

OPIYO, J.

The genesis of this application is the ruling given in the Misc. Application No. 449 of 2020, by the District Land and Housing Tribunal for Temeke which allowed the respondent to execute the decree against the applicant entered in the Land Application No. 203 of 2014 by the same tribunal. The facts however show that, before the application for execution was granted against the applicant, there was a pending application for stay of the said execution, before the same tribunal, Misc. Application No. 556 of 2020. The applicant had also filed another application for extension of time to appeal against the decision and orders given in Land Application No. 203 of 2014, vide Misc. Land Application No. 526 of 2020 before the High Court. Either, what led to the grant of execution order in Misc. Land

Application No. 449 of 2020, is the absenteeism of the applicant, who was the respondent thereat. However, despite the fact that the application for execution by the respondent was allowed, the application for stay of execution was also left intact. No order was given in respect of it by the tribunal in connection with allowing application No. 449 of 2020. It is on the basis of this background, the applicant preferred the instant application, requesting the court to exercise its revisional and supervisory powers, to call and examine the propriety, legality and correctness of the ruling of Hon. Chenya, the Chairperson of the Temeke District Land and Housing Tribunal, entered in Misc. Land Application No. 449 of 2020. The Application was brought under section 43(1) and (2) of the Land Dispute Courts Act, Cap 216 R.E 2019 and sections 75(1) (c) and 95 of the Civil Procedure Code Cap 33 R.E 2019. The same was accompanied by the affidavit of Patrick Suluba Kinyerero, the then learned Counsel for the Applicant.

On 3rd of March 2021, this court ordered the hearing to proceed by way of written submissions, one Baraka Joram Mwakyalabwe appeared for the applicant and filed written submission in support of the application while the respondent enjoyed the legal services of George Renatus Hossa. In his submissions in support for the application Mr. Baraka insisted that, when the application for execution was scheduled for mention on the 16th of November 2020, the applicant was not present in court. But the tribunal proceeded to issue an execution order against him. He argued that, granting application for execution while the same was coming for mention not for hearing constituted misdirection on part of the tribunal. Above all, the misdirection was added up by the fact that the application for stay of

execution was still pending at the time of such grant. He argued that, it was pertinent for the Chairman to dispose the application for stay of execution first before determination of execution application. He went on to argue that, the issuance of execution order in Misc. Land Application No. 449 of 2020 have rendered the applicants two cases, Misc. Land Application No. 556 of 2020 (stay of execution before the District Land and Housing Tribunal for Temeke and Misc. Land Application No. 526 of 2020 application for extension of time before this court to file appeal out of time, nugatory.

The applicant's counsel maintained that, what was done by the learned Chairperson of the District Land and Housing tribunal is as good as condemning the applicant unheard. Mr. Baraka cited the case of **Mount Meru Flowers Tanzania Limited versus Box Board Tanzania Limited, Court of Appeal, Civil Appeal No. 260 of 2018** and insisted that, the Chairperson of the District Land and Housing Tribunal for Temeke gave much weight on the speed of the case rather than substantive justice. He therefore, urged the court to allow the application with costs by revising the decision of Hon. Chenya.

In reply, Mr. Godfrey Renatus for the respondent was of the view that, the ruling of Hon. Chenya in respect of Mis. Land Application No. 449 of 2020 was proper as there was no pending application for stay of execution as stated by the counsel for the applicant. The case is more than seven years now and the applicant has an intention of prolonging this case to delay the same as he has always done. He insisted further that, the respondent in this case is poor therefore prolonging this case by allowing

the prayers sought by the applicant is to continue retaining the residential license of the respondent, hence worsening the respondent's financial condition.

After painstakingly looking into the submission of the parties and going through the records. It is vivid on the records that when the impugned application came for mention on 16th November 2020, the same was rescheduled for mention on to pending determination of application for stay of execution. When the both matters came for mention on 16/11/2020 the applicant herein who was the respondent therein did not enter appearance. Only the respondent, the then applicant, appeared on that day. After the counsel for the then applicant registered his concern on non-appearance of the respondent for no reason at all, the Chairman proceeded to grant the application without hearing either side on the application that was before him. In my view, this was unprocedural, nonappearance of the respondent on the day the application was coming for mention was not an automatic ignition to grant the application without hearing the parties on the same. This is tantamount to the denial of parties right to be heard as argued by the counsel for the applicant. This stand is even given strength by the fact that, this same application was adjourned on 21/10/2020 to pave way for determination of application for stay of execution which was latter left hanging upon grant of execution order

In the application at hand, the applicant has used sections under section 43(1) and (2) of the Land Dispute Courts Act, Cap 216 R.E 2019, sections 75(1) (c) and 95 of the Civil Procedure Code Cap 33 R.E 2019. I will

reproduce section 43 (1) and (2) of the Land Disputes Act, supra and &5 (1) (c) of The Civil Procedure Code, supra, as they are more relevant to our application;

To start with section 43 (1) and (2) of the Land Disputes Act, supra, it provides;-

> *"(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-*
>
> *(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;*
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> *(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".*

As for 75(1) (c) of the Civil Procedure Code supra, it says,

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

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it."

Based on the above quoted provisions, the paramount consideration for an application for revision to be allowed is if the lower court or tribunal as in our case, has exercised its jurisdiction illegally or with material irregularities, leading to injustices on part of the applicant. The same was the position of the Court in **Abdallah Hassan versus Mohamed Ahmed (1989) TLR 181**, where it was held that

"the High Court revisional power under section 79(1) of the Civil Procedure Code are limited to cases where appeal lies and issues such as whether the subordinate Court has exercised jurisdiction not vested, if vested whether it has failed to exercise the same or has acted illegally or with material irregularity."

Looking at the records of the District Land and Housing tribunal for Temeke the irregularity is obvious as I have noted earlier on in entertaining the Misc. Land Application No. 449 of 2020. The records clearly show that, the applicant was aware of the execution application against her. It is shown the Misc. Application No. 449 of 2020 was filed in the tribunal on 17th August 2020, the same was mentioned on 07th September 2020 and both the applicant and the respondent were present. It was later scheduled for Mention on 21st October 2020. Again, both parties appeared before the tribunal. It is on this date when the

respondent learnt from the applicant that there was an application for stay of execution, vide Misc. Land Application No. 556 of 2020, being lodged a day (on 20th October 2020). The District Tribunal felt obliged to adjourn the application for execution, until the 16th of November, 2020 pending determination of the application for stay of execution. The Misc. Land Application No. 556 of 2020 was also scheduled on the same date. On this day, the applicant did not appear in both cases, neither her application Misc. Land Application No. 556 of 2020, nor the execution case, Misc. Land Application No. 449 of 2020. The application for execution by the respondent was granted forthwith on that day without hearing either side on the merits of the application. Be it as it may, although the applicant defaulted appearance no hearing was conducted even from the other side. Execution order was just granted without hearing submission of ether side. This was irregular conduct of the matter.

I understand that the application for execution is to be granted without undue delay after its admission, if the court has satisfied itself of the compliance with procedures set forth by the law, in terms of Order XXI Rule 15 of the Civil Procedure Code, which states that:-

> *15 (4) "Where the application is admitted, the court shall enter in the proper register a note of the application and the date on which it was made and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application.".*

However the need for speedy disposal should not be in violation of other general principles forming substantive justice including leaving hanging the application that led to the adjoining the matter on 21 October 2020 in the first place. For the reasons, the application is allowed, the decision of the trial issuing execution order is revised. The file is remitted back to the tribunal for regular determination of the execution application after disposal of the stay of execution application. As all the prolongation of this matter was fueled from applicant's failure to appear on 16th November 2020, the respondent is entitled to costs of this application.

M.P. OPIYO,

JUDGE

27/8/2021