IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 40 OF 2021

(Originating from District Land and Housing Tribunal for Kibaha, Application No. 27 of 2012 and Misc. Application No.15 of 2020)

SEGORENA P. KIWANGO.....1ST APPLICANT

SEVERIN MTENGA.....2ND APPLICANT

FRIMIN MANGASHI.....3RD APPLICANT

VERSUS

DANIEL MATERU.....1ST RESPONDENT

M/S MSOLOPA INVESTMENTS COMPANY LTD.....2ND RESPONDENT

RULING

Date of order: 21.09.2022

Date of Ruling: 30.09.2022

KADILU, J.

The applicants have moved this court under sections 41 (1) and 43 (1) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] inviting the court to call for and examine the records of Kibaha District Land and Housing Tribunal in respect of Land Application No. 27 of 2012 to satisfy itself on the correctness, legality and propriety of the orders made therein.

The application is supported by a joint affidavit of the 1st and 3rd applicants on behalf of the 2nd applicant. The Respondents did not file counter affidavit in opposition, neither did they appear on the day set for hearing. Thus, the matter proceeded exparte against both respondents while the applicants were represented by Mr. Roman Selasini Lamwai, the learned Advocate.

Submitting in support of the application, Mr. Roman proposed that, since the application is unopposed, the court should grant it as prayed. To support his prayer, he cited the case of *Togolani Mbusso v Dyness Mhagama* Civil Application No. 182 of 2004, Court of Appeal of Tanzania at Dar es Salaam (unreported).

He then stated that the 1st applicant (wife of the 3rd applicant) was not afforded an opportunity to be heard when the matter was determined in Kibaha District Land and Housing Tribunal. Notwithstanding, her property rights are now being threatened by the decision which she cannot appeal against. She is the one who is in actual possession of the disputed land and who had developed it for the past 17 years. It is stated in the affidavit that the said land is a matrimonial property/home so, the 1st applicant ought to have been given chance to defend her interest over it before reaching to the decision. The learned Advocate referred to the case of *Tang Gas Distributors*

Ltd v Mohamed Salim Said & 2 Others, Civil Application for Revision No. 68 of 2011, Court of Appeal of Tanzania at Dar es Salaam (unreported) in which the court dealt with the essence of right to be heard and its consequences.

He asserted that the District Land and Housing Tribunal decided on the disputed land which was not described properly by the respondents. According to him, the property was described as 6 acres farm located at Bamba area, Kongowe – Kibaha. He opined that such description is not proper to enable the Tribunal to reach a conclusion as to who is the lawful owner of that land. On the essence of proper description of the land in dispute, the learned Advocate cited the case of *Daniel Dagala Kanuda v Masaka Ibeho & Others*, Land Appeal No. 26 of 2015, High Court of Tanzania at Tabora (unreported).

The 1st and 3rd applicants stated in their joint affidavit that the proceedings, decree and judgment of the Tribunal do not state categorically where the disputed land is located. They said, the Tribunal's judgment and decree do not also reflect the place of execution. Therefore, they submitted that the disputed land is not the same as the one disclosed by the warrant of eviction and demolition order. According to them, the warrant of eviction refers to the land registered as Farm No. 543 located at Bamba area, Kongowe –

Kibaha Township, which is not occupied by the 1st applicant. They concluded that the eviction intended to be executed against the 1st applicant is illegal for being on a strange property.

After a careful scrutiny of the applicants' affidavit and submissions by their Advocate, I now turn to determine the application before me. On the outset, it should be clear that I could not subscribe to the proposition by the applicants' Advocate that the application which has not been opposed should be granted as prayed. In my view, the interest of justice demands that, the application should be considered on merits even if the respondents did not file counter affidavit and appear to object it. The applicants have to prove their case sufficiently and independently because their evidence is not dependent on the respondents' defence.

To start with, I wish to point out that this court derives its powers of revision over the proceedings or any order from the tribunal under section 43 (1) (b) of the Land Disputes Courts Act [CAP 216 R.E 2019]. The said provision provides:

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

(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.* [Emphasis added].

From the foregoing provision of the law, in an application of revision like the present one, the applicants must show that there is an error material to the merits of the case involving injustice. I have carefully gone through the entire records of the Tribunal. It is not in dispute that the present application arises from application No. 15 of 2020 which was an execution order filed by the 1st respondent. I am of the considered view that determination of the application for execution before the Tribunal concluded the matter to the finality hence, the present application for revision lodged in this court is misconceived in law.

The Land Disputes Courts (District Land and Housing Tribunal) Regulations, G.N. No. 174 of 2003, (hereinafter referred as Regulations), gives an elaborative procedure and remedy available as far as execution is concerned. Regulation 23 of the Regulations requires the decree holder to file an application for execution as soon as the order or decree is passed. Sub-

regulation 2 of Regulation 23 stipulates the manner in which such execution is to be preferred. Where there are any objections, the same have to be determined prior the execution is granted. Hence the judgment debtor against whom the execution has been preferred is required to raise his/her objection prior the execution order is made. And the chairperson is required to determine any objection raised first. This is the requirement under Regulation 23 (5) of the Regulations.

When the matter was before the Tribunal, at the hearing of the application for execution (Application No. 15 of 2020), the judgment debtors, the applicants herein did not raise any objection as clearly seen on the record. So, until the application for execution was determined and an order for execution issued, the applicants had no objection. Thus, preferring an application for revision after the order of execution had been made was improper. Equally, the Regulations make it clear that any party aggrieved by the order arising from execution is required to approach this court by way of appeal as provided for under Regulation 24 of the Regulations and not revision as it was done in the present application.

In the case of *Ms. Farhia Abdullah Noor v Advatech Office Supplies Limited & Another*, Civil Application No. 261/16/2017, Court of Appeal of Tanzania (unreported), it was held that the court's power of revision may be resorted to only where there is no right to appeal or where such right exists, but has been blocked by judicial process. In the present matter therefore, right to appeal was available to the applicants and hence no reason has been advanced by the applicants as to why they did not exhaust that remedy first before resorting to revision.

I would like to make an observation concerning the nature of the objections to be raised by the judgment debtors in execution proceedings. Regulation 23 (5) of the Regulations requires objections that are to be raised by the judgment debtors to be limited to the subject matter of the execution. Going by the grounds containing in the applicants' affidavit, I am of the settled mind that the issues raised by the applicants against the execution were misconceived in law. The application for revision is not meant to challenge matters which could be addressed during the hearing of the main application (No. 27 of 2012) in the Tribunal.

I state so because in revision, there is no room for the applicants to raise matters which should have been dealt with by adducing evidence when application No. 27 of 2012 was heard on merit. I am of the considered view that as revision is not an alternative to appeal and there are numerous precedents about this. As such, the 2nd and 3rd applicants were incompetent to prefer this application to the court because they had an opportunity to appeal which they opted not to utilize.

With regard to the 1st applicant's contention on the right to be heard, it is difficult to comprehend how was she not aware of the Land Application No.27 of 2012. In the joint affidavit, the 2nd applicant is shown to be her husband with whom they have been in possession of the disputed land as indicated in annexure "RA2" of the Tribunal's records. She swore a joint affidavit with the 2nd and 3rd respondents who were parties to the original dispute in the Tribunal and who appeared to be represented by the same law firm since the beginning of the case. In addition, even if the 1st applicant was not aware of the dispute, she cannot apportion that blame to the respondents or the Tribunal. The case of *MZA RTC Trading Company Limited v. Export Trading Company Limited*, Civil Application No.12 of 2015 (unreported) supports this argument.

Thus, the contention that the 1st applicant was denied right to be heard is an afterthought as she could have filed objection proceedings to contest the execution if she really had a genuine claim. However, she chose not to follow that path instead she claimed to be condemned unheard. Her other assertion that the suit property is a matrimonial property/home is also misplaced as the same cannot be determined by this court at the revision stage.

It is for the reasons above I hold that the present application is incompetent before the court and it is hereby struck out with costs.

Order accordingly.

M. J. KADILU,
JUDGE
30/9/2022

Ruling delivered on the 30th Day of September, 2022 in the presence of Ms. Marry Lamwai, learned Advocate for the Applicant, holding brief for Mr. Roman Selasini Lamwai, learned Advocate for the applicants.

M. J. KADILU,
JUDGE
30/9/2022