

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

LAND REVISION NO. 53 OF 2021

(Originating from Temeke District Land and Housing Tribunal in Misc. Land Application No. 595 of 2020)

ALLY OMARY MTOILINGE..... APPLICANT

VERSUS

SHABAN RAJABU VYALE.....1ST RESPONDENT

MWAJUMA JHASSAN MUSA.....2ND RESPONDENT

MTC AUCTION MART CO. LTD.....3RD RESPONDENT

Date of Last Order: 29.09.2022

Date of Ruling: 25.11.2022

RULING

V.L. MAKANI, J

This is an application for revision by ALLY OMARY MTOILINGE. He is praying for the court to revise the decision of Temeke District Land and Housing Tribunal (the Tribunal) in Misc. Land Application No. 595 of 2020 (Hon. P.I. Chinyele, Chairman).

The application is made under section 43(1)(a) and (b) of the Land Disputes Court Act CAP 216 RE 2019 and section 79(1)(b)(c) of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**). The application is supported by the affidavit of the applicant herein. The respondents filed a joint counter-affidavit to oppose the application.

With leave of the court the application proceeded by way of written submissions. Mr. Peter Leornard Kaozya, Advocate under the Legal Assistance of Tanganyika Law Society drew submissions on behalf of the applicant. Mr. Hillal Hamza, Advocate from Law Associates drew and filed submissions in reply on behalf of the respondents.

In his submissions Mr. Kaozya informed the court that the applicant was the respondent in Land Application No. 01 of 2009 and Misc. Land Application No. 595 of 2020. He said Land Application No. 01 of 2009 was determined ex-parte on 30/06/2010 and after becoming aware of the ex-parte judgment on 26/08/2010 the applicant requested for copies of judgment on 26/07/2011 and on 10/08/2011 he lodged Application No. 156 of 2011 praying for extension of time and setting aside the ex-parte judgment. Before the respondents were served with summons to appear for this case on 17/08/2011, the respondents invaded and evicted from the house on 15/08/2011 around 18:00pm without prior notice, publication or auction as required by the law, claiming that the applicant's dwelling house located at Plot No. TMK/CHB/MNZ12/44 (the **suit premises**) was sold by public auction on 17/07/2011 to the 2nd respondent. Mr. Kaozya alleged that there was no auction that was conducted on the

material day. He said since the Tribunal set aside the ex-parte judgment, the suit premises should not to have been sold to the 2nd respondent but ought to have been returned to the applicant which triggered Misc. Land Application No. 595 of 2020 claiming the return of the house into the applicant's power. He said the Tribunal did not consider this but went on to order the matter to be heard inter-partes in Land Application No. 01 of 2009 as was ordered by the Tribunal. He said there was clear violation of the jurisdiction by the Chairperson for failure to determine Misc. Land Application No. 595 of 2020 and ordering hearing inter-partes of Land Application No. 01 of 2009. He cited the case of **Balozi Abubakari Ibrahim & Another vs. MS Benandys Limited & 2 Others, Civil Revision No. 6 of 2015 (CAT-DSM)** (unreported).

Mr. Kaozya went on to say that the Tribunal failed to determine the issue brought before it for purposes of nullifying the sale and return of the house to the applicant and payment of compensation of TZS 111,706,000/= being loss incurred to the applicant after the forceful eviction from the house which was illegal. He said the application subject of this application for revision was triggered by the illegality committed by the Tribunal years ago and that the suit premises was

sold unlawfully without notice contrary to the Auctioneers Act CAP 227 RE 2002 and Article 13(6)(a) of the Constitution of United Republic of Tanzania. And to cement that the auction was unlawful, Mr. Kaozya cited the case of the **Registered Trustees of Africa Inland Church vs. CRDB Bank PLC & 2 Others, Commercial Case No. 7 of 2017 (HC-Comm Division)** (unreported). He went on to explain the unlawfulness of the sale and eviction and the loss by the applicant and went on saying that the Chairperson not only failed to determine the issue of return of the house but also the issue of compensation. He thus prayed for the application to be granted as prayed.

Mr. Hamza, Advocate in his reply on behalf of the respondents adopted the contents of the joint counter affidavit of the respondents. Mr. Hamza gave a brief background of the matter and further pointed out that after the Tribunal setting aside the ex-parte order the matter has not been heard inter-partes. He said instead the applicant filed Misc. Application No. 595 of 2020 claiming the suit house to be restored to him and compensation be paid. He said the ruling in this application clearly stated that the reliefs prayed for are unmaintainable as they will interfere with the proceedings in Land

Application No. 01 of 2009 which is yet to be determined inter-partes. He said the claim by Counsel for the applicant that the Chairperson refused to grant the application is not proper as both the parties were heard and considered, and it was ruled that the application is not maintainable. He further said the claim by the applicant labelling the proceedings that resulted to the eviction of the applicant illegal is not proper because there is no court order to that effect yet. He said the nature of the prayers in Misc. Land Application No. 595 of 2020 requires adducing evidence which cannot be done in a miscellaneous application. He said the honourable Chairperson rightly determined the application after having considered the rivalry submissions by the parties. Mr. Hamza pointed out that the issue of notice is a new fact because the affidavit in support of the application does not state anything concerning notice, so he was not in a position to attach the said notice issued by the 3rd respondent. He said the case of **The Registered Trustees of Africa Inland Church Tanzania** (supra) is distinguishable as in the present case notice was issued (**Annexure B** to the affidavit). He said the claims that the suit premises were sold below the market price were not supposed to be in the miscellaneous application but had to be proved as provided for under section 110 of the Evidence Act CAP 6 RE 2019. He relied on the case of **Geita Gold**

Mining & Another vs. Ignas Athana, Civil Appeal No. 227 OF 2017 (CAT-Mwanza) (unreported) and **Anthony M Masanga vs. Penina (Mama Mgesi) & Another, Civil Appeal No. 118 of 2014.** Mr. Hamza prayed for the application to be dismissed for lack of merit.

In rejoinder, Mr. Kaozya reiterated the submissions in chief and emphasized that the Chairperson in the application failed to exercise her jurisdiction to determine the matter on the ground that there is still Land Application No. 01 of 2009 to be determined inter-partes. He concluded that the Tribunal was legally and procedurally wrong for want of exercising the jurisdiction vested into it as in the case of **Balozi Abubakari Ibrahim & Another** (supra). He reiterated his prayer in the Chamber summons.

Having heard Counsel for the parties, the court is called upon to determine whether this application is meritorious.

Applications is for revision are governed by section 43 of the Land Disputes Court which states:

"43(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;

(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."

It is apparent that the court under the above provision has supervisory and revisional powers on the proceedings of the Tribunal and the applicant wants this court to revise the proceedings of the Tribunal in Misc. Land Application No. 595 of 2020. In the said application the applicant prayed for the Tribunal among other things to depart from its eviction order and issue an order for the return of the applicant in the house allegedly sold illegally by the 1st and 3rd respondents to the 2nd respondent. The respondents also asked to be

paid compensation for the loss incurred to the applicant for the unlawful eviction and general damages following the unlawful eviction. These prayers were made under Regulation 22(d) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulation GN No. 174 of 2003 and section 89 of the CPC.

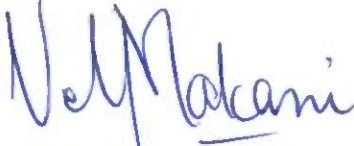
There is no dispute that Land Application No. 01 of 2009 was decided ex-parte. But the decision ex-parte was set aside and the matter was restored. Further, there is no dispute that Land Application No. 01 of 2009 has not been heard inter-partes to date. In essence therefore, Land Application No. 01 of 2009 is pending before the Tribunal and still awaiting hearing and determination thereof.

It is apparent that the prayers in the Misc. Land Application No. 595 of 2020 cannot be entertained because the main application is still pending and determining the application may create conflicting decisions. One cannot pray to be restored in the suit premises while there is pending the main application based on ownership of the suit premises. As it is now there are numerous applications which are a creation of confusion and chaos.

I am of the considered view that the main application Land Application No. 01 of 2009 is the key and its hearing and determination would then make the proper procedure fall into place. Misc. Land Application No. 595 of 2020 in my considered view was an apprehension on the part of the applicant and as correctly stated by the Chairman the prayers therein were not maintainable considering the existence of the pending Land Application No. 01 of 2009. In essence therefore the Chairman's powers were limited considering the pendency of Land Application No. 01 of 2009. And it is surprising that the applicant made efforts to restore the main application but has decided to abandon it and pursue another application. In my considered view, the proper course of action, is for the applicant to pursue the main application which is still pending at the Tribunal.

In the result, I find this application to have no merit and I proceed to dismiss it. There shall be no order as to costs considering that this application was filed under Legal Aid. It is so ordered.




V.L. MAKANI
JUDGE
25/11/2022