

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND REVISION NO. 16 OF 2021

(Arising From the Decision of District Land and Housing Tribunal of Temeke in Land Case/Application No. 156 of 2020)

ERICA MKASUAPPLICANT

VERSUS

CHARLES SHIJA MANYASA1ST RESPONDENT

ADIL AUCTION MART LTD.....2ND RESPONDENT

RULING

16/2/2022 & 19/04/2022

Masoud J.

I am asked to revise and set aside what is referred to as " perplexing ruling/order" of the District Land and Housing Tribunal of Temeke (herein after the District Tribunal) at Temeke dated 27/4/2021 and substitute it with a fair and just directives as circumstance allows. The affidavit of the applicant, one, Erica Mkasu, supports the application which is opposed by the first respondent. The affidavit discloses the reasons on the basis of which the application is preferred and made under sections 41 and 43(1)(b) of the Land Disputes Courts Act cap.216.

In a nutshell, the applicant is complaining about the use by the District tribunal of words from contradictory and unfounded judgment to decide the objection proceedings preferred by the applicant. It failed as a result to decide on whether the applicant was a party to the suit which gave rise to the decree which was being executed by the respondent in the District Tribunal. In relation to the alleged error, the applicant complained that the district tribunal did not perform its duty. The other depicted error was that the tribunal failed to analyse and reveal the appearance of the applicant in the proceedings of the ward tribunal which led to the decision whose decree was being executed. The last was the alleged error of failure to clarify on the proceedings whether the proceedings in the ward tribunal were in relation to complaint No. 100 of 214 or Complaint No. 101 of 2014 which was reported first by the applicant.

The counter affidavit of the first respondent disputed the alleged errors on the basis of which the application is made. The claim that the applicant was not a party in the proceedings leading to the decree which was being enforced was disputed as well. Apart from filing the counter affidavit, the said respondent also raised a preliminary objection to the effect that the application is incompetent as it is supported by a defective affidavit whose

para.8 consists of conclusion, paras 9,12,13, and 14 consist of legal opinion, and para 15 consists of prayers.

The matter was simultaneously heard on the objection and the merit of the application. At the outset, the objection was found to have no merit. It was so found because even if the said paragraphs of the applicant's affidavit contain conclusion, legal opinion and prayer as alleged, the remedy would be to expunge them and the remaining paragraphs would still in my view suffice to support the application. The question would only be whether the affidavit would have sufficient materials supporting the granting of the application. Having thus considered the rival arguments on the point, the objection was dismissed.

As to the submissions on the merit of the application, I would say that parties filed the rival submissions which I have herein considered in arriving at my decision. The gist of the submissions is not far from the averments in the affidavit and counter affidavit. The exceptions were submissions and arguments made on the point that the trial ward tribunal did not have jurisdiction when it entertained the matter whose decision gave rise to the decree which was the subject matter of the execution at the District Tribunal. The same was for the submission and argument

made on the allegation of fraud, corruption and misrepresentation by the trial ward tribunal and the claim that the Chairman of the district tribunal closed his eyes on them. I say so as there was nothing in the affidavit supporting the application which complains about the jurisdiction of the trial tribunal or raising the said allegations about fraud, corruption and misrepresentation. I would agree with the submission by the respondent that those matters are a mere afterthought which cannot be attended to at this stage. I therefore decline the invitation to deal with them for reasons stated.

Looking at the grounds of complaints raised in the affidavit supporting the application holistically, I am settled that the complaints are all hinged on only one ground which is to the effect that the applicant was not a party to the proceedings of the trial ward tribunal which gave rise to the impugned decision and decree.

My reading of the district tribunal's decision left me in no doubt that the tribunal's Chairman made clear reference to the proceedings of the trial ward tribunal and its decision. In so doing, the Chairman quoted the relevant parts of the decision in which the Chairman referred to the trial tribunal's proceedings showing that the applicant was a party in the trial tribunal's proceeding and was actually heard in support of her case. This


finding is apparent and evident in the proceedings and decision of the trial ward tribunal which were brought to my attention subsequent to the call for records. With this finding, I am satisfied that the alleged error is unfounded.

In the upshot, the application is without merit and is hereby dismissed with costs.

It is so ordered.

Dated at Dar es Salaam this 19th day of April 2022.




B.S. Masoud
Judge