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

MISCELLANEOUS CIVIL CAUSE NO. 282 OF 2021

USAFIRISHAJI MIKOANI UNION LTD.....APPLICANT

Versus

MINISTER FOR LANDS, HOUSING AND HUMAN SETTLEMENTS DEVELOPMENT.....1st RESPONDENT

ASSISTANT LAND COMMISSIONER, EASTERN ZONE .....2nd RESPONDENT

THE ATTORNEY GENERAL.....3rd RESPONDENT

RULING

30/10/2021 & 28/01/2022

Masoud J.

The applicant challenged by way of judicial review the revocation of her right of occupancy under Certificate of Title No.33512 which was in respect of Farm No.6 Rupia, Kilombero District. She alleged in her affidavit in support of her application brought under sections 2(3) of the Judicature and Application of Laws Act Cap. 358 R.E 2019, 17(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act Cap. 310 R.E 310 and

rule 8(1)(a) & (b), 8(2) and 8(3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, GN No. 324 of 2014, that she was not heard before the revocation was effected. She also alleged that the requisite procedures for revoking her right of occupancy was not complied with when the purported revocation was done.

She said that it was as a result of her own search and inquiries that she learned of the detailed information regarding the revocation which she was not aware of. The said search and inquiry were a result of information of revocation by the first respondent which he received from the Ward Executive Officer for Mbingu. As she was already out of time to apply for judicial review, she applied for extension of time to file application for judicial review against the revocation, which was granted by Hon. Makani J., and applied for leave to file the present application which was also granted by Hon. Maghimbi J.

It was upon obtaining the leave that the applicant who was represented by Mr. Daimu Halfani, and Mr. Mashaka Ngole, learned Advocate filed the present application. The applicant is seeking a prerogative order of certiorari removing into this court and quash the notice of remedy breach

of condition, notice of revocation of the applicant's right of occupancy on farm No. 6, Rupia, Kilombero District with Title No. 33521 registered in the name of the applicant herein above. She is also praying for costs; and any other relief order which the honourable court shall deem just to grant in the favour of the applicant.

The details and particulars of the applicant's search and inquiries mentioned herein above were shown in the affidavit supporting the application. They included a copy of a letter referenced No. MG/LD/5428/S.G.M of 19/12/2016 written on behalf of the District Executive Director and copied to Mbingu Ward Executive Officer official land and representatives of Wananchi Chiwachiwa Village about the revocation and subdivision of the of the farm by the second respondent, a letter referenced MISNAK/G-2017/04 of 10/4/2017 written by the applicant's lawyer requesting in vain the details of the revocation from the first and second respondent, and a website, namely, www.utumishi.go.tz.../1022-toleo-na34-la-tarehe-12-agosti-2016 accessed on 07/06/2017 in which the applicant discovered on 07/06/2017 about publication of the General Notice of the Revocation of the applicant's right of occupancy on the disputed property on the Government Gazette of 12/08/2016, and the downloaded copy of the of

the said General Notice which showed that the said revocation was effected by the first respondent, and an official search on the status of the status of the said Right of Occupancy of the Farm No. 6, Rupia, Kilombero District, whose result had it that the right of occupancy had been revoked on 19/08/2016.

In relation to the allegation that the applicant was not heard prior to the purported revocation, the court was shown in the affidavit and the submissions that followed that she was not notified of anything about the intention to revoke her right of occupancy, reasons for revocation and the eventual revocation that was purportedly effected. In other words, it was the applicant's complaint that the procedural steps that had to be taken as prerequisites for revocation were not taken as is required by the law and was not notified as is required by the law. It was the applicant's specific averment in her affidavit that she was not served with the revocation of the said right of occupancy in respect of Farm No. 6, Rupia, Kilombero District.

The applicant invoked and expounded on the retirements of the law under sections 45(1) and (2)(v) of the Land Act in her written submissions which provisions were in her view grossly violated by the second respondent.

The said provisions of the law, the court was told, set out conditions which must be complied with to the commence the process of revocation of a right of occupancy.

It was further averred that the commencement of such process is preceded by issuing and serving the applicant a notice of breach of any of the conditions of the right of occupancy, and a call for remedying the breach as provided for under sections 45(5), 46(1), and 47(1) of the Land Act, cap. 113 R.E 2019. It was shown that a notice of intention to revoke the right of occupancy as stipulated under section 48(1) and (2) must be issued and served to the applicant. I was told that the above requirements of the law were not honoured by the second respondent.

The applicant added that section 45(4) of the Land Act which provides for issuance of a warning letter to the applicant on the alleged breach of a condition of the relevant right of occupancy was also not complied with. She went further to expound on the entire procedural steps that must be followed. They included the procedural steps under section 47(3) of the Land Act where the breach is remedied, issuing and serving upon the applicant with a ninety days' notice of intention to revoke the right of occupancy pursuant to section 48(1)(i) and (2) of the Land Act, and

publishing revocation once approved by the President pursuant to section 48(3) and 49(1) of the Land Act.

It was argued in relation to the failure to comply with the procedural requirements of the law that there was no notice of breach of condition two of the applicant's certificate of right of occupancy which provides that "*the land shall be used for agricultural and pastoral purposes only.*" The court was shown that the purported notice of revocation on the record is in relation to a condition relating to "*abandonment of land, non-compliance with the Land regulations of 1948 and non-payment of rent.*" The court was further shown that the condition as to abandonment has a specific procedure of remedying the breach. The court was thus referred to provisions relating to abandonment which were not complied with and which are contained under section 51(1), (2), (3), & (5) of the Land Act.

In view of the foregoing, it was argued that there was therefore no notice of breach of condition 2 of the certificate of the right of occupancy of the applicant. It was equally argued that there was no notice of revocation based on the breach of ground 2 of the said certificate. It was further contended that although the reasons for revocation, the notice to remedy breach of condition of the right of occupancy and condition specified in

the notice of revocation alleged to have been breached were all under the purview of the abandonment of land under section 51(1) of the Land Act, there were no notice of abandonment and no declaration of abandonment that were issued to the applicant by the second respondent prior to issuing the purported notice of revocation.

The submissions made on behalf of the applicant by her learned Advocates also dealt with the procedure which the applicant believed that it has to be followed where there is an allegation of non-payment of land rent. The court's attention was drawn to the summary procedure for recovery of land rent payable under section 33 of the Land Act. The procedure involves commencing an action in the District Land and Housing Tribunal or District Court of the area where the relevant right of occupancy is situate. I was told that the government is in accordance with section 186 of the Land Act equally bound by the Act.

The respondents who were represented by Mr. Stanley Kalokola State Attorney opposed the entire allegations. As reflected in their counter affidavit, and the submission in reply, all procedural requirements for revocation were complied with, the applicant was duly notified on 20/06/2007 to remedy the breach, but failed to exercise her rights of

being heard prior to revocation. In other words, the respondents were not disputing the procedural requirements referred and elaborated by the applicant which relate to revocation of a right of occupancy. Rather, they were disputing the allegation that the procedural requirements were not complied with; and the allegation that the applicant was not heard and notified of the revocation.

In the counter affidavit opposing the application, there were averments as to when the applicant's right of occupancy was revoked (i.e 18/07/2016), how the applicant was notified of the breach and the requirement to remedy the breach, and issued the notice of revocation of ninety (90) days on 01/06/2015 in accordance with the law. It was thus shown that the applicant was notified through registered post via her postal address (i.e P.O.Box 573 Ifakara), which is in her revoked certificate of right of occupancy and of which there was no change of address communicated to the second respondent, and that the applicant chose not comply with the requirements of the said notices. Accordingly, the relevant receipts, and notices were revealed in the counter affidavit, and emphasis was drawn on the dates on which the notice of breach and the intention to revoke the right of occupancy were made.

There was also averment alleging admission on the part of the applicant that the relevant right of occupancy was indeed revoked, and that the revocation was duly published in the Gazette following neglect by the applicant to remedy the breach of the condition communicated to her by the respondents. In so far as the respondents were concerned, the President through the Commissioner for Lands had good cause to revoke the relevant right of occupancy. Reliance was made on the notice to remedy the breach attached to the application. It is not without relevance to note that the averments in the counter affidavit informed the submissions in reply by the respondents.

In the reply to the counter affidavit by the applicant, there were averments disputing the disclosure of the alleged evidence as to notifying the applicant of the breach and intended revocation of the right of occupancy. The averments were further explained in the submission in chief and rejoinder by the applicant. The argument was in a nutshell that, the allegation as to evidence of proof of service of the notices by post was an afterthought as it was not disclosed in the affidavit supporting the application for leave to file judicial review. I think this argument was informed by the provision of rule 8(1)(a) of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and

Fees) Rules, 2014, which states that the "....*application for judicial review shall be made by way of chamber summons supported by an affidavit and the statement in respect of which leave leave was granted.*" Besides the above reason, it was averred and submitted that the evidence has several anomalies which raise doubts as to whether the applicant was really notified as alleged. Reference was in this respect made to the proof of service of notice to remedy the breach of condition of the right of occupancy, and notice of revocation.

It was shown in the submission in chief that, some of the documents were not addressed to the applicant but they were addressed to one, "*Daud Balali of P.O. Box 2939 Dar es Salaam*". Other documents allegedly evidencing posting had different identification numbers and the rubber stamps appearing in the said documents were not legible and did not indicate dates. In addition, it was shown that the documents did not indicate that they were in respect of posting the notice to remedy breach of conditions to the applicant. I was also told that while there was absence of clear information indicating that the documents were connected to the relevant revocation, there was absence of proof that they were indeed received by the applicant.

It is to be noted that the respondents' submission in reply only insisted that service was properly effected through the applicant's postal address as there was no notice of change of the address furnished to the second respondent. The submission also has it that in so far as the service was effected in the said address, the applicant could not be heard complaining of not being aware of the entire process leading to the disputed revocation. In addition, it was said that by including the proof of service in the counter affidavit, it was evident that the applicant was duly served and notified. The argument was strengthened by a further argument that there had never been return of the documents sent which also signifies effective service. The postal rule was invoked relying on the case of **Adams v Lindsell** (1818) although its applicability was disputed on the ground that it only applies in acceptance of offer in the law of contract.

In respect of concerns raised as to the proof of service by post, it was implied by the respondents in their submission in reply that the applicant was alleging fraud, which was not part of the pleading, and which must be strictly proved. On the other hand, the applicant argued that it was the respondents who raised the issue of fraud which was never part of her grounds in support of the application.

Taking the argument about the notice allegedly issued and served further, it was submitted that the respondents should have led evidence showing that the applicant received the notices as was stated in the case of **Mahmood Said Abdulrahman v AG**, Civil Case No. 296 of 1995, (unreported). In this case, as there was no evidence that the plaintiff received the notice, the court was satisfied that the plaintiff was not accorded opportunity to be heard before revocation of his right of occupancy. In the instant application, the evidence purporting to show that the applicant was served and therefore received the notices had, it was submitted, serious anomalies which suggest that the evidence was not related to the alleged revocation.

There were no counter arguments advanced about the anomalies on the documents relating to evidence of proof of service. There were no plausible explanations given as to the difference in the identification numbers, the absence of the dates, the absence of the indication that the documents were in respect of the notices alleged to have been sent to the applicant, and the difference in the names appearing on the document as shown in the applicant's affidavit and submissions.

On the other hand, there was no reason disclosed why the documents as to proof of service were not shown in the counter affidavit of the respondents in respect of the application for leave to file application for judicial review, only to be shown in the counter affidavit in respect of the present application contrary to the provisions of rule 8(1)(a) of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. These documents were OSG-2, and OSG -3 which were annexed to the respondents' counter affidavit and statement in reply. In my finding and as already intimated above, the proof of service shown is wanting in many respects and dents seriously the claim that the applicant was effectively notified and therefore heard in the purported process of revocation of the applicant's right of occupancy.

There was submission in reply in relation to the breach of condition two in which the respondents argued that the abandonment of the land is pursuant to section 44(3) of the Land Act connected to breaching condition two of the right of occupancy on agricultural and pastoral purpose. It was insisted that the abandonment of the relevant land necessarily affected condition two of the right of occupancy. It was further

argued that there was no evidence shown by the applicant as to developing the relevant land. With such arguments, the respondents reasoned that since the land was abandoned, there was no agricultural or pastoral activities that were taking place on the land. There was in my finding, however, no indication that the allegation was envisaged in the processes leading to the purported revocation or anything suggesting that the allegation was communicated to the applicant.

While the respondents kept maintaining that the second respondent complied with the requisite procedures, nothing was shown as to how such compliance was met. While it was argued that the abandonment and non-payment of rents were relevant to the condition two concerning agricultural and pastoral purposes, the respondents were silent as to the specific procedure for abandoned land and non-payment of land rent and whether or not the procedures were complied with and if not why.

I recalled the procedure stipulated under the provision of section 51 of the Land Act which among other things requires, issuance and publication of a notice of abandonment under section 50(2); consideration of representations as to showing cause; and issuing of a declaration of abandonment in the prescribed form when the second respondent

determines that the land has been abandoned pursuant to section 51(3); and sending a copy of the declaration to the occupier pursuant to section 51(3). Likewise, I recalled the summary procedure for recovery of land rent payable under section 33 of the Land Act which is provided under section 50 of the Land Act.

I was referred by the respondents to a number of authorities on the principles that guide the court in considering whether or not to grant an application for judicial review. Along with the authorities on the record cited by the parties, I am aware of **Sanai Murumbe vs Mhere Chacha** [1990] TLR 54 in which the following guiding principles were laid down:

> *Taking into account matters which it ought not to have taken into account; Not taking into account matters which it ought to have taken into account; Lack or Excess of jurisdiction; Conclusion arrived at is so unreasonable that no reasonable authority could ever come to it; Rules of natural justice have been violated; and Illegality of procedure or decision*

In so far as this application is concerned, the law is indeed settled that a prerogative order of certiorari may issue where an applicant establishes that he was denied his right to be heard or where there was illegality of procedure or decision. In this application the applicant raised two grounds whereas the first was in relation to failure of natural justice, the second was on the legality of the procedure. It therefore means that the court must consider whether any of the two grounds reflecting the above principles was proved for the order of certiorari to issue.

The cumulative effect of my findings herein above necessarily leads to a conclusion that the applicant was not only not duly notified of and therefore not heard in the processes leading to revocation of her right of occupancy under Certificate of Title No.33512 in respect of Farm No.6 Rupia, Kilombero District, but also the procedures for revocation of the said right of occupancy were not duly complied with as demonstrated above. I have thus no doubts in my mind that the revocation of the applicant's right of occupancy on farm No. 6, Rupia, Kilombero District with Title No. 33521 registered in the name of the applicant herein above was flawed. On the basis of the principles on the failure of natural justice and illegality of procedure set out in the decision of **Sanai Mirumbe**

(supra), this is a fit case for the order of certiorari sought by the applicant to issue.

In the final result, the applicant has made out her case. I accordingly grant the prayer for an order of certiorari removing into this court and quashing the notice of remedy of breach of condition, and the notice of revocation of the applicant's right of occupancy on farm No. 6, Rupia, Kilombero District with Title No. 33521 registered in the name of the applicant. The applicant will have the costs of the application.

I order accordingly.

Dated at Dar es Salaam this 28th day of January, 2022.

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B. S. Masoud

Judge