IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 3 OF 2022

(Arising from the Ruling of the District Land and Housing Tribunal for Temeke at Temeke in Application for Execution No. 629 of 2020 Hon. J. M. Bigambo-Chairperson)

NURUDIN SHEGO..APPELLANT

VERSUS

YOHANA MWEGA..RESPONDENT

Date of last order: 12/7/2022

Date of Judgment: 27/7/2022

JUDGMENT

A. MSAFIRI, J.

Before Chamazi Ward Tribunal (the trial Tribunal) the above named appellant instituted Land Application No. 21 of 2020 against the respondent herein. The appellant claimed that the respondent had encroached into his land. After hearing the parties the trial Tribunal decided in favour of the appellant and the respondent was ordered to demolish a wall he had erected on the appellant's land within one month.

It is gathered from the record that the respondent attempted to challenge the decision of the trial Tribunal by lodging an application for extension of time but the same was dismissed.

Consequently the appellant lodged an application for execution before the District Land and Housing Tribunal of Temeke at Temeke (the DLHT) in Execution No. 629 of 2020. In the course of hearing the application for execution, the DLHT invoked its powers of revision under Section 36(1) (a) (b) and (2) of the Land Disputes Courts Act [CAP 216 R.E 2019] (the Act) and proceeded to quash the proceedings and decision of the trial Tribunal.

The reason advanced by the DLHT in quashing the proceedings and decision of the trial Tribunal was that there was no sufficient evidence tendered before the trial Tribunal to decide who is the lawful owner of the land in dispute.

The appellant was aggrieved with the decision of the DLHT hence he preferred the present appeal on four (4) grounds of appeal namely;

1. *That the Honourable Learned Chairperson erred in law and in fact by quashing the proceedings and decision of the Chamazi Ward Tribunal*

giving reason that there was no evidence as to who is the lawful owner of the suit premises while the records of the Ward Tribunal and its decision openly show that the two parties collected their titles as to the ownership of the suit land and it was realized from the titles that the respondent herein YOHANA MWEGA had exceeded his boundaries four (4) feet to the north of the said piece of land trespassing into the appellant's land.

2. *That the Honourable Learned Chairperson erred in law and in fact by ignoring the measurements indicated by the Chamazi Ward Tribunal cited in its decision which were derived by the Ward Tribunal visiting the suit land in perfecting its decision.*
3. *That the Honorable Learned Chairperson erred in law and in fact by invoking section 36 of CAP 216 R.E 2019 of the Land Disputes Courts Act at the stage of Executing the Decree for which the provisions gives revision jurisdiction for any proceedings of the Ward Tribunal but the provision does not provide that at any stage such powers be invoked. Instead such powers should have been exercised during appeal made by the respondent hereinto the said tribunal for which*

the very same Tribunal and Chairperson had proceeded the case and dismissed it for the good reasons by the appellant herein.

4. *That the Honourable Learned Chairperson erred in law and in fact by ignoring and or/overlooking the evidences by the parties in the court records attached to it each with the copy of a title for which he owns that piece of land as his evidence. This is sufficient evidence that the Honourable Learned Chairperson should have relied in the proceedings for execution of a decree by the appellant herein instead he invoked revision jurisdiction thereby delaying justice.*

The appellant therefore prayed the decision of the DLHT be quashed and set aside and the decision of the trial Tribunal be upheld.

By consent of the parties, this Court on 7/6/2022 ordered the appeal to be disposed of by written submissions and the order was duly complied with by the parties in respect of the submission in chief and the reply submission, for the rejoinder submission the same was filed in Court on 5th July 2022 instead of 1/7/2022 and there was no leave sought by the appellant to lodge the same out of time. Therefore the rejoinder submission by the appellant will be disregarded for being filed out of time.

After carefully going through the grounds of appeal raised by the appellant together with records of the DLHT, I am of the settled opinion that ground 3 of appeal is sufficient to dispose of the appeal before me. The said ground faults the propriety of the DLHT decision by invoking its powers of revision under section 36 of the Act. Hence the issue for my determination is ***whether the learned Chairperson was legally correct in the circumstance to quash the decision of the trial Tribunal by invoking powers of revision.***

The appellant submitted at length, faulting the learned Chairperson for invoking his powers of revision on the grounds that the decision of the trial Tribunal was arrived at without being supported by sufficient evidence. The appellant submitted that it was not proper for the DLHT to overturn the decision of the trial Tribunal through revision, and that could only have been done if there was an appeal before the DLHT. According to the appellant there was sufficient evidence to support the decision of the trial Tribunal.

The appellant submitted further that the learned Chairperson had no legal authority to turn an application for execution for decree duly procured

from the trial Tribunal to enter decisions that are ordinarily entered when appeals are preferred.

On reply the respondent contended that the DLHT correctly invoked its powers of revision because the trial Tribunal erred both in law and fact to step into the shoes of the parties and assume its own evidence while composing its judgment. The respondent submitted further that there is no law which limits the DLHT from invoking its powers of revision. The respondent also further went by stating that the trial Tribunal was not properly constituted as required by law.

Having gone through the submission, now I am in a position to answer the above issue which I have raised.

I have carefully gone through the record of the DLHT. It is not in dispute as I have stated before that the appellant had gone to the DLHT to have the decision of the trial Tribunal executed. It is on record that the appellant prayed before the DLHT for an order to demolish the wall erected by the respondent.

The learned Chairperson after a brief deliberation proceeded to invoke the powers of revision and quashed the decision of the trial Tribunal

for the reason that there was no sufficient evidence to decide as to who between the appellant and the respondent was the lawful owner of the disputed land. To me the DLHT strayed into serious illegality for two reasons;

First, the DLHT did not afford parties right to be heard before quashing the decision of the trial Tribunal. Instead after the appellant having prayed for an order to demolish the wall and in the absence of the respondent, the learned Chairperson proceeded to state that there was no sufficient evidence tendered before the trial Tribunal. Hence it can be said with certainty that parties were condemned unheard on the aspect of lack of sufficient evidence on the trial Tribunal. The respondent supports the said decision because it favour him. The story would have been different if the order for demolition was to be carried on.

Parties ought to have been given chance to be heard as to whether there was sufficient evidence or not before quashing the decision of the trial Tribunal.

The Court of Appeal has insisted on a number of decisions that on violation of rule of natural justice of right to be heard, any decision arrived

at would be nullified. Similarly when courts or tribunals raise any issue *suo motu* like in the matter before DLHT, parties should be given chance of being heard.

In **Mbeya – Rukwa Auto Parts and Transport Ltd v Jestina George Mwakyoma** Civil Appeal No. 45 of 2000 it was observed that;

> *In this country, natural justice is not merely a principle of common law, it has become a fundamental constitutional right. Article 13 (6) (a) includes the right to be heard amongst the attributes of the equality before the law and stipulates in part;*
>
> ***(a) wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi na mahakama au chombo kingine kinachohusika, basi mtu huyo atakuwa na haki ya kupewa nafasi kikamilifu.***

Hence since the order quashing the decision of the trial Tribunal was arrived at without observing rules of natural justice in particular right to be heard, the decision cannot be allowed to stand.

Secondly, the DLHT has powers of revision under section 36 of the Act. But unlike this Court and other courts vested with powers of revision

under respective laws, the DLHT has very restrictive powers of revision over matters originating from Ward Tribunals. This is clearly provided under section 36 (1) of the Act. The said provision reads;

> ***36**.-(1) A District Land and Housing Tribunal may call for and examine the record of any proceedings of the Ward Tribunal for the purpose of satisfying itself as to whether in such proceedings the Tribunal's decision has-*
>
> *(a) Not contravened any Act of Parliament, or subsidiary legislation; or*
>
> *(b) Not conflicted with the rules of natural justice; and whether the Tribunal has been properly constituted or has exceeded its jurisdiction, and may revise any such proceedings.*

Hence from the foregoing provision of the law, the DLHT powers of revision are limited only to such aspects as to the proceedings not contravened an Act of Parliament or subsidiary legislation, the proceedings have not conflicted with rules of natural justice and whether Tribunal has been properly constituted or has exceeded its jurisdiction.

Issue of lack of evidence in my settled opinion is not an area where the DLHT can resolve through revision *suo motu* instead the same ought to be resolved through appeal. I state so because through appeal the Court can reappraise the evidence on record.

I have noted also another anomaly on the DLHT record which equally vitiates the entire proceedings. This is on the issue of the assessors whom presided over the matter. The record shows that on 1/2/2021 there were two assessors namely **Makoya and Sikunjema.** On 31/3/2021 there were no assessors present. On 19/5/2021 the two assessors were present.

But on the date of hearing the matter that is on 10/11/2021 there were no assessors present. The learned Chairperson did not assign any reason to proceed with the hearing of the matter and pass decision in the absence of the assessors. Similarly it was not indicated whether the learned Chairperson was proceeding with the matter under section 23(3) of the Act.

Consequently for the reasons stated above I hereby allow the appeal, nullify and set aside the proceedings of the DLHT and remit the matter to DLHT for the commencement of hearing of the application for execution. The decision of the trial Tribunal is hereby restored. If the respondent so

wishes, he is at liberty to challenge the decision of the trial Tribunal as provided by the law. I will make no order as to costs.

Order accordingly.

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A. MSAFIRI,

JUDGE

27/7/2022