

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

MISC. LAND CASE APPLICATION NO. 324 OF 2022

(Originating from land Revision No. 1 of 2019 of the High Court Land Division)

MTEMI NALUYAGA APPLICANT

VERSUS

SAID MOHAMED KHAMIS & 24 OTHERS RESPONDENTS

Date of last Order: 02/05/2023

Date of Judgment: 08/06/2023

RULING

I. ARUFANI, J

This ruling is for the review sought by the counsel for the parties in the instant application to be made in the decision of this court delivered in Land Revision No. 1 of 2019 dated 30th September, 2020. The stated review was preceded by the reference made to this court by the District Land and Housing Tribunal for Temeke District at Temeke (hereinafter referred as the tribunal) through the order issued by the tribunal in Misc. Application No. 411 of 2018 dated 4th November, 2021.

The tribunal urged the court to give its directives in relation to the ruling made by the court in Land Revision No. 1 of 2019 which struck out the proceedings of the tribunal conducted in Misc. Application No. 411 of 2018 in respect of Mussa Bajani and Juma Suleman Tindwa who were applicants in Land Revision No. 1 of 2019 of this court and left the

proceedings of the tribunal in respect of the rest of the respondents intact. The directives sought by the tribunal was to state whether the tribunal was required to rehear Misc. Application No. 411 of 2018 of the tribunal against Mussa Bajani and Juma Suleman Tindwa or not.

Although the background of the matter was given in detail in the ruling of the court sought by the counsel for the parties to be reviewed by the court but for making this ruling comprehensive, I will start with the background of the matter which gave rise to the application before the court. The matter started with Application No. 8 of 2006 filed at the tribunal by one Orestik L. Ngulumi against Mtemi Naluyaga who is the applicant in the instant application. Orestik L. Ngulumi was seeking to be declared is the lawful owner of the land measuring 62 acres located at Tuamoyo area of Kigamboni District and the applicant be declared is a trespasser to the stated land.

In his defence the applicant denied to have trespassed the land of Orestik L. Ngulumi and averred he is the lawful owner of the suit land. Along with his defence the applicant raised a counter claim in his defence against Orestik L. Ngulumi praying for among other orders that he be declared is the lawful owner of the suit land. After hearing of the matter, the tribunal declared the applicant Mtemi Naluyaga is the lawful owner of the suit land. In the course of seeking to be put in possession of the land

in dispute the applicant encountered resistance from the respondents which caused several applications and suits to be filed in the tribunal and in this court.

Thereafter the applicant filed in the tribunal Misc. Application No. 411 of 2018 against the respondents seeking to be put in possession of the land in dispute. After hearing the parties, the tribunal found that, although the respondents were not parties in the Application No. 8 of 2006 but the issue of ownership of the suit land had already been adjudged in the mentioned case whereby the applicant was declared lawful owner of the suit land and ordered the respondents to be evicted from the suit land and the same be handed over to the applicant.

The stated decision caused some of the respondents to file Land Appeal No. 15 of 2019 in this court and Musa Bajuni together with Juma Suleman Tindwa filed Land Revision No. 1 of 2019 in this court urging the court to revise the decision of the tribunal in Misc. Application No. 411 of 2018. After hearing the counsel for the parties, the court found the chairperson of the tribunal failed to consider the concern of Musa Bajuni and Juma Suleman Tindwa who were not parties in Application No. 8 of 2006. The court was of the considered view that, the tribunal was required to consider the right of the mentioned two applicants over the suit land.

The court based on the stated view to struck out the proceedings of the tribunal in Misc. Application No. 411 of 2018 against the two applicants and left the ruling of the tribunal in respect of the rest of the respondents intact. When the ruling of the court was placed before the tribunal, the tribunal chairman, (Hon. R. L. Chenya) interpreted the ruling of the court and come to the view that, the tribunal was required to hear afresh Misc. Application No. 411 of 2018 against Musa Bajuni and Juma Suleiman Tindwa who were applicants in Land Revision No. 1 of 2019. Thereafter, Hon. R. L. Chenya recused from dealing with the matter after Juma Suleiman Tindwa written a letter requesting him to recuse from entertaining the matter on ground of lack of confidence on him.

When the matter was placed before Hon. J. M. Bigambo, Chairman of the tribunal he failed to agree with the interpretation of his predecessor that Misc. Application No. 411 of 2018 was required to be heard afresh against the mentioned applicants who appears in Misc. Application No. 411 of 2018 as the 19th and 25th respondents. The successor chairman decided to refer the matter to this court to seek for its directives as to whether the tribunal is required to hear afresh the application in respect of the mentioned two respondents or not.

After the tribunal made the stated reference to the court, the counsel for the applicant in Misc. Application No. 411 of 2018 filed in this

court a letter requesting the court to amend the drawn order extracted from the ruling delivered by the court in Land Revision No. 1 of 2019 on ground that it contains some clerical error. After the stated letter being brought to the court the instant application was opened in our court and assigned to my learned brother Hon. Mugetta, J, (as he then was). After his retirement the matter was reassigned to me to proceed from where the matter had reached.

While the applicant was represented in the Matter by Mr. Rajab Mrindoko, learned advocate, the first to seventh respondents were represented by Mr. Alexandar Kyaruzi, learned advocate, the nineteenth and twenty fifth respondents were represented by Mr. Joseph Rutabingwa, learned advocate and the rest of the respondents were represented by Mr. Benitho Mandele, learned advocate. The counsel for the parties were ordered to address the court by way of written submission and I commend them for their very illuminating submissions.

Starting with the submission by the counsel for the applicant he stated the ruling of the court delivered in Land Revision No. 1 of 2019 has serious manifest errors on the face of the record resulting to miscarriage of justice. The counsel for the applicant stated the tribunal was not right to order Misc. Application No. 411 of 2018 be heard afresh because the decision made in the stated application had already been executed by way

of evicting all the respondents from the suit land and the applicant has already been put in possession of the same.

He argued that, Hon. R. L. Chenya misdirected himself in interpreting the decision of the court subject of this review because the court did not direct Misc. Application No. 411 of 2018 to be heard afresh against the 19th and 25th respondents. He stated the matter which was ordered to be remitted to the tribunal to continue with hearing was Application No. 292 of 2018 and not Misc. Application No. 411 of 2018. He stated the purpose of the court to struck out the proceedings in Misc. Application No. 411 of 2018 against the 19th and 25th respondents was to enable the mentioned respondents to continue with Application No. 292 of 2018 they claimed was pending in the tribunal regarding ownership of the land in dispute.

The counsel for the applicant stated another error is that the decision subject of the instant review was given while the order sought to be revised had already been executed. He submitted that, if the court was made aware that execution had already been carried out, it would not have made that decision. He submitted the stated important information was concealed by the respondents in Misc. Application No. 411 of 2018 without being communicated to the court.

He stated after the decision of the court in Land Revision No. 1 of 2019, all respondents in Misc. Application No. 411 of 2018 withdrew all of their pending suits lodged in the tribunal. He stated they instituted Land Case No. 184 of 2021 in the High Court basing on ground that, the decision in Land Revision No. 1 of 2019 quashed the proceedings, ruling and order in Misc. Application No. 411 of 2018 and gave them chance to seek for their remedies from the court of relevant jurisdiction.

He argued further that, the wording of the ruling delivered in Land Revision No. 1 of 2019 is not the one contained in the drawn order extracted from the stated ruling and is contradicting completely with the ruling. He submitted the stated error has occasioned miscarriage of justice because it is from the stated drawn order the tribunal derived power to order Misc. Application No. 411 of 2018 to be heard afresh against the mentioned respondents.

He submitted it was not proper for the tribunal to compel the applicant in Misc. Application No. 411 of 2018 to prosecute his application for eviction against the 19th and 25th respondents if not all the respondents while they had already been evicted from the land in dispute and the applicant has already been put in possession of the disputed land. He submitted the stated order of hearing the application afresh was made

basing on the impugned drawn order and urged the court to correct the stated error so that injustice should not continue.

On his part the counsel for the first to seventh respondents stated in his submission that, after the court being satisfied the order in Misc. Application No. 411 of 2018 were issued to the detriment of the mentioned two respondents without being heard in Application No. 8 of 2006 as they were not parties in that case, then the same benefit would have befallen to all respondents who were not parties in the main suit but were affected by the orders made in Misc. Application No. 411 of 2018 for being evicted from their premises without being parties in the original application.

He stated the first to seventh respondents had filed land Appeal No. 15 of 2019 in this court against the decision of the tribunal but they withdrew the same on 24th February, 2020 after realizing there was Revision No. 1 of 2019 which had already been filed in the court. He explained they withdrew the stated appeal from the court after seeing if the revision would have succeeded, it would have benefited all of them as were aiming at the same goal of seeking for the order of the tribunal to be quashed. He based on the stated reasons to pray the court to rectify the error in the decision of the court made in Land Revision No. 1 of 2019

and quash the decision of the tribunal in Misc. Application No. 411 of 2018 against the first to seventh respondents.

The counsel for the 19th and 25th respondents argued that, although the instant application was brought to the court by way of reference but they urged the court to invoke its power of review under section 78 (1) (a) of the Civil Procedure Code, Cap 33 R.E 2019 over the decision of the court delivered in Land Revision No. 1 of 2019 dated 30th September, 2020. He submitted that, although the revisional proceedings were taken at the instance of his clients but all respondents in the matter were complaining against the decision made in favour of the applicant in Application No. 8 of 2006 and in Misc. Application No. 411 of 2018.

He argued that, if the court was satisfied the 19th and 25th respondents were not given a chance of hearing in Application No. 8 of 2006, then striking out of the proceedings in Misc. Application No. 411 of 2018 would have not benefited only the 19th and 25th respondents but all the respondents in the stated application. He submitted that, after striking out the proceedings in Misc. Application No. 411 of 2018 there cannot be a fresh hearing or investigation of the matter by the tribunal on number of reasons.

He argued that, although the respondents are described under paragraph 2 of the affidavit of the applicant filed in Misc. Application No.

411 of 2018 as the judgment debtors and his agents but Orestik Ngulumi who is a judgment debtor is not a party in the mentioned application. He argued the respondents are in no way agents of the judgment debtor and there has never been an ascertainment of the alleged 62 acres. He referred the court to Order XXI Rule 96 of the Civil Procedure Code and stated that, even if it will be taken the respondents were being instigated by the judgment debtor and were his agents the law requires the decree holder to be put into possession of the property in dispute and when that order is not complied with, the applicant could have sought for an order of detaining the respondents as civil prisoners.

He argued the stated procedure was not followed in the dispute between the parties in the matter at hand. He submitted that shows the tribunal's chairman was justified to refer the matter to the court and it is therefore proper for this court to review its impugned ruling delivered on 30th September, 2020 and rectify the errors appearing on the face of its record. He submitted that, the applicant, Mtemi Naluyaga is still at liberty to enforce his right against the judgment debtor in accordance with the law and the respondents deserve to be put into possession of their land and they are at liberty to take necessary steps against the wrong door or doors if they so wish.

On his party the counsel for the rest of the respondents stated in his submission that, after the court struck out the proceedings in Misc. Application No. 411 of 2018 of the tribunal, such proceedings became a nullity and without any effect as against all and every party thereunder. He stated the effect of striking out the proceedings of the tribunal had the same effect to all the parties thereunder. To support his submission, he referred the court to the case of **Bin Kuleb Transport Company Limited V. The Registrar of Title & Three Others**, Civil Application No. 522/17 of 2020, CAT at DSM (unreported) where it was stated the effect of striking out an application it is treated as if it had never happened.

As on what the court can do in this application, he subscribed and associated with the ruling of the court in Land Revision No. 1 of 2019 which held Application No. 8 of 2006 of the tribunal is the source of multiple applications which are now forthcoming and which are seemingly to be endless. He therefore prays the court to examine the proceedings and decision of the stated land application for the purpose of making such order in the case as it thinks fit. He referred the court to the case of **Isaac Wilfred Kasanya V. Standard Chartered Bank Tanzania Limited**, Civil Appeal No. 453/01 of 2019 where it was stated that, in order to avoid multiplicity of endless cases, issues must be dealt with at once.

He stated in examining the proceedings and decision of the stated land application the court will find a number of issues that tainted the legality, propriety, correctness and regularity of the stated proceedings and the decision of the tribunal. He analysed the stated issues in his submission but for the reasons which will be seeing as we gone on with this ruling the court has found there is no need of reproducing the stated issues in this ruling. At the end he urged the court to examine and revise or quash the proceedings, judgment, decree and all subsequent orders resulting from Application No. 8 of 2006 of the tribunal.

The court has painstakingly considered the submissions from the counsel for the parties and it has gone through the record of all matters referred in this ruling. The court has found the counsel for the parties are at one that Hon. R. L. Chenya wrongly interpreted the decision of this court made in Land Revision No. 1 of 2019 to order Misc. Application No. 411 of 2018 of the tribunal be heard afresh against the 19th and 25th respondents. The court has found the gist of the submission by the counsel for the parties is to the effect that, the order made by the court in its ruling was to struck out the proceedings of the tribunal in Misc. Application No. 411 of 2018 against the 19th and 25th respondents and left the ruling of the tribunal intact in respect of the rest of the respondents in the stated application and not more than that.

The court is in agreement with the submission by the counsel for the parties and the opinion taken by Hon. J. M. Bigambo, that the court did not order in its ruling that Misc. Application No. 411 of 2018 of the tribunal should be heard afresh against the 19th and 25th respondents. To the contrary the court has found the ruling of the court in Land Revision No. 1 of 2019 struck out the proceedings of the tribunal in Misc. Application No. 411 of 2018 in respect of 19th and 25th respondents and left the ruling and order of the tribunal in the stated application intact. For clarity purposes the court stated at paragraph two of page 24 of the ruling sought to be reviewed as follows: -

"Now what should be done? I invoke the provisions of section 43 (1) (b) of the Land Disputes Courts Act, Cap 216 and proceed to strike out the proceedings in Misc. Land Application No. 411 of 2018 in respect to the two applicants only. The 2nd to 24th respondents had the option to move the proper court or tribunal for what remedies they would like to be considered and determined in their favour. Otherwise, the district tribunal ruling and order will remain intact in respect to the 2nd to 24th respondents. For the interest of justice, I further order and direct that the records in Misc. Application No. 292 of 2018 to be remitted to the District Land and Housing Tribunal of Temeke as soon as practicable for continuation of hearing and final

determination starting from the proceedings dated 29th March, 2019 before a different chairperson and different tribunal assessors."

From the wording of the above quoted paragraph of the ruling of the court it is crystal clear that there is nowhere the court ordered Misc. Application No. 411 of 2018 to be heard afresh against the two applicants who were 19th and 25th respondents in the mentioned application. To the contrary the court has found the proceedings of the tribunal in respect of the mentioned respondents was struck and the ruling of the tribunal and its orders were left intact.

The court has found what was ordered to continue with hearing was Misc. Application No. 292 of 2018 which the mentioned respondents had claimed they had filed in the tribunal and not Misc. Application No. 411 of 2018. In the premises and as rightly argued by the counsel for the parties and as opined by Hon. J. M. Bigambo in his order dated 4th November, 2021, the court has found Hon. R. L. Chenya, misinterpreted the ruling of the court delivered in Land Revision No. 1 of 2019 in ordering in his ruling dated 17th August, 2021 that Misc. Application No. 411 of 2018 should be heard afresh against the 19th and 25th respondents.

The court has found the counsel for the applicant argued that the tribunal's chairman was misdirected by the drawn order extracted from

the ruling of the court as it is in contradiction with the ruling of the court. After going through the stated drawn order, the court has found it is true as argued by the counsel for the applicant that it is in contradiction with the ruling of the court. The court has come to the stated finding after seeing that, as stated earlier in this ruling the order made by this court in its revisional order states clearly that the proceedings of the tribunal in Misc. Application No. 411 of 2018 was struck out against the two respondents and the ruling of the tribunal in respect of the rest of the respondent was left intact.

There is nowhere in the revisional ruling of this court it was ordered or it can be construed to establish the court ordered Misc. Application No. 411 of 2018 should be heard afresh against the 19th and 25th respondents. To the contrary the court has found the first order in the drawn order extracted from the ruling of the court states the court struck out the proceedings, ruling and order of the tribunal in Misc. Application No. 411 of 2018 and ordered the matter to be heard afresh before a different chairman sitting with different tribunal assessors. For clarity purpose the first part of the drawn order states as follows: -

"The proceedings, and ruling and orders of 18/01/2019 in Misc Land Application No. 411 of 2018 are struck out and order is given that the same to start afresh before different

chairperson and set of tribunal assessors at Temeke District Land and Housing Tribunal."

As what is stated in the above quoted order is not featuring anywhere in the ruling of the court which is now being reviewed by this court, the court has found the stated order was wrongly inserted in the drawn order of the court. In the premises the court has found under normal circumstances and if other things will remain equal, then as argued by the counsel for the applicant the court would have been required to order the drawn order be amended so as to tally with the ruling of the court.

Although the court has agreed with the counsel for the applicant that the drawn order extracted from the ruling of the court is in contraction with the ruling of the court, but as stated earlier in this ruling the counsel for the parties are also challenging the propriety of the ruling of the court which struck out the proceedings of the tribunal in respect of only the 19th and 25th respondents and left the ruling and order of the tribunal in respect of the rest of the respondents intact while all respondents in Misc. Application No. 411 of 2018 were not parties in Application No. 8 of 2006 of the tribunal.

The court has found that, although the court was dealing with the revisional proceedings file in the court by 19th and 25th respondents alone but close scrutiny of the ruling of the court shows the right of the

mentioned respondents which was found was not considered by the tribunal and caused the proceedings of the tribunal to be struck out was also the concern of the rest of the respondents. The stated concern is that the rights of all respondents over the suit land was not considered by the tribunal in Misc. Application No. 411 of 2018 which was dealing with an application for an order of evicting all the respondents from the suit land. The stated finding of the tribunal can be seen at page 23 of the ruling of the court where it was stated as follows: -

"The only issue that is found not correct is failure of the district tribunal chairperson not to consider the concern of the respondents in Misc. Application No. 411 of 2018. It is therefore my considered view that in the course of hearing application for eviction, the district tribunal ought to also consider the right of the applicants over the suit land."

The wording of the above quoted excerpt shows that, although the tribunal found the concern of all respondents was not considered in Misc. Application No. 411 of 2018 but it went on to strike out the proceedings of the mentioned application in respect of only the 19th and 25th respondents and left the proceedings and ruling of the tribunal in respect of the rest of the respondents intact. To the view of this court and as rightly submitted by the counsel for the parties, it was not proper for the

court to struck out the proceedings of the tribunal against 19th and 25th respondents only and left the ruling and order of the tribunal in respect of the rest of the respondents intact.

In lieu thereof and as rightly submitted by the counsel for the parties the benefits accorded to the 19th and 25th respondents by the court of striking out the proceedings of the tribunal against the mentioned respondents ought to be extended to cover the rest of the respondents and not to leave them to look for their remedies from another forum as stated by the court. If the stated benefit is extended to the rest of the respondents, it is crystal clear that, as stated in the case of **Bin Kuleb Transport Company Limited** (supra) the stated application could have not been heard afresh against any of the respondents as it is supposed to be treated as if it has never existed.

The court has found Mr. Benitho Mandele urges the court to examine the proceedings and decision of the tribunal in Application No. 8 of 2006 which is the genesis of the matter before the court on ground that it has number of issues that tainted its legality, propriety, correctness and regularity. The court has failed to see justification of examining the proceedings and decision of the tribunal in the mentioned application after seeing that, the matter before the court is firstly seeking for directives of the court about whether the ruling of the court in Land Revision No. 1 of

2019 is requiring the tribunal to rehear Misc. Application No. 411 of 2018 in respect of 19th and 25th respondents or not.

Secondly, the court is being urged to see whether it was proper for the court to struck out the proceedings of the mentioned application in respect of the mentioned two respondents only and left the proceedings and ruling of the tribunal in respect of the rest of the respondents intact. That means the court has been moved to review the order made by the court in Land Revision No. 1 of 2019 which revised Misc. Application No. 411 of 2018 of the tribunal and it has not been moved to examine the proceedings of Land Application No. 8 of 2006 which the counsel is inviting the court to examine its proceedings and its decision.

Although the court has power under section 43 (1) (a) of the Land Disputes Courts Act, Cap 216 R.E 2019 to do what the mentioned counsel is urging the court to do, but the court has found as the stated prayer was made in his submission and other parties in the matter sought its proceedings and decision to be examined have not been accorded chance of being heard it is to the view of this court improper to do what the mentioned counsel has prayed the court to do in the mentioned matter. In the premises the prayer by Mr. Benitho Mandele that the court be pleased to examine the record of Application No. 8 of 2008 of the tribunal

to see whether it is tainted with illegality, impropriety, incorrectness and irregularity cannot be granted.

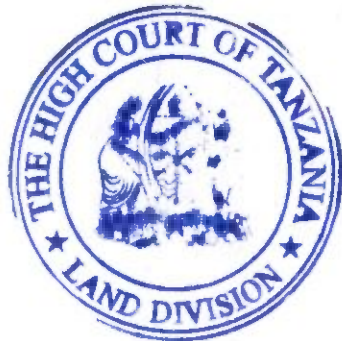
Having arrived to the foregoing finding, the court has come to the view that, as there is no dispute that there are errors in the ruling and in the drawn order issued by the court in Land Revision No. 1 of 2019 the stated errors are sufficient ground for moving the court to review the ruling and drawn order of the court. The stated finding is being bolstered by the position of the law stated in the case of **Chandrakant Joshubhai Patel V. R** cited in the case of **Tanganyika Land Agency Limited & Seven Others V. Manohar Lal Agrawal**, Civil Application No. 17 of 2008, CAT at DSM (unreported) where it was stated that: -

"... an error which would ground a review, whether it be one of fact or one of law, will be an error over which there should be no dispute and which results in a judgment which ought to be corrected as a matter of justice."

In the light of the foregoing quoted authorities and the reasons stated hereinabove the ruling of the court and the order issued by the court in Land Revision No. 1 of 2019 are hereby reviewed and it is ordered that, the order of striking out the proceedings in Misc. Application No. 411 of 2018 should not only be for the 19th and 25th respondents but for all respondents. In the upshot the proceedings of the tribunal in Misc.

Application No. 411 of 2018 is hereby struck out in respect of all the respondents. Each party to bear his own costs. It is so ordered.

Dated at Dar es Salaam this 8th day of June, 2023



I. Arufani
I. Arufani
JUDGE
08/06/2023

Court:

Ruling delivered today 08th day of June, 2023 in the presence of Mr. Rajabu Mrindoko, learned advocate for the applicant, Mr. Joseph Rutabingwa, learned advocate for 19th and 25th respondents, Mr. Alexandar Kyaruzi and Ms. Rose Sanga, learned advocates for the rest of the respondents. Right of appeal to the Court of Appeal is fully explained.



I. Arufani
I. Arufani
JUDGE
08/06/2023