

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 309 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Kinondoni District at Mwananyamala in Application No.165 of 2018)

ABDALLAH SALUM KIMBELETE.....APPLICANT

VERSUS

**1. DOGO HASSAN KAPECHA (Administratrix of the
late Said Mohamed Kinyuka)**

2. MARWA ZACHARIA

3. HALFAN ATHUMAN

4. ZAHARA MALICKY

5. SELEMAN KASSIM

6. MUSA MOHAMED

7. AMINA HUSSEIN@ MAMA WITI

RESPONDENT'S

RULING

Date of last Order: 08 August 2023

Date of Ruling: 23 October 2023

K. D. MHINA, J.

In this application, the applicant moved this court under Section 43(l)(b) of the Land Disputes Courts Act, Cap by way of chamber summons. 216 R.E 2019. He is seeking *inter alia* for the following orders:

- i. That this Court be pleased to call and inspect the records of the District Land and Housing Tribunal (the DLHT) for Kinondoni District at Mwananyamala in Application No. 165 of 2018 and give directions for the applicant be included in that application for the interest of justice to be done.*
- ii. Costs of the Application.*
- iii. Any other relief(s) which the court may deem fit and just to grant.*

The application is supported by the affidavit affirmed by Abdallah Salum Kimbelete, the applicant, which expounded the grounds for the application.

The application was argued by way of written submissions. The applicant was represented by Mr. Abdul Kunambi, a learned advocate, while the first respondent by Mr. Lugiko John Hindisha, also a learned advocate. Mr. Augustine Mathern Kusalika, learned advocate, represented the 3rd, 4th, 5th, 6th, and 7th respondents. On his side, the 2nd respondent did not file the submissions.

But before going to the submissions and the substance of the application, a brief background is significant to appreciate what prompted

the filing of this application. Canvassing through the records, what I gather regarding the background of this application is as follows.

At the DLHT for Kinondoni, the 1st respondent vides Application No. 165 of 2018, sued the 2nd to 7th respondent over the ownership of 8-10 acres of land located Mabwepande Area within Kinondoni District.

While the application was ongoing, the applicant applied the same DLHT, i.e., Application No. 519 of 2022, against the respondents seeking to be joined in Application No. 165 of 2018. His reason was that the disputed land belonged to him; therefore, he had an interest. In its decision dated 3 June 2022, the DLHT dismissed the application because the applicant failed to establish prima facie ownership of land; therefore, he had no interest.

The DLHT proceeded with the determination of Application No. Application No. 165 of 2018, and on 23 August 2023, it delivered the judgment and declared the 1st respondent as the lawful owner of the disputed land.

Having prefaced briefly the background of the application, now the submissions of the parties briefly are as follows;

In supporting the application, Mr. Kunambi at the DLHT, the applicant filed Misc. Application No. 519 of 2022 sought to be joined in Application No.

165 of 2018 because he was a lawful owner of the land, which the respondents claimed to be lawful owners. That application was dismissed; therefore, Application No. 165 of 2018 proceeded without the applicant.

He further argued that it was incorrect for the DLHT to refuse to join the applicant because he was a necessary party. His right over the ownership of the disputed land had been prejudiced. To bolster his argument, he cited Article 13 (6) of the Constitution of the United Republic of Tanzania, which provides for a fair hearing.

Therefore, he prayed for this Court to invoke its powers under Section 43 of the LDCA to revise, quash and set aside the proceedings and judgment of the DLHT and order the re-trial and the applicant be joined as a necessary party as per Order 1 Rule 3 of the CPC. To support his submission, he cited **Deodatus Katabaro and another vs. Christine Harieth Mulokozi and three others**, Misc. No. 417 of 2022 and **Mubelwa James Mutabiilwa vs. M/S Riziki Lulida and another**, Misc. Land Application No. 472 of 2021 (Both HC-Land Division).

Opposing the application, Mr. Hindishi submitted that after the dismissal of Misc. Land Application No. 519 of 2022, the DLHT heard and determined on merits Application No. 165 of 2018. Therefore, he argued that

the instant application has been overtaken by events since the judgment in Application No. No. 165 of 2018.

Also, he raised the issue that the applicant is praying to revise Application No. 165 of 2018 and not Application No. 519 of 2022.

Further, he argued that at the DLHT, the applicant did not state how he acquired the land rather than asserting that the land in dispute was his land. Therefore, Application No. 519 of 2022 aimed to disrupt 2018.

On his side Mr. Kusalika for the 3rd, 4th, 5th, 6th, and 7th respondents in his submission raised the following issues;

One, he submitted that the applicant had failed the illegality, irregularity or impropriety of the DLHT in Application No. 519 of 2022.

Two, he argued that in the instant application, the applicant failed to indicate to what extent he was involved with the land in dispute.

Three, the DLHT had already declined the applicant's ownership over the land in dispute in Application No. 519 of 2022.

The applicant filed the rejoinder but mostly reiterated what was submitted earlier in the submission in chief. Thus, I don't see a reason to summarize it here.

Having considered the chamber summons, its supporting affidavit, counter affidavits, and the written submissions made by the counsel for the parties, the issues before me is straight forward;

"whether or not the applicant was denied a right to be heard to join proceedings at the DLHT" and

"whether this Court may quash and set aside the DLHT proceedings and judgment in Application No. 165 of 2018 and order the applicant to be joined as a necessary party in the proceedings before the DLHT"

From the factual issues of this case and as I briefly showed in the background part of this ruling, the first issue should not detain me long. Because the record is clear that after the 1st respondent filed the case against the 2nd to the 7th respondents vide Application No. No. 165 of 2018 concerning the ownership of the suit land, the applicant filed Application No. 519 of 2022 seeking to be joined in Application No. 165 of 2018 as a necessary party.

For ease of reference, I wish to briefly narrate the procedure of joining a necessary party at the DLHT. In exercising its powers, the DLHT is

governed and regulated by the **Land Disputes Courts (The Land and Housing District Tribunal) Regulations 2003** ("the Regulations").

Unfortunately, Regulations happen to be silent on the issue of joinder and non-joinder of the parties to the suit. But the law is already settled; if there is a lacuna in the Land Disputes Courts Act, this Court can invoke the provisions of the **Civil Procedure Code** [Cap 33 R: E 2019] ("the CPC") to fill the gap (s). That "leeway" is provided under Section 51 (2) of the Act, which provides that;

"51 (2) The District Land and Housing Tribunals shall apply the Regulations made under section 56, and where there is inadequacy in those Regulations it shall apply the Civil Procedure Code.

On this, the joinder of parties, under the CPC, is provided under Order I Rule 10 (2) of the CPC. That law read that;

..... "(2) The Court may, at any stage of the Proceedings, either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any person who ought to have been joined, whether as a plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added."

Further, the Court of Appeal, in **CRDB Bank Public Company Limited vs. UAP Insurance Company Limited**, Civil Appeal No. 32 of 2020 (Tanzlii), elaborated on the applicability of the provision of law when it held that;

"It is incumbent upon the trial court in terms of order 1 rule 10 (2) of the Civil Procedure Code, [Cap. 33 R.E 2019] (the CPC) to scrutinize the pleadings in order to determine a party or parties whose presence before the Court will be necessary to enable the Court effectually, completely adjudicate upon and settle all questions involved in the suit".

From above, it is quite evident that a necessary party may be ordered to be joined at any stage of the trial after the Court of Tribunal satisfies itself that without joining such a party, it could not effectually and completely adjudicate and settle all the questions involved in the suit and pronounce an effective decree.

In the instant application, the record further indicated that the applicant was afforded a right to be heard to establish his interest in the suit land. After hearing both parties, the DLHT rejected the applicant's application on 30 March 2023. The DLHT held that there were no merits to the

application, and Application No. 165 of 2018 could be determined without the involvement of the applicant.

After that, the applicant did not challenge that decision for the reason that his advocate informed him that the decision was interlocutory. In my view, that was wrong; the applicant was supposed to challenge that decision, which dismissed his application to be joined as a necessary party; otherwise, the decision in Application No. 519 of 2022 remains unchallenged and intact.

From the above discussion, in such circumstances, one cannot say that the applicant was denied the right to be heard. By due process of law, he was afforded the right, and his application was dismissed.

Reverting to the second issue flatly, I hold that it is devoid of merits because;

One, by seeking to quash and set aside the proceedings and judgment in Application No. 165 of 2018 and order the applicant to be joined in the proceedings, amounts to a "back door" application to set aside Application No. 519 of 2022, which was never challenged, quashed and set aside. That is contrary to the law.

Two, for a person to be joined as a party to the suit, at least he should establish prima facie interest over the property. But in this application, the

applicant failed miserably to establish his primary facie interest, as rightly submitted by Mr. Kusalika and Mr. Hindisha in their submissions.

In the entire applicant's affidavit, only in paragraph 1 the applicant mentioned his connection in a suit land. The paragraph read that;

*"That the disputed land which both applicant and respondents in Application No. 165/2018 claimed to be declared lawful owners before Kinondoni District Land and Housing Tribunal **is my land**".*

[Emphasis provided]

Nothing was mentioned on the acquisition of that land. Further, nothing was attached to the affidavit to establish the applicant's interest in the land. Therefore, prima facie, there is nothing to link the applicant with a disputed land.

Flowing from above, the application has no merits, and I decline to grant the same as there is nothing to direct the DLHT. Consequently, it is dismissed with costs.

It is so ordered.




K. D. MHINA
JUDGE
23/10/2023