

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 49 OF 2023

(Arising from the order of the District Land and Housing Tribunal for Temeke in Misc.

Application No. 50 of 2023 dated 04/9/2023 by Hon. P.I.Chinyele.)

NORBERT LUDOVICK KWIYAKAAPPLICANT

VERSUS

AKIBA COMMERCIAL BANK 1ST RESPONDENT

WAUNGWANA AUCTION MART.....2ND RESPONDENT

AMANI CHARLES..... 3RD RESPONDENT

RULING

01/03/2024 & 20/03/2024

A. MSAFIRI, J.

The applicant have brought this Application under Section 41(1) of the Land Disputes Courts Act, Cap 216 R.E 2019 and Section 79(1)(b)(c) of the Civil Procedure Code, CAP 33 R.E.2019 (herein the CPC), praying for the following orders;

- i. That this Honourable Court be pleased to call for records of Temeke District Land and Housing Tribunal in Misc. Application No.50 of 2023 and inspect the said records and give directions as it considers necessary for the interest of justice.*
- ii. That this Honourable Court be pleased to examine the records*

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thereof for the purposes of satisfying itself as to the correctness of the illegality or material irregularity.

iii. Costs of this Application.

iv. Any other relief (s) that this Honourable Court deems fit and just to grant.

The Application is supported by the affidavit of Nobert Ludovick Kwiya, the applicant himself. The Application was contested by the 1st respondent through the counter affidavit deposed by Neema Munuo, the advocate of the 1st respondent. The Application was heard *ex parte* against the 2nd and 3rd respondents upon the court being satisfied that they were properly served and for the reasons known to themselves, failed to enter appearance and filed their counter affidavits.

At the hearing which was oral, the applicant appeared in person while the 1st respondent was represented by Ms. Neema Munuo, learned advocate. I have considered both submissions in court by the parties and the contents of their affidavit and counter affidavit and I will analyse them as I determine this Application.

The law gives power to this Court to exercise its revisional jurisdiction in a case where it appears that there has been an error material to the

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merits of the case involving justice. This is provided under Section 43 (1) (b) of the Land Disputes Court Act.

The applicant is praying for this Court to call and inspect the records and decision of the District Land and Housing Tribunal for Temeke District at Temeke (herein the Tribunal) in Application for Execution No.50 of 2023 originating from Application No. 13 of 2021 which he believes there is an error material to the proceedings of the said matter involving injustice. The wanting question here is whether there was any error material to the merit of the case i.e. proceedings and order thereof from Application No.50 of 2023 involving injustice.

From the submissions by the parties, I have gathered that, initially the applicant has requested and was advanced a loan by the 1st respondent in the year 2018 and secured his house, now the suit house as a mortgage. Later the applicant defaulted to repay the loan as per the agreed terms hence the 1st respondent moved to recover the remaining loan by auctioning the suit house. The suit house was purchased by the 3rd respondent in an auction conducted by the 2nd respondent.

The applicant was not satisfied and believing that the auction was illegally conducted, he filed an Application No. 13 of 2021 before the Tribunal, challenging the sale of the suit house. He was praying for several reliefs in the Tribunal. Among them was first, the declaration that the

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applicant was the owner of the suit house, second, that the respondent has sold the suit house unlawfully and third, the Tribunal to provide an order for the applicant to return in the suit house. The applicant was successful on one relief only i.e. the Tribunal declared that the auction was illegally conducted.

About other reliefs sought by the applicant, the Tribunal found that the Bank had a right to sell the security upon the applicant's default in loan repayment.

Therefore, according to the judgment of the Tribunal in Application No.13 of 2021, the Application was granted to the extent that the Tribunal only declared the auction illegal. It did not grant the applicant with other reliefs he was seeking.

Following the said judgment, the applicant, believing that the Tribunal have decided in his favour (which it had partly did), he filed Misc. Application No. 50 of 2023 seeking to execute judgment and decree of the Tribunal in Application No 13 of 2021.

According to his affidavit, the applicant claims that the Tribunal failed to resolve the dispute and dismissed the said Application. And now he is praying for this Court to revise the records of Misc. Application No. 50 of 2023 and inspect them.

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According to the proceedings of Misc. Application No. 50 of 2023, the applicant was moving the Tribunal to evict the 3rd respondent Amani Charles who was the purchaser of the suit house who was in occupation of the said house and has renovated it. The 3rd respondent has asked the Bank (1st respondent) to refund him the purchase price plus the renovation expenses which totalled TZS 25 million.

On 04/9/2023, the 1st respondent through the counsel Ms. Munuo informed and provided the proof to the Tribunal that the money has been refunded to the 3rd respondent. She informed the Tribunal that the suit house has reverted to the 1st respondent. The Tribunal then dismissed the Application and ordered for the auction to be re-conducted and the applicant was given option to participate.

Having gone through the judgment of Application No.13 of 2021 and Misc. Application No. 50 of 2023, I have failed to see any error material or irregularity in the conduct of Misc. Application No. 50 of 2023.

These two Applications i.e. Application No.13 of 2021 and Misc. Application No. 50 of 2023 are inseparable. The applicant have failed to understand that the Tribunal has never declared him the owner of the suit house as he was seeking to. The Tribunal observed and believed the evidence that the applicant has defaulted to repay the loan advanced to him by the 1st respondent. In its judgment dated 30/01/2023, the Tribunal

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found that the 1st respondent had a right to exercise the power of sale. The Tribunal only nullified the auction but did not revert the applicant to the ownership of the suit house.

I agree with the position of the Tribunal and add that the 1st respondent had right to take over and sell the suit property where there is a default in payment of loan or interest subject to the lawful procedure. This right is provided under the provisions of Sections 127,130 and 132 of the Land Act, Cap 113, R.E 2019.

Since the decree of the Tribunal was only on the nullification of the auction, then the applicant had no right in the first place to institute the execution of the decree seeking to repossess the suit house. This is for the reason that at all this time, the ownership of the suit house was in the hands of the mortgagee, the 1st respondent. Therefore the Tribunal was right to dismiss the application for execution as there was nothing to be executed by the applicant.

I find that there is no any error material or irregularity in the Tribunal's decision in Misc. Application No. 50 of 2023.

The applicant kept submitting that he is ready to pay the loan amount but only the premium loan and not the amount which the Bank is demanding him to pay. The applicant is praying for this Court to order that he be allowed to pay the amount he wants. *Alle.*

However, since there is a loan agreement between the parties, each party has contractual obligation to fulfill it. The applicant hence has a contractual obligation to pay the loan amount with interest and on that, the Court is not allowed to interfere with the contractual obligations of the parties (See the case of **General Tyre EA Ltd vs HSB Bank Plc** [2006] TLR 60.

From the above analysis and reasons, I find the Application to have no merit and I hereby dismiss it with costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal dotted line.

A.MSAFIRI

JUDGE

20/3/2024