

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY**  
**AT MWANZA**

**LAND APPEAL NO. 34 OF 2017**

*(Arising from Application No. 6/2013 of Chato District Land and Housing Tribunal)*

**YASINTA MICHAEL SUMUNI ..... APPELLANT**

**VERSUS**

**1. MWAMBAO SACCOS LTD**  
**2. MSENYELE MAZOYA**  
**3. EVARIST BWIRE**  
**4. JOHN LUGINGIS** } ..... **RESPONDENTS**

**JUDGMENT**

**19/09/2018 & 21/01/2019**

**RUMANYIKA, J.:**

Appeal is against the 5/4/2017 ruling and order of the District Land and Housing Tribunal for Chato (the DLHT) striking out Application No. 63/2013 for reasons that; (1) It was incompetently preferred (instead of one filling objection proceedings) (2) It was overtaken by events. The disputed house having been long ago auctioned and sold. Yasintha Michael Sumuni (the appellant) is not happy. Here she is. Like the appellant, the

respondents appeared in person. Save for the 4<sup>th</sup> and 2<sup>nd</sup> against whom respectively appeal was marked withdrawn and appearance dispensed with (pursuant to my order of 19.09.2018).

The appellant, according to records wife of the 2<sup>nd</sup> respondent blessed, with three issues, personally, and by way of sale owned the disputed premises in 2005. But with it in her back the 2<sup>nd</sup> respondent secured a loan from the 1<sup>st</sup> respondents. He defaulted and eventually the house was, by DLHT's order auctioned and sold in 2013 to 3<sup>rd</sup> Respondent. That she hadn't been aware of the case or execution order until as late as 07.8.2013.

In his decision subsequent to a preliminary objection raised, the DLHT's chair reasoned and held; (a) that now that the applicant was not a party to Application No. 15 of 2009, but claimed some interests in the suit premises, she should have instituted objection proceedings but didn't (b) that the application was long overtaken by events. Much as the disputed premises had been auctioned, sold and perhaps title accordingly passed onto 3<sup>rd</sup> party. The application as said, was struck out with costs.

The issue is whether, the application was improperly struck out. The answer is no! Reasons are:-

**One;** the applicant may have solely owned the disputed premises, and for quite sometime stayed aware at Ukerewe Yes! But unless she had no interests and therefore abandoned it say for four (4) years (2009-2013), she if at all owner did not tell how possible she did not know about

existence of application No. 63 of 2009, Judgment and decree until as late as 7/8/2013.

**Two;** the fact that she attached to the application a copy of the loan agreement (between the 1<sup>st</sup> and 2<sup>nd</sup> respondents), the applicant should have had knowledge and, quietly though, consented to the agreement leading to attachment, auction and sale of the disputed premises. Objection was, but after thought.

**Three;** with regard to complaint that the disputed property was of 45,000,000/= value, therefore the auction invalid due to the "take away sale price", the property was actually assessed at Shs. 5,000,000/= value (see item 4@ of the Loan agreement.

**Four;** though proper party, Jackson Auction Mart and Brokers were not joined in the appeal. What the incompetent matter for non joinder of the parties?

**Five;** Now that appellant knew or had reasons at the earliest possible opportunity to know about existence of the application, and therefore decision/orders of the DLHT, she should have, as a necessary step filed objection proceedings. And if failed institute a suit.

**Six;** with regard to the three issues and or other members of house hold being homeless, the appellant's letter of 12.07.2013 to the 1<sup>st</sup> respondent denied the fact. Infact only tenants had been threatened.

**Seven;** Like the DLHT's chair held, not only the application was overtaken by events premises house duly sold and probable tittle

accordingly passed onto the bonafide purchases, but also this appeal is overtaken by events and therefore out of place.

**Eight;** if anything, the auction and sale may, for some reasons be declared a nullity/set aside. But what about as said, the valid judgment and decree in the said Application No. 63 of 2009?

Decision and orders of the DLHT upheld. Appeal is dismissed with costs.

Ordered accordingly.

Right of appeal explained.



**S.M. RUMANYIKA**  
**JUDGE**  
**13.01.2019**

Delivered under my hand and seal of the court in chambers this 21<sup>st</sup> day of January, 2019 in the presence of the 1<sup>st</sup> respondent and in the absence of the appellant, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents.



**M.A. Moyo**  
**DEPUTY REGISTRAR**  
**21/01/2019**