

TANZANIA / JUDGMENT

amina ramadhani vs athumani hinga and another 2024 tzhc 909 18 march 2024

COURT
TZHCDECIDED
18 March 2024

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IN THE HIGH COURT OF TANZANIA DODOMA SUB REGISTRY AT DODOMA MISCELLANEOUS
LAND REVISION NO. 26947 OF 2023 {Arising from the Application for Execution No. 5 of 2023 of
the District Land and Housing Tribunal for Singida at Singida) AMINA
RAMADHANI..... APPLICANT VERSUS ATHUMANI
HINGA..... 1st APPLICANT YAHYA M.
SINGU..... 2nd APPLICANT

RULING

Date of fast order. 11/03/2024 Date of Ruling: 18/03/2024 LONGOPA, J.: On 4th December 2023, the applicant instituted this application for revision against the order of the District Land and Housing Tribunal for Singida in Application for Execution No 05 of 2023. The applicant and respondents were parties before this Court in Land Revision No. 8 of 2020 which was determined on 18/10/2022. This Court in its Ruling allowed the application by quashing proceedings of the District Land and Housing Tribunal from 05/06/2018 to 10/5/2019 and declared that there was no order allowing sale of the suit house, thus the purported sale of the suit house located on 1 | Page 4 plot No. 269 Block "Z" Kibaoni in Singida Municipality was unlawfully and consequently the same was nullified. The Court explicitly declared that the house shall remain in the ownership of the applicant and the 1st respondent as earlier ordered by the District Land and Housing Tribunal. For the end of justice to be met, it was ordered that the 1st respondent should pay 2nd respondent the outstanding installment of the purchase price of the suit house in line with the original order of the Tribunal. It is this clear order that the applicant herein applied before the District Land and Housing Tribunal to enforce by way of an application for execution. The grounds for this application are as follows:

1. That this Honourable Court be pleased to call and inspect the ruling and proceedings of the District Land and Housing Tribunal for Singida in Execution Application No 5 of 2023 and revise the same for being entangled with irregularities and illegalities and give proper orders and/ or directives for interest of justice.
2. That, costs of the application be provided for.

3. Any other relief(s) this Honourable Court may deem fit and just to grant. 2 | Page On 07/03/2024 the parties appeared before me for oral submission of the grounds of appeal. The applicant enjoyed the legal service of Amina Hamis, learned advocate while the 1st respondent appeared in person. The application proceeded ex parte against the 2nd respondent as he deliberately refused to appear before this Court without any justifiable reason having been duly served. The affidavit of the process server was tendered to this Court to validate the blatant refusal by the 2nd respondent to appear. The counsel for the applicant, Ms. Amina Hamis stated that this is an application for revision under Section 43(1) and (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019 whereas the applicant is seeking the Court's intervention to revise the proceedings and decision of the District Land and Housing Tribunal for Singida in Application for Execution No. 05 of 2023 to satisfy itself on the legality and correctness of the decision. The application is supported with the affidavit of the applicant that was adopted to form part of this submission. The main reason for this application is that there are legal issues or irregularities/weaknesses in the decision of the District Land and Housing Tribunal for Singida in the Application for Execution No. 5 of 2023 as demonstrated in paragraphs 4 and 5 of the applicant's affidavit in support of the application. 3 | Page The applicant sought to enforce the decree of the High Court in the Land Revision No 8 of 2020 in which the High Court nullified the sale of the disputed land and ordered the same to remain property of the applicant and 1st respondent. The District Land and Housing Tribunal dismissed the Application for Execution No. 5 of 2023 on ground that there is no unfinished house on the plot in the dispute. This decision is bad in law as the High Court had nullified the sale of and all its developments thereafter. That land and anything attached to it reverted to the applicant. The plot of land was declared by the High Court of Tanzania that such land is owned by the applicant and the first respondent. Furthermore, it was argued that as the decision of the High Court that nullified the sale is still intact and valid as it has never been challenged, it was incumbent to the District Land and Housing Tribunal to order the execution of the decree in favour of the applicant as declared by the High Court of Tanzania. In the case of Thabita Mgabe Nshoya Nyamhanga vs Leonia Sengo and Others, Land Case No. 337/2015 at pp. 30-31 the High Court stated that: Nullification of the sale remained unchallenged thus the respondent's ownership ceased on the date the High Court nullified the sale. Thus, in the circumstances of this application the purchase of the land in question was determined on the date of nullification of the sale by the High Court. 4 | Page There are other illegalities on this matter including that error of the Tribunal Chairman to hold that there are other constructed houses in the suit plot thus the applicant could not be given vacant possession. This is reflected in Paragraph 5 of the affidavit. The failure by the Tribunal on existence of other houses on plot was wrong as the sale had been nullified and the parties thereto returned to the original position before the sale of the suit plot. The alleged new houses have no legality of the continued existence as the basis of them being there was the sale that is nullified. The applicant cited the case of Hamis Bushiri Pazi and Others vs Sauli Henry Amon, Civil Appeal No. 166 of 2019 (Unreported) which provides for analysis of bonafide purchaser determination and effect of nullification of the sale as illustration that the 2nd respondent remains in that land

unlawful, and the Tribunal wrongly and erroneously decided against the applicant. It was a prayer of the applicant that this application deserves to be allowed and the nullity of the proceedings and decision of the District Land and Housing Tribunal be quashed. On the other hand, the first respondent had nothing to argue against the submission made by the Counsel for the applicant. It was his view that the prayer by the applicant be allowed for it has merits in the circumstances of the case at hand. I have keenly considered the application, affidavit in support of the application and submission made by the parties to be able to determine 5 | Page whether the application before this Court has merits. I shall analyse the merits or otherwise of this application as follows: It is true that the Land Disputes Courts Act, Cap 216 R.E 2019 provides for the revisional powers of this Court against any decision of the District Land and Housing Tribunal. This may be when the Tribunal exercises its original, appellate or revisional powers. The Act provides as follows: 43.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-

- (b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit. This provision allows the Court to act on its own or upon application by a party to the proceedings before the Tribunal. In the instant matter, the applicant filed an application before this Court seeking intervention of this Court to call and examine the ruling and proceedings of the District Land and Housing Tribunal for Singida in the Application for Execution No. 5 of 6 | Page 2023 in which the applicant herein applied for enforcement of the High Court decision in Land Revision No. 8 of 2020. The ruling and drawn order in Land Revision No. 8 of 2020 had categorically stated about the rights of the parties about suit premises. The High Court of Tanzania Dodoma District Registry had determined that: First, the Tribunal's proceedings relating to the sale of the plot land in question were illegal thus void ab initio. Second, the alleged sale without any order of the Tribunal in the nullified proceedings was nullified too. Third, the Court declared the applicant to be the only rightful and recognised owner of the disputed land. Fourth, the second respondent was entitled to refund of his money that was an outstanding as purchase price of the suit house. This drawn order of the High Court has remained intact as there was no appeal preferred by any party to challenge the same. In simple terms, having nullified the proceedings and purported sale by order of the District Land and Housing Tribunal on suit house situated on plot number 269 block "Z" Kibaoni within Singida Municipality, the only lawful order remaining on who is the owner of that house in that plot is the High Court order dated 18th October 2022 that declared the applicant the rightful owner of the same. I am fully aware that Article 107A (1) of the Constitution of the United Republic of Tanzania provides for the authority in dispensation of 7| Page justice and entrusts on the judiciary the final authority in administration of justice. The article provides that: 107A.-(1) The Judiciary shall be the authority with final decision in dispensation of justice in the United Republic of

Tanzania. Being the final authority in determination of rights and obligations between the parties, the judiciary vide a Drawn Order dated 18th October 2022 in the Land Revision No. 8 of 2020 determined to the finality that the land in question is the lawful property of the applicant herein. I am of the view that the dispute was determined to finality because neither of the parties to the proceedings before the High Court took any action to challenge that decision of the High Court in any manner. It implies that parties were satisfied that such order was proper and appropriate and not otherwise. Such unchallenged decision must be implemented by anyone responsible to ensure its implementation. In that respect, an entitled party has a right to execute such unchallenged decision of the Court. In the case of Gabriel Kung'u Kariuki & Another vs Republic (Criminal Application No.56/01 of 2020) [2023] TZCA 17459 (25 July 2023), the Court of Appeal reiterated that: 8 | Page There must be an end to litigations, be it in civil or criminal proceedings...In any properly functioning justice system, like ours, litigation must have finality and a judgment of the final court in the land is final and its review should be an exception. That what sound public policy demands. The need to ensure litigations are not endless has also been reiterated in the Johnson Amir Garuma vs The Attorney General & Others (Civil Appeal No. 206 of 2018) [2023] TZCA 116 (15 March 2023), the Court of Appeal lucidly and emphatically stated that: It is a public policy and interest that litigation should not continue forever Litigation must come to an end so that the litigants will be able to focus on other important things in their life. The provisions of section 3 (1) of the Act is one of the ways in which the state can strike a balance between individual's right to instituting the suit and the social control in terms of time limit. Enforcement of the decision of the Court in terms of decrees or drawn orders is a way the litigation would come to an end when such order of the Court is not challenged. That is why Order XXI of the Civil Procedure Code, Cap 33 R.E. 2019 exists to ensure that decree holders enjoy the fruits of their rights as fully determined by the courts of law. 9 | Page Indeed, the same procedure is covered under Part V of the Land Disputes (District Land and Housing Tribunal) Regulations, GN No. 174 dated 27/06/2003. Regulation 23 of these Regulations caters for execution of the decree/orders by the District Land and Housing Tribunal. It is expected that unchallenged decision of the court should always be executed by institutions or officers designated to handle execution. I have pointed out categorically in the foregoing part that the decision of the High Court in the Land Revision No. 8 of 2020 finalised the determination of the rightful owner of plot No. 269 Block "Z" Kibaoni within Singida Municipality. By declaring the applicant as the lawful and rightful owner of the land in question, it outlawed possibility of anyone claiming ownership of that same land. I concur with the observation made by the applicant that guidance in Hamisi Bushiri Pazi & Others vs Saul Henry Amon & Others (Civil Appeal 166 of 2019) [2022] TZCA 186 (13 April 2022) (TANZLII), at page 30 where the Court of Appeal stated that: inhere a purchaser of the /and having purchased the property without prior inquiry into the extent of the tit/e of the judgment debtor on the suit property cannot qualify as a bonafide purchaser of value without notice. This is because in the circumstances of this case, any reasonable man would have expected the second respondent to, 10|P a g e before purchasing the suit property, inquire and found out in relevant authorities what interests, if any, the said fourth

respondent's relatives had in the suit property. tier unreasonable omission to make an inquiry, put her to constructive notice and/or imputed notice of the appellant's ownership interests on the suit property That being the case nothing in the purported sale from the nullified proceedings and order of the District Land and Housing Tribunal passed hands in law. Anyone remaining in the suit premises is a trespasser. This was a decision in the case of Abbas Ally Athuman Bantulaki & Another vs Kelvin Victor Mahity (Civil Appeal 385 of 2019) [2022] TZCA 509 (18 August 2022), at pages 16-17, the Court of Appeal stated that: In the final analysis and for the foregoing reasons, we are of the decided view that the purported sale of the disputed plot by Erick peter Watcher did not pass title to the 1st appellant and the High Court's order declaring the respondent the lawful owner of the disputed plot was invalid and ineffectual. The High Court of Tanzania, Dodoma Sub Registry having determined the revision in favour of the applicant by quashing proceedings of the District Land and Housing Tribunal for Singida proceedings dated 05/06/2018 to 10/5/2019, made the decision about rights of the parties. 11 (Page The High Court declared those proceedings to be nullity for violating the right to be heard of the applicant herein who has been declared to be the lawfully owner of the suit plot since 30/04/2012 as well as unprocedural manner of ordering the sale. There is no doubt that declaration that disputed land belongs to the applicant herein in effect it made anyone currently occupying that plot of the land in question a trespasser. That being the case, the applicant had all rights to apply for execution of the drawn order of the Court by invoking Tribunal's powers to assist the applicant to obtain her land back as ordered by the High Court of Tanzania in Land Revision No. 8 of 2020. In the case of Yusufu Selemani Kimaro vs Administrative General & Others (Civil Appeal 266 of 2020) [2022] TZCA 306 (24 May 2022), pp. 16-17, the Court of Appeal of Tanzania reiterated that: That the sale of the suit property by the second respondent to the appellant was null and void and consequently the appellant as well as the second and third respondents were trespassers on the suit property. The denial by the Tribunal to allow the applicant on executed the order of the High Court is unwarranted and uncalled for. The reason that there is no unfinished house (pagale) on the suit plot is clear denial that is against the public policy that litigation should come to an end. The application for execution in the amended application for execution had two main aspects, namely: first, the suit house located at Plot No. 269 Block "Z" Kibaoni within Singida Municipality be attached and hand over the same to the decree holder. Second, demolishing the new houses built in the said landed property which is not the property of the decree holder herein. Once there is pronouncement by the Court nullifying a sale of landed property, the current occupier of the same becomes a trespasser who can only stay at the pleasure of the rightful owner so declared by the court. A trespasser deserves nothing other than being removed from that piece of land if he cannot on his own volition allow vacant possession of such land. In the case of Mohamed Kanji vs MAC Croup Ltd (Civil Appeal 391 of 2022) [2023] TZCA 17263 (22 May 2023), at page the Court of Appeal had instructively stated that: It is an established common law principle (and now it has been codified under section 67 of the Land Act] that, the purchase of a possession from someone who has no title, denies the purchaser any ownership of title (Nemo dat quad non habet). Applying the principle in an issue like this, we held, in the case of Hamis Bushiri

Pazi and Others v. Saul Henry Amon and Others, Civil Appeal No. 166 of 2019 (unreported) that: "...since it is not in dispute that the 4th respondents share in the suit property 13 | P a g e was, soon before the sa/e in question, the fourth respondent being the only judgment debtor, had no title to pass to the second respondent other than the said share." Given the illegality nature of the sale order by the District Land and Housing Tribunal through the nullified proceedings, there was no title that passed from the appellant as the rightful owner of the suit property to any purported buyer. That nullity of sale order and non-transfer of title was confirmed in the High Court of Tanzania decision in Land Revision No. 8 of 2020. The High Court of Tanzania, Dodoma District Registry decision in Land Revision No. 8 of 2020 dated 18th October 2022 had the effect of confirming the applicant's ownership over the land and estopping anyone else to have any claim of right over that land. Having demonstrated fully that the land in Plot No 269 Block "Z" Kibaoni within Singida Municipality was declared to be the property of Amina Ramadhani who is the applicant it means that there was nothing to prevent the trial Tribunal to order execution of the drawn order dated 18th October 2022 in the Land Revision No. 8 of 2020 between the parties. The decision of the Tribunal on Application for Execution No 5 of 2023 was irrational, against the settled principles of laws and intended to defeat the clear orders of the High Court. Such decision is an evident 14 | P a g e denial to the applicant to enjoy the rights that were clearly determined by the High Court of Tanzania. The dismissal of the application for execution by the District Land and Housing Tribunal for Singida is against public policy of ensuring that litigations come to an end and such decision cannot be allowed to stand in a democratic state which adheres to the rule of law. If any person had a claim of right regarding ownership over that piece of land such person would have challenged the decision of the High Court of Tanzania Dodoma District Registry at Dodoma dated 18th October 2022 in Land Revision No 8 of 2020. In absence of such legal challenge, the decree holder is entitled to enjoy the fruits of the court decision by executing the same. I am certain that decision of the District Land and Housing Tribunal for Singida in dismissing the Application for Execution No. 5 of 2023 is marred with illegalities and should not be allowed to stand. For the reasons set out in the foregoing part of this decision, I concur with the applicant that the Tribunal seriously erred by its failure to recognise that any development in the suit plot by a trespasser cannot be legally protected as already the Court has declared that none other than the Applicant herein is the owner of that land. 15 | P a g e 4 It is reiterated that illegalities should not be countenanced by any quasi-judicial body that is entrusted with the powers to determine rights and obligations of the parties. In the circumstances, it is my findings that the decision by the District Land and Housing Tribunal for Singida to dismiss the application for execution No. 5 of 2023 is a nullity thus void. In exercise of the powers vested in this Court under Section 43(1) (b) and (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019, I hereby quash all the proceedings of the Tribunal in the Application for Execution No 5 of 2023 and set aside the decree thereof. I order that the application for execution be heard afresh with view of giving effect to the Drawn Order of the High Court of Tanzania Dodoma District Registry at Dodoma in Land Revision No. 8 of 2020. The same should be heard immediately without undue delays. In the upshot the application is granted

for being meritorious. Ordered accordingly. DATED at DODOMA this 18th day of March 2024.
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