

TANZANIA / JUDGMENT

atanas ami vs sevela pantaleo mosha and another 2021 tzhclandd 113 24 march 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND APPEAL NO. 235 OF 2019 (Appeal arising from Ruling and Drawn Order in Miscellaneous Land Application No. 342 of 2019 dated 18 October 2019 by Honourable L R. Rugarabamu) ATANAS AMI..... APPELLANT VERSUS SEVELA PANTALEO MOSHA. ,1st RESPONDENT MWANAHARUSI MUHIDINI 2nd RESPONDENT JUDGMENT ON APPEAL. S.M. MAGHIMBL J: At the District Land and Housing Tribunal for Ilala ("The Tribunal") the appellant herein lodged a Misc. Application No. 342 of 2019 C^e Application") seeking for extension of time to lodge an appeal against the decision of the Ward Tribunal in Land Application No. 119/2019. He was also seeking for an order staying execution of Ward Tribunal pending hearing and determination of the application for extension of time. The respondent then raised a preliminary objection on point of law that the application was defective for non-citation of the proper provision of the enabling law; the application was incompetent for being omnibus and that the affidavit in support of the application was incurably defective for containing prayers. In his ruling, the Honorable Chairman of the tribunal sustained the objection on the ground that the applicant did not cite the enabling provision of the law which moves the court to stay the execution of the decision of the Ward Tribunal. The tribunal further sustained the objection that the application is incurably defective for being omnibus because the prayers sought in the application are distinct and cannot go together in one application because one prayer is under the provisions of Cap. 216 R.E 2002 and the other one is governed by the Civil Procedure Code, Cap. 33 R.E 2002. Consequently, the tribunal struck out the application with costs hence this appeal on the following grounds:

1. That the Honorable Tribunal erred in law for holding that the Application No. 342/2019 was bad in law as it contained Omnibus prayers
2. That the Honorable Tribunal erred in law for holding that the prayer for stay of execution in chamber summons was not supported by proper enabling provisions of the law. The appellants prayed for the following orders:

1. The decision of the trial tribunal be quashed and set aside and subsequent to such order, let the Honorable Court be pleased to order return of the file to the trial tribunal and let the same be placed to another Chairman for continuation of the hearing of the applicant's application.
2. Costs be provided for by the respondents.
3. Any other relief(s) the Court can deem fit to grant. By an order of the court dated 24/11/2020, the appeal was disposed by way of written submissions. The applicant's submissions were drawn and filed by Mr. Mutakyamirwa Philemon, learned advocate. The respondent did not enter appearance, nor did they file any reply submissions. I have considered the submissions filed by Mr. Mutakyamirwa and the records of this appeal. Before I proceed to determine the merits or otherwise of this appeal, I must comment on the way this appeal was lodged. As narrated earlier, the appeal emanates from an order of the tribunal which struck out the appellant's application for being incompetent. As far as the records are, having determined the merits of the objection in favor of the respondent herein, the Tribunal did not dismiss the application but instead, the application was struck out. This means the appellant still had a chance to refile the application accordingly as directed by the tribunal. However, instead of refilling the applications, Mr. Mutakyamirwa lodged this appeal which, by all means, have unfairly prolonged the parties' time in pursuit of justice. I must say, on the part of his client this was a total waste of time because the outcome of this appeal would not have changed the situation any better than what would have happened if the appellant refiled the applications as directed. In simple mathematics, the application that an appeal is sought for was struck out on 16/10/2019, and the gist of that decision was that the application for stay of execution and that of extension of time to lodge an appeal should have been filed separately, meaning the appellant still had a chance to refile the applications. Instead, Mr. Mutakyamirwa lodged this appeal on 14/11/2019 and it is not until today, the 24/03/2021 which is almost two years later that this judgment is delivered. Therefore the appellant has wasted this whole time trying to rectify what was not so much to his detriment. Had he lodged the two applications then, I am certain that the same would have been determined, and if time was extended, even the intended appeal would have been determined by now. It is only wise and prudent that the advocate should concentrate more on substantive matters that determine and resolve disputes instead of prolonged unnecessary litigations that yield no much fruits. Afterall, the order of the tribunal did not finally determine the rights of parties. Despite that, in the interest of time, I will treat the matter under the oxygen principle because these technicalities will not hinder me to proceed to determine the appeal so that matters can be decide in substance and parties can have their substantive rights determined. Having said the above, I will now turn into the merits of the appeal. As per the records, the learned Chairperson found that the application before him was incompetent for being incompetent for reason that the applicant did not cite provision of law which moved the court to grant the order for stay of execution and two that the orders sought could not be granted in one application. In his ruling, the tribunal Chairman held that the proper provisions to be cited were Order XXI Rule 24(1) and Order

XXXIX Rule 5(1) of the CPC and this is what Mr. Mutakyamirwa is contesting. To begin with, the question is whether it was proper for the Chairperson to invoke the provisions of the CPC in matters which have arisen from the Ward Tribunal. The power to stay execution of decrees of the Tribunal is provided for under Regulation 25 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, G.N. No. 174/2003 ("the Regulations"). The decree to be stayed in this Regulation is pending an intended appeal to the High Court but originating from the Ward Tribunal. Unfortunately, the Regulations are silent on staying of an execution of a decision of the Ward Tribunal pending appeal to the High Court and that is why the Tribunal referred to the Civil Procedure Code. However, the applicability of the provisions of the CPC in the proceedings before the Tribunal is provided for under Section 51(2) only in so far as the admissibility of evidence is concerned. The Section provides: "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." Apart from that, there is nowhere that the applicability of the CPC at the Tribunal in matters arising from the Ward Tribunal is provided for. Hence when it comes to the stay of execution of decrees of the Ward Tribunal at the District Tribunal, the law is silent. Therefore holding that there is a generality in the provisions of Order XXI Rule 24 of the CPC to include matters from the Ward Tribunal to be executed by the DHLT, in exclusion of the generality of Section 95 of the same law was not justifiable. Under such circumstances, the tribunal should have invited the general applicability of the provisions of the 95 of the CPC cited by the appellant, after all, the law as it currently stands, discourages entertainment of issues of curable technicalities where matters of substantive justice are concerned. Going to the second limb of objection, that the application was incompetent for containing prayers which could not be determined under one application, the Chairman held that since the two applications are preferred to under two different laws, then the application was incompetent. Looking at the records, the appellant was seeking for an order staying an execution of the decision of the Ward Tribunal pending determination of an application for extension of time which was also pending before the DHLT. On the face of it, on determination of the application for extension of time, the application for stay of execution would have become redundant as it would have been overtaken by events. There was no need therefore to have the two applications filed differently as determination of one would have disposed the other therefore it could have been well determined under the same roof. It is also pertinent to note that the decree that was intended to be appealed against was ex-parte and the applicant (appellant herein) alleged that he was not aware of the existence of the suit before the Ward Tribunal. Therefore the grounds for stay of execution and the grounds for the delay in filing the application would have been overlapping hence well determined together without a need to file multiple applications. Wisdom would have called for the Chairman to see the substance of the two applications and capability of being determined together since there is no law which strictly prohibits omnibus applications, that is why each case must be determined on its own merits. Having made the above findings, I invoke my revisional powers and set aside the decision of the tribunal striking out the applications before it. I further order the file to be remitted back to the tribunal to proceed with the determination of the merits of the Misc.

Application No. 342/2019. The hearing should however proceed before another Chairperson and a new set of assessors (if applicable). Costs of this application shall follow cause in the outcome of the application. JUDGE 7

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