

TANZANIA / JUDGMENT

philip allan lema vs peter tegemea ndatele and others

2021 tzhclandd 152 23 april 2021

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23 April 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND REVISION NO. 22 OF 2020 (Arising from the Judgment and Decree of Application No. 102 of 2017 as per Hon. Rugarabamu- Chairperson) DR PHILIP ALLAN LEMA.....APPLICANT VERSUS PETER TEGEMEA NDATELE.....1st RESPONDENT ILALA MUNICIPAL COUNCIL..... 2nd RESPONDENT TULIPO HELTON MWAKABULI.....3rd RESPONDENT

JUDGMENT

I. MAIGE, 3 This is an application for revision against the decision of the District Land and housing Tribunal for Ilala ("the trial tribunal") dated 27.5.2020. In the said decision, the applicant herein was the respondent. The last two respondents were the first and second respondents, respectively. The applicant herein was not a party. The dispute pertained to ownership of a landed property at plot number 1736 Block B, Kinyerezi Area within the Municipality of Ilala. Upon assessment of evidence, the trial tribunal declared the first respondent herein the lawful owner of the suit property. This decision has displeased the applicant. Because he was not a party thereto, he has preferred this application calling upon this Court to, under section 43(1) (a) and (b) and 2 of the Land Disputes Courts Act Cap. 2016, R.E., 2019 revise the decision and proceedings thereof. The factual justification for the application is based on the affidavit deposed by the applicant. The first respondent far from controverting the facts in affidavit by a counter affidavit, he attacks the tenability of the same on legal points contained in his notice of preliminary objection. It contains two grounds. First, the decree is at variance with the judgment. Two, the applicant being not a party in the trial tribunal cannot have standing to initiate an application for revision. The merit or otherwise of the preliminary objection was argued by way of written submissions. The first respondent filed his submission in person. Advocate Thomas Masawe filed it for and on behalf of the applicant. I have considered the rival submissions and I will hereunder consider the same. In the second ground, the propriety of the application is challenged for want of necessary standing on the part of the applicant to pursue the application.

The reason being that, he was not privy to the judgment and proceedings of the trial tribunal. I cannot agree with him. In my understanding of the law, a person not a party to a decision and proceedings of the lower tribunal though does not enjoy the right to appeal, enjoys locus to challenge any decision affecting his interest. This position is settled and I need not cite an authority. The second point of preliminary objection is henceforth overruled. In the first ground, the application is challenged in so far as it seeks to revise a judgment and proceedings of the trial tribunal which is non-existent. It is submitted that, while the current revision is against the decision of the trial tribunal in Land Application No. 102 of 2017 as per the copy of the judgment attached, the judgment in which the applicant was privy at the trial tribunal was Land Application No. 102 of 2016. As that is not enough, the applicant submits, a copy of the drawn order attached in the memorandum of appeal suggests that the impugned decision does not arise from the proceedings in Land Application No. 102 of 2016 nor Land Application No. 102 of 2017 shown in the judgment. It is rather against the decision in Land Application No. 107 of 2017 which again the appellant has never been a party in. In the circumstance therefore, the first respondent urges the Court to strike out the application with costs. In his submissions, Mr. Masawe submits that, the copies of judgment and drawn order that he has attached in his memorandum of appeal are those which he was supplied by the trial tribunal. He submits that, if there be error, the same are mere typographical which can be cured under section 96 of the CPC. The submissions for the applicant in my reading, is not clear whether he is admitting or refuting to the claim raised by the first respondent. He is just shifting the burden to the trial chairman as if the trial chairperson is a party to these proceedings. What the Court is asked in the chamber summons is to call for the records and proceedings of the trial tribunal with a view to examining the correctness, validity and legality of the same. The chamber summons and affidavit on the basis of which the Court would grant the application, make reference of cases with two different registration numbers. Besides, while the counsel for the respondent contends that, neither of the cited cases was the subject of the proceeding at the trial tribunal, the applicant and his counsel does not, in his submissions, clarify which is the correct registration number of the proceedings in question. This Court cannot, in the absence of a chamber summons citing a correct citation of the record of the trial tribunal, assume the risk of calling a record of the trial tribunal which might be irrelevant. Much as it may be true that, the error involved is mere clerical which would be addressed by the provision of section 96 of the CPC, it is my humble opinion that, the power to correct incidental and/or clerical error in the judgment is within the domain of the Court which pronounced the judgment. In the premises, the first point of preliminary objection is with merit and it is sustained. In the final result, the application is dismissed for being incompetent, with costs. 5 It is so ordered. L Maige JUDGE 23/ 04/2021 Ruling delivered this 23rd day of April 2021 in the absence of the applicant and presence of the respondent I. Maige JUDGE 23/ 04/2021

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Prepared on 14 October 2026 · Esheria