

TANZANIA / JUDGMENT

felix kagisa rugarabamu vs ilemela municipal council 2 others 2023 tzhc 20447 28 august 2023

COURT
TZHCDECIDED
28 August 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA MISC. CIVIL APPLICATION NO. 10 OF 2023 FELIX KAGISA
RUGARABAMU..... APPLICANT VERSUS ILEMELA MUNICIPAL
COUNCIL.....1STRESPONDENT THE ATTORNEY
GENERAL.....2NDRESPONDENT SOLICITOR
GENERAL..... 3RDRESPONDENT

RULING

15 & 28/8/2023 ROBERT, J:- This is a ruling on an application brought under a certificate of urgency by the applicant, Felix Kagisa Rugarabamu, seeking a declaratory order restraining the first respondent, Ilemela Municipal Council, from demolishing the applicant's property located on Plot No. 79 Block "B" Ilemela, Mwanza, and revocation of the applicant's ownership on certificate of title No. 33816 LR Mwanza pending the maturity of the 90 days statutory notice issued by the applicant, Felix Kagisa Rugarabamu. The application is supported by an affidavit sworn by the applicant. i The applicant was represented by Mr. Erick Kahangwa, Learned counsel, whereas the respondents were represented by Mr. Patrick Muhere, Principal State Attorney assisted by Mr. Mbuya, State Attorney. The facts of the case, as presented in the applicant's affidavit, are that the applicant purchased the disputed property from one Sami Msinda on 4th July, 2012, and the title was duly registered in his name by the Assistant Registrar of Titles. The property was initially registered as Plot No. 67 Block B Ilemela, Mwanza, but was subsequently renumbered to Plot No. 79 Block B Ilemela on 25 January, 2019. The applicant alleges that he has been in peaceful enjoyment of the property until the first respondent claimed that the property belongs to one Ahmed Kiwanuka, as Plot No. 64 Block B Ilemela. The applicant developed the property by building a wall surrounding the plot and a gate for entrance. The first respondent fined the applicant TZS 200,000 for constructing without a building permit, which the applicant paid. After the construction was completed, the first respondent issued a notice requiring the applicant to demolish the wall built without a permit. Part of the wall and the gate were subsequently demolished by the first respondent's personnel. 2 The applicant's main

arguments, as presented by Mr. Kahangwa, contends that, the applicant has been punished twice, which is unfair, and the first respondent's actions violate Section 34 of the Urban Planning Act. He maintained that the first respondent should have taken the matter to the District Land and Housing Tribunal (DLHT) instead of taking unilateral action. He maintained further that, although the first respondent is empowered to take action under Regulation 133 of the Local Government (Urban Authorities) (Development Control) GN No. 242 of 2008, these Regulations cannot supersede the provisions of the Urban Authorities Act. Section 34 of this Act mandates the first respondent to take the matter to the DLHT. He contended that the applicant has not experienced peaceful enjoyment of the property since 2021 due to the respondents' actions. Hence, since the law requires the applicant to issue a 90 days' notice of intention to sue the Government before filing an action, the applicant filed the requisite notice and seeks to protect his interest in the property during this notice period before filing a legal action. In response, Mr. Muhere, representing the respondents, countered the arguments by arguing that there is no urgency in the matter, citing 3 that the applicant was informed of the lack of a building permit for construction of the fence wall. He also argued that the applicant was informed of the change in plot number, which the applicant did not heed. He further mentioned that the 90 days' notice attached by the applicant had a typographical error in the date, rendering it incompetent. Upon careful consideration of the arguments presented by both parties, this court finds that there is a dispute over the ownership and legality of the property in question. The applicant asserts that he has experienced threats to his ownership rights and peaceful enjoyment of the property. The 1st Respondent claims to have acted within the bounds of the law, citing regulation 4 of the Urban Planning (Building) Regulations, 2018 (G.N. No. 80 of 2018) which prohibits erection of buildings without building permit. Regarding the issue of the 90 days' notice with a typographical error, the court acknowledges that typographical errors can occur in documents. However, whether this error renders the notice incompetent or not is a procedural question that needs to be addressed by the Court dealing with the relevant suit to be filed after the expiry of the notice. In light of the aforementioned considerations, the court finds that the issues raised in this application warrant a determination through a full 4 hearing by the Court which underscores the need for the intended suit against the Government by the Applicant. Hence, in the present application, the urgency of the matter, the applicant's potential loss, and the need for fairness in the process are important factors to be taken into account in granting reliefs sought by the applicant. Accordingly, the application is deemed to have met the threshold for urgency and the applicant's request for a declaratory order restraining the first respondent from demolishing the property and revoking the ownership pending the maturity of the 90 days statutory notice is hereby granted. The 1st respondent is restrained from further demolition or any actions that might affect the applicant's possession or ownership of the disputed property pending the expiry of the 90 days' notice. It is so ordered. 5

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Prepared on 14 October 2026 · Esheria