

TANZANIA / JUDGMENT

filemon balemba others vs mujungu cleophace 2018 tzhc 2715 3 august 2018

COURT
TZHCDECIDED
3 August 2018

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IN THE HIGH COURT OF TANZANIA LAND DIVISION AT BUKOBA MISC. LAND CASE
APPLICATION NO. 64 OF 2015 (Arising from Misc. Application No. 306 of 2012 of the District Land
and Housing Tribunal for Kagera, Original Case No. 5 of 2012 of Ihanda Ward Tribunal) FILEMON
BALE MBA..... IstAPPLICANT GRATIAN
FELECIAN..... 2nd APPLICANT CLAUDIA
FESTO..... 3rdAPPLICANT VERSUS MUJUNGU
CLEOPHACE.....RESPONDENT

RULING

27/7 & 3/8/2018 BONGOLE, J. The applicants namely Filemon Balemba; Gratian Felecian and Claudia Festo preferred this application against the Respondent Mujungu Cleophace. The application is made under Rule 3 (4) of the Magistrates' Courts (Limitation of Proceedings under Customary Law) Rules, G.N. No. 311 of 1994 and Section 43 (1) (b) of the Land Disputes Courts Act, [CAP 216 R.E. 2002]. The Reliefs sought by the applicants are that:-

1. That this court be pleased to extend time for filing an application for revision.
2. Costs of the application to be in cause.
3. Any other order(s) this court sees it fit to make. 1 The application is supported by an affidavit deposed on by the applicants. The facts as deposed by the applicants inter alia materially run as hereunder:- That the respondent in this application during the year 2012 instituted Civil case No. 5 of 2012 at Ihanda Ward Tribunal against the applicants claiming possession of the disputed land. That the Ihanda Ward Tribunal ordered the Respondent to redeem the disputed land, after noting that the said land was a clan land. That the respondent in December, 2012, applied before the District Land and Housing Tribunal for Kagera to be handed the disputed land contrary to the judgment of the Ward Tribunal requiring the respondent to redeem the disputed land. That on the 2nd April, 2013, the District Land and Housing Tribunal issued an order directing the respondent to pay back the purchase price, and the applicant became aggrieved by the said order. That after the order of the DLHT had been issued, the applicants filed Civil Revision No. 2 of 2013 before this court in time, but the same was struck out by the court on the 19th October, 2015, for failure by the applicants to

sign the verification clause. That the time during which the applicants were prosecuting Civil Revision No. 2 of 2013 before this Honourable Court should be 2 excluded when computing the period of Limitation for filing a proper application for revision. The Respondent filed a Counter Affidavit where apart from noting the facts that he was a part to the impugned decisions, he denied all the allegations by the applicants. In this application, Mr. Bitakwate learned Advocate appeared for the applicants and whereas Mr. Lameck learned Counsel represents the Respondent. Mr. Bitakwate argued that after the applicants had been served with Misc. Application No. 306 of 2012 the Applicants on the 31st December, 2012 raised objection to the application for execution on the ground that the application for execution was contrary to the judgment and order of Ihanda Ward Tribunal that had ordered the respondent to redeem the disputed land. That despite the objection filed by the applicants, the Hon. Chairman of the DLHT for Kagera on the 2nd, April, 2013 proceeded issuing an order directing the Respondent to pay the purchase price to the applicants within 45 days of the said order. That the said order further directed that the applicants were at liberty to initiate a fresh suit against the respondent for compensation of unexhausted improvements. 3 He added that the proceedings before the DLHT for Kagera were irregular for failure to hear the applicants on the objection raised, the error which resulted in injustice on the part of the applicants and the only remedy available to the applicants was to seek for revision of the proceedings of the DLHT by the High Court. He cited the case of KULWA DAUDI Vs REBECA STEPHEN (1985) TLR 116; where it was held:- "The Revisionary Powers of the High Court may be invoked by any party to Civil case or on the motion of the High Court to correct an error resulting in injustice committed by a District Court or court of a Resident Magistrate". He went on submitting that the applicants being aggrieved by the order of the DLHT; applied for revision of the same in time in Civil Revision No. 2 of 2013 which was struck out on the 19th October, 2015 for failure by the applicants to sign the verification clause as required by the law. That it is out of that the applicants have filed this application seeking for extension of time to file an application for revision so as the applicants may address the court on the irregularities and illegality in the proceedings before the DLHT. Finally he submitted that the delay in filing the intended application was not deliberate but the time run out when the applicants were irreaneously litigating Civil Revision No. 2 of 2013 before this court. 4 Responding to the above arguments, Mr. Lameck argued that a quick perusal of the judgment of the trial tribunal, the same when paraphrased held its decision on the redemption of the suit land by the Respondent against the applicants as he was within the provided time so to do. That the material statements are coached in the following words on the last hand written page of the judgment. "Kwa kuwa walalamikiwa wote walinunua bila kibali toka kwa Mkuu wa ukoo nabado wako ndani ya muda kukombolewa kwa shamba la ukoo. Hivyo basi mlalamikaji Bw. MUJUNGU CLEOPHACE anayo HAKI ya kukomboa shamba bishaniwa toka kwa walalamikiwa Na. (i)(ii) na (iv) uliyopewa na Baraza la Kata Ihanda leo tarehe 16/10/2012." That it is this unambiguous statement contained in the judgment that had pushed the Respondent to file application for the execution in the DLHT vide the Misc. Application No. 306 of 2012. That at this point it cannot be said that the Respondent had applied for the

orders contrary to the holding of the trial Tribunal. Further that another raised complaint is alleging the failure of the learned chairman omitting to hear the objection against the application for execution. He argued that the Hon. Chairman was not 5 wrong to proceed by ordering the redemption by paying the purchase price and the compensation of the unexhausted improvements. That the order made on 2nd April, 2013 followed the submission by the learned counsel for the Judgment Debtors id est the current applicants and the Decree Holder as it appears on the page number 3 of the records of the proceedings which goes:- "BITAKWA TE ADVOCA TE: The Decree Holder was allowed to redeem the shambas which were purchased by the Judgment debtors. Therefore, he is obliged to pay back the purchasing price as well as the unexhausted improvement as follows:- Philimon @ 80,000= Gration @ 100,000= Claudia @ 207,000= D/HOLDER-1 am ready to pay them. Sign. R.L. Chenya 2/4/2013 Order: The application is reserved until the Decree Holders pay the purchasing price within 45 days. The issue of compensation of unexhausted improvement the Judgment debtors are at liberty to initiate afresh suit against the Decree Holder. If the Decree Holder fails to comply within the said duration, the suit shambas shall be the property of the Judgment debtors. It is so ordered". 6 Mr. Lameck submitted that the record of the proceedings does not showed the learned Advocate praying for the hearing of the claimed objection against the filed Application and denied that right. Hence he prayed this application to be dismissed with costs. My cursory perusal of the record reveals that before the impugned decision was delivered, there was an objection levelled/raised by the applicants and the respondent filed a reply to that objection. The objection was not heard and determined insteady the order cited above was issued. It is also on record that the applicants filed Application No. 2 of 2013 timely which was struck out on the 19th October, 2015 on an account of failure to sign the verification clause on the part of the applicants. The present application was instituted as time to re-file the strucked out application for revision had elapsed. As the record speaks by itself, the applicants have given sufficient cause of delay i.e. they were pursuing Application No. 2 of 2013 before this court. I have keenly analysed the submission made by Mr. Lameck which I found to be very attractive and convincing. Going by the arguments raised, I find the same attacking the intended substantive application for revision and not the current application of extension of time to file the said application for Revision 7 That been observed, I find this application meritorious and consequently it is hereby allowed. The applicants to preferred their application for revision within seven days from the date of this ruling/order. Costs in the course. 3/8/2018 8 Date: 03/8/2018 Coram: Hon. S.B. Bongole, J. 1st Applicant: Present 2nd Applicant: Present 3rd Applicant: Respondent: Present B/Clerk: A. Kithama Court: This application comes for ruling and the same is delivered. 3/8/2018 9

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