

TANZANIA / JUDGMENT

frank mh mhilu versus fatuma hussein mohamed another 2023 tzhclandd 16534 25 may 2023

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25 May 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND REVISION NO. 32 OF 2022 (Arising from Execution No. 201 of 2022, in the District Land and Housing Tribunal for Ilala) FRANK M.H. MHILU APPLICANT VERSUS FATUMA HUSSEIN MOHAMED 1st RESPONDENT FORCE FOCUS (Court Broker) 2nd RESPONDENT

RULING

Date of Last Order: 08.05.2023 Date of Ruling: 25.05.2023 T. N. MWENEGOHA, 3- This Application was preferred under Sections 43(l)(a) and (b) of the Land Disputes Courts Act, Cap 216, RfE. 2019. The applicant is asking the Court to call for, inspect the records and give directions to the Execution Orders granted on the 22nd July, 2022, by Hon. Kirumbi, the Chairman of Ilala District Land and Housing Tribunal, vide Execution No. 201 of 2022. The Application was heard by way of written submissions and ex-parte against the 2nd respondent. In his submissions, the applicant who appeared in person, argued that, the Ruling of Hon. Kirumbi given in Execution No. 201 of 2022 contains irregularities and illegalities. That, it is the same Chairman who refused to grant the prayers of like nature in Land Application No. 144 of 2021 and advised the 1st respondent to a fresh case. He cannot afterwards give a different decision on a case of the same nature, with the same parties, 1 same decree and same status of the disputed property. The applicant cited the case of East Africa Development Bank versus Blue Line Enterprises, Civil Application No. 57 of 2004, Court of Appeal of Tanzania. On his part, Advocate Shaibu R. Changaluma for the 1st respondent, was of the view that, the orders given by the learned Chairperson of Ilala District, Land and Housing Tribunal resulted in a decree given in Land Application No. 122 of 2013. In the said case (Land Application No. 122 of 2013, it was ordered that, the parties should return to their original position they had before the entering into the agreement which was found to be illegal. Therefore, the respondent was ordered to return to the applicant, 30,000,000/= as part of a purchasing price and the suit land be taken back to the 1st respondent. The decision given in Land Application No. 122 of 2013 was never challenged, hence its execution, vide Execution No. 201 of 2022. In that case, the trial Chairman properly granted the prayers as prayed in the execution case. In his rejoinder, the applicant reiterated his submissions in chief. Having gone

through the submissions of both parties, the question in need of determination is whether the application has merits or not. As I have pointed out here in above, the instant Application is made under Section 43(1)(a) and (b) of the Land Disputes Courts Act, Cap 216 R. E.

2019. The said provisions state as follows; - 43.-CV In addition to any other powers in that behalf conferred upon the High Court, the High Court- fa) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay; (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. Plainly, if I may interpret the above quoted provisions of the law, Revision comes when there exists an error or errors apparent to the merits of the case. The said errors should have effects on the rights of the parties, hence leading to injustices on one or both of them. The Court by using its supervisory powers over the lower tribunal, has the duty to correct such errors by revising the proceedings or decision or both as the case may be, and restore the parties to their position before the orders were given. In the case at hand, after going through the records, I have found myself with nothing to revise. The proceedings and orders of Hon. Kirumbi, learned Chairperson of Ilala District Land and Housing Tribunal vide. Execution No. 201 of 2022 contain no illegalities or irregularities which call for the same to be revised by this court. This Court notes that the decision given through Land Application No. 22 of 2013 still stands as although it was challenged, through Land Appeal No. 4 of 2017 and Misc. Land Application No. 127 of 2018, it was to no avail. Therefore, parties have the right to execute the same, and that is what they did. The respondent argued that it is not prohibited for the same Chairman to hear and determine two Applications for execution especially after the Application was not granted. This Court agrees with the respondent that such actions by the Chairman do not amount to irregularity. What the Learned Chairman did, was to order the parties to comply with the restoration order as was given in Land Application No. 122 of 2013, by Hon. Mwigambo J.M. In that footing, I find this Application to be devoid of merits. Eventually, the same is dismissed with costs. It is so ordered. IGOHA 3 JUDGE OP o C 4 25/05/2023 W \7 o X »■

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