

TANZANIA / JUDGMENT

gloria edmund kileo vs deposit insurance as liquidator of efatha bank 4 others 2022 tzhclandd 12417 4 october 2022

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4 October 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES
SALAAM LAND REVISION NO. 13 OF 2021 (Arising from Application No. 370 of 2017 District Land
and Housing Tribunal for Kinondoni at Mwananyamaia before Hon. I.R. Rugarabamu - Tribunal
Chairman, Judgment delivered on 19th day of February, 2021) GLORIA EDMUND
KILEO..... APPLICANT VERSUS DEPOSIT INSURANCE BOARD (as
liquidator of EFATHA BANK) 1STRESPONDENT MARK AUCTIONEERS
AND COURT BROKERS LTD..... 2ndRESPONDENT ALAWI RAJABU
KASSIM..... 3rd RESPONDENT ANNA LESLIE
KILEO..... 4th RESPONDENT KILEO MSONGORYU
EDMUND..... 5TMRESPONDENT

RULING

Date of last Order: 22/09/2022 Date of Ruling: 04/10/2022 KHALFAN, J. The applicant has applied for revision before this Court. She has applied for orders of the Court, inter alia, that this Court to call and inspect the record and examine the regularity, legality, propriety and correctness of the Ruling and Order of the Kinondoni District Land and Housing Tribunal for Kinondoni at Mwananyamaia in Application No. 370 of 2017 before Hon. I. R. Rugarabamu - Tribunal Chairman. The impugned Ruling was delivered on 19th day of February, 2021. The application is supported by the affidavit of Gloria Edmund Kileo, who has moved the Court under Section 43 (1) and (2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019. In a bid to resist the application, the third respondent filed counter affidavit through Mr. Mbuga Emmanuel. The first, second, fourth and fifth respondents, though duly served, did not file their respective counter affidavits. When the matter came for hearing Mr. Amin M. Mshana, learned Advocate, appeared for the applicant. On the other hand, Mr. Living Raphael, learned Advocate represented the first respondent, the second respondent was absent, while Mr. Mbuga Emmanuel, learned Advocate, represented the third respondent and Mr. Rachus Assenga, learned Advocate represented the fourth and fifth respondents. Before the hearing of the matter commenced, Mr. Assenga addressed the Court that the fourth and fifth respondents do not resist the application, and he prayed to be excused which prayer was granted accordingly. 2 The background leading to this application is that the

applicant, before the trial tribunal had her application struck out for failure to effect service of summons to the fourth respondent. In his submission, Mr. Mshana started by adopting the affidavit of Ms. Gloria Edmund Kileo to form part of the applicant's submission and submitted mainly that, the trial Chairman issued the impugned order without sufficient reasons and without citing any law enabling him to strike the said application. He argued that, the entire applicable law namely, GN. No. 174 of 2003 does not contain any provision empowering the Trial Chairman to strike out the application for want of service. That, Regulation 15 of GN. No. 174 of 2003 applies only to applications that were left unattended, which was not the case. Mr. Raphael responded to the above submission that the Chairman is empowered under Section 9 of the Land Disputes Courts Act, Cap 216 R.E. 2019 to issue orders of substituted service which is not automatic as there should be material before the Trial Tribunal. That is, what happened was non-compliance of the Tribunal order as service was not effected. & 3 The main issue is whether the application is meritorious. The provisions of Section 43(l)(b) of the Land Disputes Courts Act (supra) gives this Court powers to revise the proceedings and decision of the District Land and Housing Tribunal. The Court is duty bound to be satisfied that there is an error material to the merit of the case involving injustice. The provision cast a burden on the applicant to demonstrate how the decision or proceedings of the District Land and Housing Tribunal is tainted with an error to the merit of the case thereby leading to injustice. I will start with the impugned order dated 19.02.2021, at page 2 of the typed proceedings of the Tribunal, by quoting the same for ease of reference and clarity sake. It reads: ' TRIBUNAL There was an order of the service of the summons to the 4h & 4h (albeit 5th) Respondents which I made on 1CF September 2020 and I made this order despite the fact that this case was filed as the Respondents on 1st August, 2018 but as up to now the 14h (albeit 4h) Respondent has not been served summons for, despite the last order I gave on 10.09.2020. For that matter, 4 I consider that the Applicant has opted to default the orders of this Tribunal and the requirement of Regulation 5 and 6 of the Land Disputes Courts Regulations 2003, is mandatory. For that matter, I hereby strike this matter with costs for non compliance with the court orders... '(end of quote) The provisions of Regulations 5 and 6 of the Land Disputes Courts GN. 174 of 2003 are such that: '5. Where an application is made to the Tribunal, the Tribunal may after consideration of the application or chamber application:

- (a) issue summons to the respondent informing him of the time, date and place at which the application will be mentioned; or
 - (b) require the applicant to produce more information as may be necessary; or
 - (c) reject an application and record the reasons for the decision. 6 -(1) In effecting services of summons, a copy of the application or chamber application if any, shall be attached to every summons to be served upon a party to the application. 5
- (2) Service under sub-regulation (1) shall be effected by process server.
- (3) Services of summons under this Regulations may be effected on the party himself, his spouse, any member of the household above the age of 18 years his advocate or any other person authorised by the party to represent him in that particular application.

- (4) After the service, a person who effected the service shaii-
- (a) return to the Tribunal the original copy of the summons duly signed by the person to the served.
- (b) swear an affidavit in the prescribed form indicating the manner in which the service was effected.' The above provisions do not give powers to the Land and Housing Tribunal to strike out the application upon failure to serve summons. Regulation 5
- (c) gives powers to the Tribunal to reject an application and record the reasons for the decision. Mr. Mshana argued that the Trial Chairman struck out the application without the support of the law. I do not subscribe to this argument. -■ 6 I am of the firm view that the absence of provisions that expressly gives power to strike out the application does not render the Trial chairman powerless. Mr. Mshana did not challenge the authority under case law. The cases that were cited by Mr. Emmanuel make it clear that Court orders must be obeyed. Mr. Emmanuel has cited a number of cases including Ayubu Salehe Chamshama and Another vs. Diamond Trust Tanzania Limited and Three Others, Misc. Land Case Application No. 514 of 2020, Itila Mbune vs. Leonard Mtete, Land Revision No. 5 of 2021, High Court of Tanzania, and Sunil Zaverchand Choha and Another vs. David Wifrem Mwakitwange (as the legal personal representative of Pauline Daudi Mwakitwange) Land Case No. 135 of 2021, High Court of Tanzania. It was stated in the case of Ayubu Salehe Chamshama and Another vs. Diamond Trust Tanzania Limited and Three Others (supra) at page 4 and 5 that: 'It is trite law in our jurisdiction that, court orders are to be complied with by parties without failure. Time and again courts have expressed their distaste with the disobedience of court orders by litigants. That view was affirmed in various 7 decision including the case of Olam Tanzania Limited vs. Halawa Kwiiabya, DC, Civil Appeal No. 17 of 1999; P3525 COL. Idahya Maganga Gregory vs. The Judge Advocate General, Court Martial Criminal Appeal No. 4 of 2002, The Court Martial Appeal Court at Dar Es Salaam and Gift Erick Mbowe vs. Reuben Pazia and Scandanavia Express Ltd, Commercial Case No. 67 of 2005, High Court, Commercial Division all unreported' The above position of the law clearly states that once the court makes an order, that order must be obeyed in the manner and extent as prescribed therein. In this application, there is no dispute that the Trial Tribunal issued orders requiring the applicant to serve summons to the fourth respondent. It is also not in dispute that the applicant did not comply with the said order. The question that remains is what amounts to error material to merits of the case involving injustice? The answer to this question is not to be found in the Land Disputes Courts Act (supra) but the same is found within Section 79(2) of the Civil Procedure Code, Cap.33 R.E. 2019. The provisions of Section 51 (1) of the Land Disputes Courts Act (supra) 8 allows the application of Civil Procedure Code to the proceeding of the District Land and Housing Tribunal. Section 79 (1) (a), (b) and (c) of the Civil Procedure Code (supra) mention such error as where the subordinate Court appears, inter alia, to have acted in the exercise of its jurisdiction illegally, or with material irregularity, the High Court may make such order in the case as it thinks fit. In this application the applicant has failed to satisfy this Court that there is any injustice or at all. Mr. Mshana does not dispute the above

position of the law in the cited authorities. Although he submitted that they are distinguishable from the circumstances of the current application. However, he did not substantiate how the said authorities are distinguishable. On the other hand, Mr. Emmanuel argued the applicant has not filed any affidavit to prove the alleged service to the fourth respondent. Apparently, Mr. Mshana did not dispute that argument. I have looked into the record; there is no affidavit of proof of service of summons. Under such circumstances, the applicant cannot blame the Trial Chairman. The applicant has failed to satisfy this Court that there is an error material to the merits of the case involving injustice. The question of injustice is not established at all. rj 9 In the results and pursuant to the above reasons, I find this application before me devoid of merit. The same is dismissed with costs. Dated at Dar es Salaam this 4th day of October, 2022. F. R. KHALFAN JUDGE 04/10/2022 Court: Ruling delivered in the presence of Ms. Anita Fabian Katena, learned Advocate for the applicant, Mr. Hance Mrindoko, learned Advocate, holding brief for Mr. Living Raphael for the first respondent and Mr. Mbuga Emmanuel, learned Advocate for the third respondent, Mr. Rochus Assenga, learned Advocate for the fourth and fifth respondents, this 4th day of October, 2022. F. R. KHALFAN JUDGE 04/09/2022 io

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