

TANZANIA / JUDGMENT

HARUNA MAUNA AND OTHERS VS HASSAN MALODA

COURT
TANZLIIDECIDED
28 May 2024

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IN THE HIGH COURT OF TANZANIA DODOMA SUB REGISTRY AT DODOMA LAND REVISION NO 12444 OF 2024 (Arising from Miscellaneous Land Application No 164 of 2021 before the District Land and Housing Tribunal for Singida) BETWEEN HARUNA MAUNA.....1ST APPLICANT SAMWEL MOGHU.....2ND APPLICANT WILFRED ELISANTE.....3RD APPLICANT DAFI NKINDWA.....4TH APPLICANT FATI ISSANI5TH APPLICANT SALEHE ABDALLAH.....6TH APPLICANT VERSUS HASSAN MALODA.....RESPONDENT

RULING

Date of the last Order: 20/03/ 2025 Date of the Ruling: 03/04/ 2025 LONGOPA, J.: This is an application made under Section 43(1)(a) and (b) of the Land Disputes Courts Act, Cap 216 R.E. 2019 and section 95 of the Civil Procedure Code, Cap 33 R.E. 2019 where the applicants pray for revision of the proceedings of the District Land and Housing Tribunal for Singida in Miscellaneous Land Application No. 164 of 2021 for this court to satisfy 1|Page itself on the correctness, legality and propriety of the order dated 26 th July 2023, hence revise and set aside the same. The application for revision relates to the land located in Mangida Village, in Msange Ward within Singida District. It is on record that both the Ward Tribunal of Msange Ward's decision in Land Case No 30 of 2017 and that of the District Land and Housing Tribunal for Singida in Miscellaneous Land Application No. 164 of 2021 proceeded ex parte against one Elisante Maloda who is now a deceased. In course of execution order of the Msange Ward Tribunal decision it was found that the land belonging to the applicants herein was affected without the applicants having been afforded a right to be heard thus the applicants became aware of the impending execution order. On 28th May 2024, the applicants instituted an application for revision to challenge the decisions of the District Land and Housing Tribunal for Singida and that of the Msange Ward Tribunal having previously allowed to file the same out of time vide a ruling of this Court dated 22nd April 2024. The applicants are seeking the following orders, namely: 2|Page

1. The Honourable Court may be pleased to call for records of District Land and Housing Tribunal for Singida at Singida in respect of Misc. Land Application No.164 of 2021 arising from Land Case No. 30/2017 so as to satisfy itself over their correctness, legality and propriety of the order delivered by the Hon. B. Colex-Chairperson, dated 26th July, 2023, to revise and set aside the said order.
2. Costs be borne by the Respondents.
3. Any other order(s) Honourable Court may deem fit. The application was heard orally whereby on 20th March 2025, both parties appeared before this Court fending for oneself in support and opposition of the application. In support of the application, the applicants adopted a joint affidavit to form part of the submission and stated that the applicants were never heard before the District Land and Housing Tribunal for Singida as well as the Ward Tribunal where the execution of the decree of the Ward Tribunal was effected and the application was heard respectively. It was applicants' position that the right to be heard is fundamental right protected under the constitution of the country. 3|Page It was argued further that the applicants were not party to the case/ land application before the Ward Tribunal but the decree touched on the land that belong to the applicants. The decree itself was not specific as it encompasses the land forming farms and plots belonging to the applicants who were not parties to proceedings. According to the applicants, they are rightful owners of the land in question and we have all purchase agreements of the land in question that was fully witnessed by the village authorities way back before the respondent instituted the claim on that land. The respondent ought to have proved before the District Land and Housing Tribunal on the ownership of the land by tendering relevant documentations from the village authorities but the respondent did not. It was argued that the applicants acquired land at different times since 1990s and have been in use of the same land todate while undisturbed only until recently when the respondent initiated the claim against one of his relative. All those years the applicants have used the land and stayed on that land without being disturbed. They stated that it was surprising that such claims of their land was brought by the 4|Page respondent. To the applicants, the long-term use of the land would have entitled them to ownership of the land by virtue of long use of the land in dispute. It was averred that for instance the first applicant owns around 10 acres which he acquired through purchase from different persons while the third applicant, Mr. Dafi Nkinda owns one acre and the fourth applicant, Mr. Fati Issani has a plot of one acre at that area. Also, the second applicant, Mr. Samwel Moghu has an acre of land in that area. It was a further stated that surprisingly, some of the respondent's relatives who were also affected by the decree/ execution were removed from the case selectively thus the respondent appears to have intended to deprive the applicants' right to own land unprocedurally. As such, the applicants' prayer was that this application be granted, the proceedings of the District Land and Housing Tribunal for Singida and those of the Ward Tribunal for Msange be quashed and the judgment, decree and execution order be set aside forthwith so that the parties be heard on merits in order to exercise the right to be heard. 5|Page According to the applicants, it was not proper for the District Land and Housing Tribunal to order the

execution of the judgment and decree of the Msange Ward Tribunal that determined the matter without involvement of rightful and lawful owners of the land thus violating the right to be heard. The whole proceedings were marred by irregularities and illegalities for failure to ensure that the applicants are heard. Conversely, the respondent commenced his submission by stating that he was objecting the application and he adopted the contents of the counter affidavit that was filed on 17th March 2025 to form part of the respondent's submission before this Court. It was the respondent's submission that there was no need to hear the applicants as the case was between the respondent and his late brother one Elisante Maloda. According to the respondent, he was rightly awarded the judgment and decree after the Ward Tribunal for Msange visited the locus in quo where the measurements on the size of the disputed land were taken. It was decided by Msange Ward Tribunal sometimes in 2017 or 2018 while at the District Land and Housing Tribunal the matter went for execution of the decree. 6|Page The respondent concluded that if the applicants wish to be heard, he has no objection so that both parties can be fully heard afresh. There is no problem with that. Having heard rival submission of the parties, it is pertinent to this court to determine the validity or otherwise of the application. In totality of the affidavit in support of the application and rival oral submissions, this application is based on two main aspects, namely violation of the right to be heard and the illegalities and irregularities that marred the proceedings before the District Land and Housing Tribunal for Singida and that of Msange Ward Tribunal. This court is enjoined to analyse the available records, the grounds of revisions, affidavits and oral submissions by the parties in order to determine whether or not the application is demonstrating any merits. To underscore the basis of the application for revision of the proceedings and decision of the District Land and Housing Tribunal for Singida in Miscellaneous Land Application No. 164 of 2021, the joint affidavit of the applicants reveals that: 7|Page

1. That, we are the applicants in this Application hence we are conversant with all the facts we are about to depose herein.
2. That, the 1st Respondent instituted a Land Case No. 30/2017 before Msange Ward Tribunal at Msange against 2nd Respondent to which the said decision was delivered ex-parte in favour of the 1st Respondent on the 25th day of April, 2018.
3. That, the 1st Respondent desirous of enjoying the fruits of the ex-parte judgment in its favour, lodged an application for execution of the ex-parte judgment against the 2nd Respondent before the District Land and Housing Tribunal for Singida at Singida vide Misc. Land Application No. 164 of 2021 and on the 26th day of July, 2023 the said Tribunal delivered the execution order in favour of the 1st Respondent.

4. That, the said execution order was issued against the 2nd Respondent where an order directing and ordering demolition of all buildings and eviction of the said deceased together with her agents was issued and further the Tribunal appointed TAOMTRA LIMITED (Court Broker) to evict the mentioned in the event she does not comply with the order issued. "Copy of the said execution order is hereby attached and marked as annexure 'PEG-1' to form part of this affidavit." 8|Page
5. That, the execution order in respect of the land in dispute that was issued against the 2nd Respondent, covered 18-acre and which includes the land owned by the Applicants herein and which we have own for a considerable period of time. "Copies of the sale agreements are hereby attached and collectively marked as annexure 'PEG-2' to form part of this affidavit."
6. That, on the 22/01/2024, the 1st Respondent herein and the appointed court broker one TAOMTRA LIMITED invaded the Applicants land and threatened to demolish the erected buildings, claiming that, they are executing Tribunal's Order as they have been directed to do so and it is when the Applicants discovered that there is an order against and in respect of their land.
7. That, the Applicants filed an application for extension of time No. 1935 of 2024 so as to file an application for revision and the said application was granted. "Copies of the ruling and drawn order are hereby attached and collectively marked as annexure 'PEG-3' to form part of this affidavit."
8. That, the District Land and Housing Tribunal's Order for execution and proceedings are tainted with illegalities and irregularities to the effect that, (i) The Applicants herein were never the part to the said Application for execution No. 164 of 2021 nor the Ward Tribunal Case No. 30 of 2017 and therefore the applicants were never afforded 9|Page right to be heard by the trial Tribunal in the matter which they had an interest. (ii) That, the order of execution was issued on 26th July, 2023 after demise of the 2nd Respondent hence the said order and proceedings of the executing tribunal are nullity and illegal in the eyes of law. (iii) That, the order and proceedings of the executing tribunal are illegal for it deprives the applicants of their houses and premises built on land in dispute for which they are lawful owners. (iv) That, the order at issue does not properly disclose the description of the suit land as required by the law hence deprives the applicants' rights.
9. That, it is in the interest of justice that, the prayers sought for in the Chamber summons be granted. This affidavit reveals that the right to be heard of the applicants was not observed in both the Ward Tribunal for Msange and District Land and Housing Tribunal for Singida; that the land is disputed was never described at all to be able to properly identify its location, boundaries, neighbours and other aspects pertinent for identification of the suit land; and that the proceedings were marred by illegalities. In respect of the right to be heard, it is settled law in this jurisdiction that equality before the law as enshrined in basic and fundamental law of the land entails affording adequate opportunity to a party to be heard 10

| P a g e before a decision is made against such person. Article 13(6)(a) of the Constitution of the United Republic of Tanzania, Cap 2 R.E. 2002 explicitly states that: Kwa madhumuni ya kuhakikisha usawa mbele ya sheria, Mamlaka ya Nchi itaweka taratibu zinazofaa au zinazozingatia misingi kwamba - Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi na Mahakama au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu. It is important to reiterate that right to be heard is so important to ensure that any decision made is lawfully and valid. Failure to observed the right to be heard nullifies the whole proceedings and decision made thereto. This principle was recently reiterated in the case of CRDB Bank PLC vs The Registered Trustees of Kagera Farmers Trust Fund & Others (Civil Appeal No. 496 of 2021) [2024] TZCA 94 (23 February 2024) (TANZLII), at pages 11-12 where the Court of Appeal of Tanzania stated that: 11 | P a g e It is trite law that, any decision affecting the rights or interest of any person which is arrived at without such person being afforded a right to be heard, is a nullity even if the same decision would have been arrived at had the affected party been heard. The violation of the right to be heard in the application is revealed on two instances. First, the absence of the respondent without being dully afforded opportunity to the respondent in the application before the District Land and Housing Tribunal for Singida in Misc. Land Application No 164 of

2021. Second, the absence of all the applicants herein whose land was included in the execution in proceedings of Msange Ward Tribunal and those at the District Land and Housing Tribunal at Singida. In the Miscellaneous Land Application No. 164/2021, at page 7 and 9 of the proceedings the District Land and Housing Tribunal was dully informed that the respondent was serious sick and later on passed on. The Tribunal proceeded ex parte without having afforded or directed the deceased family to appoint an administrator of the estate of the late Elisante Maloda to step in the shoes of the respondent. 12 | P a g e This is also reflected on pages 1 and 2 of the Ruling of the District Land and Housing Tribunal stated that it heard the application for execution without participation of the respondent who the Tribunal was informed to have pass on and that no administrator of the estate was appointed to appear. The records are silent on whether at any point in time the District Land and Housing Tribunal had advised and directed the respondent's family to appoint an administrator of the estate of late Elisante Maloda to step into the shoes of the deceased respondent. Thus, it was improper for the Tribunal to proceed ex parte while it had been dully informed of the death of the respondent in the application pending before it. Condemning the respondent in that application unheard violated the right to be heard. This warrants to nullify the whole proceedings before the District Land and Housing Tribunal. Also, in the decision of Msange Ward Tribunal dated 25th April 2018 it is revealed that the respondent herein had rallied witnesses who informed the tribunal that disputed land was sold to different persons. However, the 13 | P a g e Ward Tribunal never bothered to have those persons heard before entering judgment in favour of the respondent herein. As both parties to the application are in concurrence that the applicants herein were not parties to the proceedings in both the Ward Tribunal for Msange Ward and the District Land and

Housing Tribunal, this court finds it appropriate that the whole proceedings in before the District Land and Housing Tribunal were marred by illegalities for failure to observed the right to be heard. The effect of the proceedings that are marred with illegalities of condemning the party unheard is to vitiate the whole proceedings. The principle was observed in the case of Danny Shasha vs Samson Masoro & Others (Civil Appeal No. 298 of 2020) [2021] TZCA 653 (5 November

2021) (TANZLII), at pages 5-7, where the Court of Appeal illustratively stated that: The Court has emphasized time and again that a denial of the right to be heard in any proceedings would vitiate the proceedings. Further, it is also an abrogation of the constitutional guarantee of the basic right to be heard as enshrined under Article 13(6)(a) of the Constitution of the 14 | P a g e United Republic of Tanzania, 1977. In Mbeya - Rukwa Auto Parts & Transport Limited vs Jestina George Mwakyoma, Civil Appeal No. 45 of 2000 (unreported), the Court emphasized that: "In this country natural justice is not merely a principle of common law; it has become a fundamental constitutional right Article 13 (6) (a) includes the right to be heard amongst the attributes of equality before the law..." We also had this to say in Abbas Sherally & Another vs Abdul S. H. M. Fazalboy, Civil Application No. 33 of 2002 (unreported) that: "The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice." The parties to the land dispute ought to be heard before the trial tribunal so as to uphold one of the attributes of equality before the law. Some of the parties to the land dispute were denied the right to be heard, which renders the proceedings a nullity. On the second, limb regarding irregularities, it is my considered view that the Ward Tribunal which made the decision was not properly 15 | P a g e composed as required by the law. Section 11 of the Land Disputes Courts Act, Cap 216 R.E. 2019 provides that:

11. Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act. Perusal of the records indicates that out of six members of the Tribunal who attended there was only a single woman. That was violative of the clear provision that would require more women participation in the decision making in land disputes at the Ward Tribunal. Failure to adhere to proper composition of the Ward Tribunal when sat to determine the land application violated the law thus the whole proceedings and decision thereon is a nullity. Another anomaly was the absence of proper description of the land in question that would have enabled the execution of the decree not to interfere with lands belonging to other person is vivid in the complained decision. The need to properly describe the disputed land was stated in the case of Said H. Lipite and 4 Others vs The Ministry of Defence and 16 | P a g e Another (Land Case 85 of 2016) [2021] TZHCLandD 418 (20 August

- 2021) (TANZLII), at page 32, the Court noted that: Another thing is the description of the land by the plaintiffs. The land was not properly described. The description in paragraph 5 and 6 of the plaint is not sufficient. And equally in the testimony by the plaintiffs they only mentioned the neighbours to the East West, South and North. Others mentioned the boundaries of the village instead of their pieces of land especially during cross-examination. Proper description of the suit land enables proper award of rights to a party and also easy execution. It is common knowledge that the rationale behind proper description of land in dispute is to inform the court of the identity of the suit land as against all the other pieces of land surrounding it. The decision of Msange Ward Tribunal did not disclose the boundaries, neighbours to the disputed land nor any distinctive features that would have distinguished the disputed land from any other land situate in that Village. 17 | P a g e Indeed, it was quite dangerous path taken by the District Land and Housing Tribunal for Singida to order execution of the decree whose land in question was not properly identified, described or stated. Failure to properly describe the immovable suit property amounts to failure to establish a cause of action as per principle established in Olorubare Nginyu vs Kilempu Kinoka Laizer (Civil Appeal No. 416 of 2021) [2024] TZCA 598 (18 July 2024) (TANZLII), at page 20, where the Court stated that: ...we are persuaded that, the amended plaint omitted to disclose boundaries and names of owners of the adjacent parcels of land, being particulars necessary to describe the suit property. Since disclosure of the particulars was a statutory requirement and necessary to identify the suit land, the missing information were an integral part of the plaint, whose absence could not establish the cause of action. As such the proceedings in the Miscellaneous Land Application No 164 of 2021 before the District Land and Housing Tribunal for Singida and that in Land Application No 30 of 2017 before Msange Ward Tribunal were marred with material errors the same should be corrected in this application for review. 18 | P a g e In the circumstances of the application, it is lucid that this application is merited as the proceedings before both the District Land and Housing Tribunal for Singida in Miscellaneous Land Application No. 164 of 2021 and that of Msange Ward Tribunal in Land Application No. 30 of 2017 were marred with illegalities. In exercise of the powers of this Court vested in it by section 43(1)
- (a) and (b) of the Land Disputes Courts Act, Cap 216 R.E. 2019 I hereby revise and quash the whole of the proceedings before the District Land and Housing Tribunal for Singida in Miscellaneous Land Application No. 164 of 2021 and that of Msange Ward Tribunal in Land Application No. 30 of 2017, set aside the decisions thereon dated 26th July 2023 and 25th April 2018 respectively. Having so decided, the status quo in the disputed land prior the institution of the land application whose proceedings and decisions have been quashed and set aside has reverted. It is pertinent to note that any party who has interest to claim ownership of the disputed land is at liberty to initiate fresh application before competent court/ tribunal for determination of the same. 19 | P a g e In exercise of that right to institute proceedings before relevant land courts, the rights of both sides shall be fully determined in accommodating of the right to be heard of the parties. As the quashing of the proceedings

and setting aside the decisions in Miscellaneous Land Application No. 164 of 2021 before the District Land and Housing Tribunal for Singida and that of Msange Ward Tribunal in Land Application No. 30 of 2017 was not attributed to wrongs of the parties but that of the trial Tribunal, it is settled opinion of this court that each party to this application should bear its own costs of this application. It is so ordered. DATED at DODOMA this 3rd day of April 2025. E.E. LONGOPA JUDGE 03/04/2025. 20 | P a g e

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