

TANZANIA / JUDGMENT

hellen philip njau vs dismas joachim mariwa another 2023 tzhclandd 17270 15 december 2023

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15 December 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND REVISION NO. 44 OF 2023 HELLEN PHILIP
NJAU..... APPLICANT VERSUS DISMAS JOACHIM
MARIWA..... 1st RESPONDENT CITY LINK PENTAGON HOTEL
LIMITED..... 2nd RESPONDENT

RULING

3rd November, 2023 & 15th December, 2023 L. HEMED, J. HELLEN PHILIP NJAU is an Applicant in the instant case. She has brought the Application under section 43(1) (b) of the Land Disputes Court Act [Cap. 216 RE 2019]. The Applicant is moving this court to: - "...call for records form Ubungo District Land and Housing Tribunal in Land Application No. 117 of 2023 and examine the correctness, legality and propriety of the proceedings and the consent judgment thereof which had the effect of denying the Applicant interest over the disputed property on plot No. 330 Block "D" Sinza with certificate of Title No. 28291 and revise the i same and make befitting orders." The background to the matter at hand is that, CITY LINK PENTAGON HOTEL LIMITED, the 2nd respondent herein, instituted Application No. 117 of 2023 at the District Land and Housing Tribunal for Ubungo suing DISMAS JOACHIM MARIWA claiming ownership of a residential house built on Plot No. 330, Block 'B' Sinza, comprised in Certificate of Title No. 28291. The 2nd Respondent claimed title of the suit landed property by having purchased the same in a public auction conducted by NAMIC INVESTMENT LTD on 3rd April 2015. Before the trial Tribunal, the matter ended by a Consent Decree following the Deed of Settlement which was filed by the parties on 24th July 2023. The 1st Respondent herein consented that he is not the owner of the disputed property, hence, the 1st Respondent herein was found and declared the owner of the disputed land. As aforesaid, the Applicant is in the corridors of this court by way of revision challenging the said decision. According to the Affidavit that supports the Application, the Applicant who happened to be the wife of the 1st Respondent claims interests on the suit landed property, Plot No. 330 Block'D' Sinza with certificate of Title No. 28291. 2 It was asserted by the Applicant that the suit property was acquired on 3rd April 2015 by purchasing in the public

auction held by Namic Investment Ltd. The property was purchased in the name of the 1st Respondent at consideration of Tshs. 200,000,000/=. Due to matrimonial misunderstanding, the Applicant commenced matrimonial proceedings at Temeke Primary Court and the suit property was subjected to division during the dissolution of marriage. The Primary Court refused to grant divorce. The Applicant successfully appealed to Temeke District Court vide Matrimonial Appeal No. 120 of 2022 where Divorce was granted and file was remitted to the Primary Court to proceed with the division of matrimonial properties. While the matrimonial matter was pending at Temeke Primary Court for division of matrimonial property, the 1st Respondent informed the court that the suit property which was subject for division was no longer his property. Mr. Rajab Mrindoko, advocate who represented the Applicant, argued that the said consent Decree was obtained by collusion between the 1st and 2nd respondents in order to circumvent the matrimonial proceedings. According to Mr. Mrindoko, the advocate 3 who drew and filed the application in Land Application no. 117 of 2023 for the 2nd Respondent against the 1st Respondent, is one Mr. Kennedy Sangawe who was representing the 1st Respondent in Matrimonial Appeal No. 120 of 2022. He was of the view that the said decision is a nullity as it was obtained by fraud. He placed reliance on the decisions of the Court of Appeal of Tanzania in Yusufu Selemani Kimaro vs Administrator General and 2 others, Civil Appeal No. 266 of 2020 and The Grand Alliance Limited vs Mr. Wilfred Lucas Tarimo and 4 others, Civil Application No. 229 of 2020. It was further submitted that the Applicant was denied her right to be heard in Land Application No. 117 of 2023. He fortified his argument by referring to the case of Millicom (Tanzania) N.V. vs James Alan Russell Bell and 2 Others (2017) TLSLR 424 and Mufindi Paper Mills Ltd vs Ibatu Village Council and 3 Others, Civil Revision No. 555/17 of 2019. He concluded by praying the court to quash the consent Decree. Reply was made by Mr. Rogreen L. Mollel and Dr. Godfrey Taisamo, advocates of the 1st and 2nd respondents respectively. They generally contended that the applicant has not justified in her 4 submissions how or in what manner the 1st and 2nd respondents colluded. The learned counsel were of the view that, allegations of fraud and collusion are matters that need evidence and proof which in their opinion in the instant case the applicant has not discharged that duty. It was submitted further that there was neither collusion nor fraud in the manner the 1st and 2nd Respondents executed the Deed of Settlement. They insisted that the Deed of Settlement together with the consent decree issued by the District Land and Housing Tribunal of Ubungu, did not intend to deprive the applicant from her share in matrimonial properties. On the issue of denial of the right to be heard by the District Land and Housing Tribunal, it was asserted by the respondents that the nature of the proceedings did not require the applicant to join because the proceedings were instituted by the 2nd Respondent against the 1st respondent. It was further argued that, if at all the Applicant had interest in the property, she should have invested her energy in the matrimonial proceedings. They finally prayed for the dismissal of the Application. 5 In his rejoinder submissions, the learned counsel for the Applicant, reiterated the submissions in chief. He insisted that the Consent Decree was obtained by collusion and the Applicant was denied her right of being heard. Having gone through the rivals submissions made by the parties, it is apt now to consider whether the instant matter is meritorious. The Applicant has relied on two grounds, the consent decree being procured by collusion and fraud; and the denial of the right to be heard. I have opted to start with

the ground of denial of the right to be heard because of what was emphasized by the Court of Appeal of Tanzania in Mbeya - Rukwa Autoparts & Transport Limited vs Jestina George Mwakyoma, Civil Appeal No. 45 of 2000, 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...." The question that arises is whether it was necessary for the Applicant to be heard in Application No. 117 of 2023 before the District 6 Land and Housing Tribunal for Ubungu. The Applicant had shown her interests over the suit property as it was among the matrimonial assets subject to division in Matrimonial Cause No. 452 of 2021 between the Applicant and the 1st Respondent. I have also noted that the Proceedings before the District Land and Housing Tribunal, at Ubungu were on ownership of Plot No. 330 Block 'D' Sinza and had commenced on 27th June 2023, while the matrimonial proceedings which had commenced in 2021, were still pending in court. The fact that it was known to the 1st Respondent that the suit property had the Applicant's interests and was subject to the division in Matrimonial proceedings, he ought to have informed that trial Tribunal on the importance of joining the Applicant in the said proceedings. He opted to conceal such very crucial information and proceeded to negotiate the consent Decree! The facts pertaining to the matter at hand show that it was necessary to join the Applicant in Application No. 117 of 2023 before the District Land and Housing Tribunal for Ubungu to let her defend her interests on the suit land. In the present matter it appears that adverse action against the applicant was taken in Application No. 117 of 2023 to declare the 2nd Respondent owner of the suit land without availing the Applicant herein the opportunity to be heard. In Abbas Sherali & Another vs Abdul S. H. M. Fazal boy, Civil Application No. 33 of 2002, the Court of Appeal of Tanzania insisted 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." I am of the firm opinion that the Applicant ought to have been heard before the trial Tribunal so as to uphold one of the attributes of equality before the law. It is thus so obvious that, the Applicant was denied the right to be heard, which renders the proceedings in Application No. 117 of 2023 a nullity. In the course of perusing the record of Application No. 117 of 2023, I came across with the pleadings filed by the 2nd Respondent, CITY LINK PENTAGON HOTEL LIMITED. The said pleadings revealed that the 1st Respondent is one of the directors and 8 shareholders of the 2nd respondent. Actually, he is the chairperson of the Board of Directors of the 2nd Respondent! This fact suggests the possibility of collusion in instituting Application No. 117 of 2023. However, since the ground of denial of the right to be heard suffice to dispose this application, I will not dwell much to discuss the point of collusion and fraud. From the foregoing, I find merits in the instant Application and proceed to make the following orders:-

1. The proceedings and the consent Judgment/Decree in Application No. 117 of 2023 are quashed.

2. The file is remitted to the trial Tribunal for re-trial to join HELLEN PHILIP NJAU.
 3. The Applicant is entitled to costs of this Application. It is so ordered. DATED at DAR ES SALAAM this 15th December, 2023. JUDGE 9
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