

TANZANIA / JUDGMENT

Misc

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM MISC. APPLICATION NO. 336 OF 2024 {Arising from the proceedings dated 8th November, 2023 in Land Application No. 143 of 2023 at the District Land and Housing Tribunal for Kinondoni at Mwananyamala by Hon. J. W. SiIIas, Chairperson.) HTT INFRANCO LTD..... APPLICANT
VERSUS PETER ADAM MTATIFIKOLO..... 1st RESPONDENT ELIZABETH PETER NYEGA..... 2nd RESPONDENT Date of Last order: 13/5/2024 Date of the Ruting: 28/5/"2024

RULING

A. MSAFIRI, J This is an Application for revision whereas, the applicant is praying for this Court to call and examine the records of the proceedings in Land Application No. 143 of 2023 at the District Tribunal for Kinondoni District at Mwananyamala (the Tribunal), for the purposes of satisfying itself as to the correctness, legality and propriety of the proceedings and/ or legality of the order issued on the 8th November, 2023 and revise the same. i The Application is made under Section 41 (1), 43(1), (b) and 52 (2) of the Land Disputes Court Act, Cap 216 [R.E. 2019], Part III Item 21 of Schedule of the Law of Limitation Cap 89 R.E 2019 and it was supported by the affidavit of Kulwa Steven Shilemba, the advocate of the applicant. The 1st respondent did not contest the application and through his advocate Mr. Richard Mchwampaka, he informed the court that he don't intend to file a counter affidavit. The 2nd respondent filed his counter affidavit which was deponed by his advocate one Mr. Sereri Nyagita. The disposal of the application took form of written submissions, whereas both contesting parties complied with the schedule order of this Court. The applicant's submission in chief was drawn and filed by Ms. Kulwa Shilemba while the reply submissions by the 2nd respondent was drawn and filed by Mr.Sereri Peter Nyagita. I have well considered the submissions by the learned advocate in determination of this matter. Before going into determination of the application, the brief background of the dispute is apposite. The background according to the contents of the affidavit is that on 20/6/2023, the applicant instituted Land Application No. 143 of 2023 at the Tribunal against the respondents, seeking for the a declaration that the applicant is entitled to and has a 2 right to have access to the Telecommunication Tower unblocked so that her agents, personnel and contractors can have unfettered access to and from the tower, and other reliefs as per the application. That on 08/11/2024, the matter came for mention before the Tribunal in the presence of the parties and the applicants advocate Ms. Shilemba addressed the Tribunal that the High Court has declared

the 1st respondent as the lawful owner of the suit property and that since the 2nd respondent was no longer the lawful owner of the suit property, then the applicants advocate prayed to withdraw the Application with no order as to the costs. That the 2nd respondent resisted the prayer to withdraw without costs and the Tribunal Chairperson struck out the Application with costs without considering the applicant's reasons nor assigning any reasons whatsoever. The applicant was aggrieved by that order hence the present application. In his submission in chief, Ms. Shilemba stated that the powers of the Tribunal to deal with the application for withdrawal of the Application are found under the provisions of Regulation 17(1) and (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulation, 2002. (herein the Regulations). Ad A 3 That also Order XXIII of the CPC read together with Section 51(2) of the Land Disputes Courts Act provide for the withdrawal of the suits. She submitted further that nowhere in the Tribunal's proceedings it is shown how the prayer for withdrawal was addressed and the decision. She pointed that in application to withdraw the matter, the Tribunal has jurisdiction to either grant an application with leave to refile or without leave to refile. That this was not reflected in the proceedings. Ms. Shilemba argued that it is clear in the proceedings that after the Tribunal heard the parties on application to withdraw, it never wrote a ruling and make determination on the competing arguments of the parties and instead wrote an order striking out the application with costs. That no reason for decision was provided. That Regulation 20 of the Regulations requires every decision of the Tribunal to contain reasons for decision. To bolster her point, the counsel cited a case of Abubakari IH Kilongo & Another vs. Republic, Criminal Appeal No. 230 of 2021. The counsel added that even if the Tribunal had thought that the order of granting the prayer to withdraw was the same as striking out the Application, it would not have granted the costs due to the circumstances of the dispute. That the Tribunal ought to have considered the applicant's reasons on why costs should not be granted and that the Tribunal's discretion was not exercised judicially. She prayed for the application to be granted as prayed. Mr Nyagita for the 2nd respondent submitted in reply that at the Tribunal and on the material date, indeed the applicant addressed the Tribunal and prayed to withdraw the application with no order as to the costs. That the 2nd respondent resisted the prayer regarding the cost on the base that, it is known that the legal services are not free and that the 2nd respondent has incurred cost on prosecuting the matter therein. That the 2nd respondent prayed for the withdrawal with costs. Mr Nyagita argued that the cost is granted per the discretion of the Tribunal and that this is provided under Section 30(1) of the CPC. That the law does not require the Tribunal to give reasons for granting costs but it only requires that the reasons be given where the Tribunal directs that any costs shall not follow the event, the court shall state its reasons in writing. Therefore, in the matter before the Tribunal, the same has granted the applicant's prayers with costs hence he was not required to give out the reasons. He prayed for the Application to be dismissed with costs. 5 Having gone through the submission by the learned advocate for the applicant, the sole issue that calls for the Courts determination is whether the present application has merits. I wish to point out that this Court derives its powers of revision over the proceedings or any order from the Tribunals under Section 43 (1) (b) of the Land Disputes Courts Act [CAP 216 R.E 2019]. The said provision provides;

43. -(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-
- (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. [Emphasis added]. From the foregoing provision of the law, in an application for revision like the present one, the applicant must show that there is an error material to the merits of the case involving injustice. In the present application from the affidavit as well as the submission by the learned advocate, I have gathered that the major claim; 6 from the applicant is that on 11/8/2023, the applicant prayed to withdraw the matter which was before the Tribunal and prayed to do so without costs. That the Tribunal made an order to strike out the application with costs without assigning any reason to do so. The applicant is of the view that this Order by the trial Chairperson was improper hence he has moved this court to revise the proceedings and the order on the illegality of the same. Doing the task of revising the proceedings and order of the Tribunal, I had to go through the same in order to revise the illegality or impropriety of the same. The proceedings shows that on 08/11/2023 the counsel for the applicant, Ms Kulwa Shilemba prayed to withdraw the Application before the Tribunal. Mr. Sereri Nyagita who was appearing for the 2nd respondent prayed for the costs. Ms Shilemba responded and objected to the prayer for costs arguing that it was the 2nd respondent who caused the applicant to institute the matter in the first place and that the matter was in the early stages and all parties have incurred costs. After that, the Tribunal issued an order that the Application has been withdrawn with costs. The major issue is whether there is an error material in this order of the Tribunal which have caused injustice to the applicant. Af) L- 7 It is a principle of law that costs are awarded at the discretion of the Court but the discretion is judicial and has to be exercised judiciously and not arbitrarily or capriciously. And award for costs would usually follow the event, unless there are reasonable grounds for depriving a successful party of this costs. Since the costs award is in discretion of the court, I find that the Tribunal was correct to award the costs to the opponent party and the records shows that the said party (2nd respondent) has prayed for the same expressing that he has incurred costs. The trial Chairperson was not obliged to state the reasons for awarding costs to the 2nd respondent but only if the award could have been refused as prayed by the 2nd respondent. It is the law that the court should provide reasons for refusing to grant the award of costs. The counsel for the applicant has submitted that the applicants application was successful by virtue of the decision of the High Court and to be condemned to pay costs was not fair. It is my view that what was before the Tribunal was a different matter from the one which was successfully determined before the High Court. The matter before the Tribunal was not heard and decided on merit but it was withdrawn by the 8 applicant himself. Hence the counsel cannot say that the application was successful. Having gone through the proceedings and order of the Tribunal, it is my finding that there was neither illegality nor

error material to the proceedings or order of the Tribunal which has caused injustice to the applicant. The Tribunal used its discretion judiciously to award the costs to the 2nd respondent following the applicants prayer to withdraw the matter and the prayer for the costs by the 2nd respondent. For the above reasoning, I find this Application to have no merit and I hereby dismiss it with costs. It is so ordered. A.MSAFIRI JUDGE 28/5/2024 9

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Prepared on 14 October 2026 · Esheria