

TANZANIA / JUDGMENT

massaka ashery mwinje vs salma almasi and 2others 2023 tzhc 23150 7 december 2023

COURT
TZHCDECIDED
7 December 2023

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THE UNITED REPUBLIC OF TANZANIA IN THE HIGH COURT OF TANZANIA DODOMA DISTRICT
REGISTRY AT DODOMA LAND REVISION NO. 01 OF 2022 (Originating from the District Land and
Housing Tribunal for Manyoni at Manyoni in Land Application No. 18 of 2017.) MASSAKA
ASHERY MWINJE..... APPLICANT VERSUS SALMA
ALMASI..... Ist RESPONDENT JUMA MELKIORI..... ..2ND
RESPONDENT KIBAIGWA AUCTION MART & Co..... ...3rd RESPONDENT

RULING

Date of Last Order:21/09/2023 Date of judgment: 07/12/2023 A. J. Mambi, J. The applicant, MASSAKA ASHERY MWINJE is seeking this Court to revise the decision of the District Land and Housing Tribunal for Manyoni in Land Application No. 18 of 2017 that was between the 1st and 2nd respondents. The application is made under section 43(l)(a) and (b) of the Land Disputes Courts Act [Cap 216 R: E 2019] supported by the affidavit of the applicant. The brief facts of this case are that in 2017 the 1st respondent in this case (Salma Almas) successfully sued the 2nd respondent (Juma Melkiori) at the District Land and Housing Tribunal of Manyoni (herein the i DLHT} vide Land Application No. 18 of 2017 over the land located at Muhalala Ward within Manyoni District (herein the suit land}. Having won, it would appear that the 1st respondent (a decree holder) thereafter applied and the DLHT granted an eviction and demolition order against the 2nd respondent (the judgment debtor) in execution of its decree vide Misc. Application No. 33 of 2018. The DLHT ordered the 3rd respondent (Kibaigwa Auction Mart and Company) to execute its decree. The third respondent having executed the DLHT order, thence this application by the applicant praying this Court to revise Land Application No. 18 of 2017. The applicant application is premised on the ground that there was no exact location, boundaries or permanent features in the suit land differentiating it from other lands in order to enable proper execution . During the hearing the applicant appeared under the legal services of Mr. Benedict Kalist whereas all the respondents never appeared albeit summons served to them. This Court having been satisfied with the proof of service it ordered the matter to proceed ex-parte. Submitting in favour of the application, Mr. Benedict contended that the reasons for this application are indicated in

paragraph 1, 2 and 3 of the affidavit that was sworn by the applicant. The learned counsel contended that the applicant was not party to the Land Case No. 18/2017 at the Manyoni DLHT but in the execution of its decree his house was destroyed. Mr. Benedict went on contending that the records of the DLHT show serious illegality as the location and boundary of the disputed land were not indicated. The learned counsel argued that this was the basis of the application for revision. Reference was made to the decision of the court in Nixon John Kiwelu vs Bernard Maarifa and Another, Misc. Land Application No. 214 of 2020. Mr. Benedict averred that this was also contrary to regulation 3(2) of the Land Disputes Courts (The District Land 2 and Housing Tribunal) Regulations, 2003 and Order VII Rule 3 of Cap 33. The counsel was of the view that this illegality made the matter at the DLHT incompetent and prayed this application be granted. Having gone through the application and the affidavit in support thereof, the records and the submissions made by the applicant, the main issue before this Court I find to be whether this application is proper before this Court. In other word the issue is, is the application before this Court competent? Going through the records, there is no dispute that the applicant was not a party to Land Application No 18 of 2017. This is the suit that the applicant in this case has invited this Court to revise for the reason that during the execution of its decree his house was destructed. As shown above this application has been preferred under section 43 (l)(a) and (b) of the Land Disputes Courts Act, Cap 216 [R: E 2019], this provision reads; l'(l) In addition to any other powers in that behalf conferred upon the High Court, the High Court- fa) shall exercise general powers of supervision overall 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 compiy 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 revisionai 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 Supplied. 3 The provision is quite clear that if the High Court finds that there are illegalities or irregularities committed by the DLHT in its proceedings that necessitates its indulgency in order to correct the anomaly for interests of justice it can on its own motion or upon an application by any party revise the proceedings of the DLHT and make its decision. The question that arises is, was the applicant, in this case, legally right in applying for revision of the proceedings of the DLHT that he was not a party? The answer is obvious YES. This is because the applicant being not a party to the case at the DLHT and considering the fact that the DLHT decree had already been executed on his land, he had no any other remedy apart from applying for revision before this Court so longer as he could ascertain the illegalities or irregularities that was committed by the DLHT in its proceedings. The applicant counsel in this case stated that the applicant (now first respondent) at the DLHT did not, in her application, Land Application No, 18 of 2017, specify categorically the location and borders (or any permanent feature distinguishing the suit land) of the suit land which could have been the root cause of

destructing the house of the applicant in this case (Massaka Ashery Mwinje) during the execution of a decree which he was not a party. Indeed, going through the application in Land Application No. 18 of 2017 at the DLHT, I find that the applicant (now 1st respondent) did not specify categorically the location and borders (or any permanent feature distinguishing the suit land) of the suit land. Paragraph 3 reads as follows; '5. Location and address of the suit premises/iand: Muhaiaia Ward" Reading through the above paragraph one cannot ascertain properly the location and borders of the suit land. This, in any way, posed a question in execution of a decree to a judgment debtor. The application by the 4 applicant (1st respondent) was contrary to the law. See Order VII Rule 3 of the CPC. The said provision reads; ° Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and, in case such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number." The word "SHALL" under the above provision of the law is clear that it is mandatory for the party to provide full description of the suit land in his plaint. Failure to provide proper description in my view, can interfere other properties of innocent parties who were not party to the case. The DLHT was required to satisfy itself with the contents of the plaint before proceeding and making the decision. The records show that the proceedings at the DLHT were tainted by immense irregularities that led to wrong attachment of the property that was not the subject matter of the case. In light of the foregoing discussions, I am satisfied that since the proceedings at the DLHT were flawed, the same are then revised by this Court. In the circumstance, the decision and decree of the DLHT is hereby quashed and its orders are set aside. If parties are still interested with the case are at liberty start afresh. No orders as to costs. 5

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