

TANZANIA / JUDGMENT

mathayo ole silongoi vs hussein midle 2024 tzhc 24 22 january 2024

COURT
TZHCDECIDED
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB REGISTRY OF
MANYARA AT BABATI LAND REVISION NO. 6 OF 2023 (Arising from Land Application No. 3 of
2019 before the District Land and Housing Tribunal of Simanjiro at Orkesumet) MATHAYO OLE
SILONGOI.....APPLICANT VERSUS HUSSEIN
MIDLE.....RESPONDENT

RULING

28th November>2023 & 22ndJanuary2024 Kahyoza, 3.: This is a ruling in respect of Revision Application instituted by Mathayo Ole Silongoi, the applicant, for this court to call and inspect record of proceedings and decision of the District Land and Housing Tribunal of Simanjiro at Orkesumet (the DLHT) in Land Application No. 03 of 2019 as to the Correctness, Legality or propriety of the decision and as to the regularity of the proceedings. The background, at the DLHT, Mathayo Ole Silongoi sued Hussein Midle for; Trespass on Land (situated at Langai Village, Langai Ward within Simanjiro District, measuring 200 acres), a declaration that the respondent is a trespasser, an eviction order, a compensation to a tune of 20,000,000/=(TZS), a permanent injunction on the suit land and a condemnation on costs of the case. At the conclusion, the DLHT decided the matter in favour of the respondent, with orders that Hussein Midle was the lawful owner of the Suitland, an eviction order against the applicant, in its decision dated 24/02/2023. Being aggrieved, the applicant filed this application seeking to fault the said decision. In support of the application, he filed his sworn affidavit and the complaint is on the following:- "9. That, after an amended Application was filed and duly served the respondent did not file a written Statement o f the defence to the amended application, nevertheless the trial proceeded and the respondent testified.

10. That, the Honourable Chairman o f the Tribunal relied on the Exhibit(s) D1 (page 39 o f the typed proceedings) which was improperly tendered by the Respondent and admitted by the District Land and Housing Tribunal.
11. That; the Respondent improperly relied on a written Statement o f Defence that was filed prior to the amendment order.

14. That, failure to file an amended Written Statement of Defence to the amended application is an error material to the merit of the case and may have occasioned miscarriage of justice on the part of the applicant." In his counter affidavit, the respondent had this to depone:- "5. That the content of paragraph 9 from the Applicant Affidavit is strongly disputed there is neither proof tested. The applicant should put strictly proof. In alternative the respondent stated that, despite the tribunal was functus officio to grant the same order which was the same tribunal rejected previously not only that the order was to file amended within 14 days (12/02/2021) but the applicant filed after 19 days (17/02/2021) without the leave of the Tribunal. And the same date the tribunal proceeds.
6. That the contents of paragraph 10 of the applicant affidavit are strongly disputed and applicant should strictly proof on how turns into irregularity on the face of records. In alternative the exhibit D1 stated in page 39 of the proceedings its was the issue concerning the admissibility of the documents which is not matter of revision.
7. That answering from contents of paragraph 11 and 12 from the applicant affidavit the answer is simple first the tribunal it was functus officio to grant the order of amending the application, second the order of the tribunal was not honoured by the applicant by filing out of time without leave and third the respondent was not given the time to file WSD because the amended was focus to interpret the language while the respondent already filed in English language.
8. That the contents of 13 and 14 paragraph from the applicant affidavit are baseless the applicant and the successor chairman lacks capacity of prayed and granted the order of amendment on the face of law the application was not amended and if so, the respondent was right, proceedings was proper even the judgment its correct" This application was heard by way of written submissions and parties duly complied with the scheduling orders. Ms. Rehema Kitaly, Advocate, on behalf of the applicant, submitted in support of the application that once an order for amendment of pleadings is granted, then the prior filed pleadings cease to exist, in other words, pursuant to the order dated 29/01/2021, that granted for the amendment of the application form, rendered the Written Statement of Defence (WSD) prior filed by the respondent to be extinct, thus an amended WSD was imminent. And the omission was fatal and vitiated the proceedings and the resultant judgment, citing Regulation 7(1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003. That it was upon the filing of the WSD, that the hearing was to be scheduled and not otherwise. On exhibit D1, Ms. Rehema submitted that it was erroneous on part of the DLHT to rely on the said exhibit which was part and parcel of the extinct WSD as it was annexed in the respondent's WSD which was filed prior to the amendment order. Citing rules in *Airtel Tanzania Limited vrs. OSE Power Solutions Limited*, Civil Appeal No. 206 of 2017 (Copy supplied) and that of *Tanga Hardware and Autoparts Ltd and 6 Others vrs. CRDB Bank Ltd*, Civil Application No. 144 of 2005 (unreported) citing in approval the rule in *Warner vrs. Sampson and Another* [1995] Q.B 297. On the aspect of functus officio it was submitted that when the first attempt to amend the application form was made to the DLHT,

the same was not determined. In the circumstances, the applicant was not barred from making the same move, as a result, when the same prayer was made and not objected, the DLHT granted the same. The argument that the said amendment was done out of time, is baseless, for, there was no ruling or order that rescinded the amendment order, neither was it an issues at the DLHT, thus no any prejudice occasioned, thus cured under the overriding objective principle, citing and supplied the rule in Prof. T.L Maliyamkono vrs. Wilhelm Sirivester Erio, Civil Appeal No. 93 of 2021 (unreported). The absence of an order to file WSD did not cause any prejudice to the respondent, as he was duty bound to file an amended WSD after the issuance of amendment order to the application form. On the other side, Mr. Emmanuel H. Hyera, Advocate for the respondent, submitted in rebuttal of the application, that, the first attempt to amend the application form was rejected, and referred to page 6 of the typed proceedings. Surprisingly, the same prayer was made and granted on 29/01/2021. That the DLHT was functus officio to determine the same prayer which had been rejected previously, citing the rules in a litany of authorities, from Kamundu vrs. R (1973) EA 540, Bibi Kisoko Medard vrs. Minister for Lands Housing and Urban Developments and Another [1983] TLR 250, to Laemthong Rice Co. Ltd vrs. Principal Secretary- Ministry of Finance [2002] TLR 389. That the applicant filed his amended application form out time and never served the respondent. As if that was not all, on 17/02/2021 the court did proceed without referring anything on the amended application, as the same was never filed at the time. Failure to file amended documents on time is contrary to the law, citing Order VI Rule 18 of the Civil Procedure Code, Cap 33 R.E 2019. Thus, failure to file amended documents on time renders the prior filed documents paramount. Thus, the respondent was not obliged to file an amended WSD. On the compliance to court orders, Mr. Hyera cited the case of Ratman vrs. Cumarasamy and Another (1964) 3 ALL ER. 6 That this application is misconceived as revision is exercised only when no right to appeal is available. For revision to stand, an applicant must point out irregularities, illegalities, incorrectness or inappropriateness of the proceedings or decision. Citing the rule in Israel Mwakalabeya vrs. Ibrahim Mwaijamba, Misc. Civil Application No. 21 of 1991 and Tanzania Telecommunications Co. Ltd (TTCL) and 3 Others vrs. Tri Telecommunications Tanzania Ltd, Civil Revision No. 62 of 2006 which cited in approval the case of Hallais Pro-Chemie vrs. Wella A.G

(1996) TLR 269. That, since the applicant was the party to the matter before the DLHT, then he was supposed to channel his grievances in an appeal not a revision. The applicant cannot allege illegality on his own wrongdoing, neither can it be said that parties were prejudiced. One cannot benefit from his own wrong doing, thus the applicant cannot benefit from the overriding principle. Once an application for revision is declared incompetent the recourse is to dismiss it with costs, citing and supplied the rule in Isedori Leka Shirima & Another vrs. The Public Service Social Security Fund, Civil Application No. 151 of 2016, CAT (unreported), Distinguishing the case of Warner vrs. Sampson and Another, for, in this matter the order to amend pleadings was illegal, contrary to the dictates of the CPC. In the end, he emphasised on the rule in Mathias Katonya vrs. Ndola Masimbi [1999] TLR 390 and section 45 of the Land Disputes Courts Act, Cap 216 R.E 2019,

that the decision of the DLHT should not be disturbed. In his rejoinder, Ms. Kitaly submitted that the DLHT order dated 20/02/2020 is not one of the grounds for revision, and that if the respondent was aggrieved by the proceedings of the particular date, he should have sought remedies in filing an action in court, not using this forum to stage his grievances. That, since there was no court's determination on the first attempt to amend the pleadings, then the DLHT could not be functus officio as there was no any decision meted out. Thus, authorities in *Kamundu vrs. R, Bibi Kisoko Medard vrs. Minister for Lands Housing and Urban Developments* and *Another and Laemthong Rice Co. Ltd vrs. Principal Secretary- Ministry of Finance* were quoted outside the context. That the respondent was served with the amended application through his advocate, Mr. Hyera on 17/02/2021. The rule in *Ratman* is distinguishable since there was an actual amended application and the same was relied by the DLHT to arrive at its decision, thus the previous pleadings ceased to exist. Order IV Rule 18 does not provide for amendments of the pleadings. 8 That the said irregularities in the proceedings have occasioned a failure of justice because the tribunal concluded that the respondent was the lawful owner of the suit property. The pertinent issue for determination is whether there is manifestation of error material to the merits of the case on the record of the trial DLHT. Section 43(l)b of Cap 216 provides: - "43.- (1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-

- (a) shall exercise general powers of supervision over all 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 comply 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 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." From the cited guiding provision of the law, I find it to be the requirement of the law, that for an application for revision to be meritorious, there must exist an error material on the records so called and inspected. One of the complaint by the applicant was that the respondent never filed a WSD to the amended application and the DLHT never bothered to determine the legal implication on the said omission. I had a cursory review on record in Application No. 03 of 2019, and I quote the relevant extract of the proceeding, at page 10 of 44: - "29/01/2021 Coram: Hon. P. J. Makwandi Assessors: 1 & 2: Nil Parties: Applicant: present/Adv. Samson Rumende Respondent: Absent/Adv Hyera for Respondent T/C: Vicky 10 Advocate Rumende: We pray to file amended application because for application form was prepared in Kiswahili warty to the applicable Regulations. Advocate Hyera: I have no objection.

Ruling

Prayer granted. Let the Application form which was prepared in Kiswahili be amended. Amended application be filed within 14 days. Mention on 17/02/2021. Sgd by Makwandi, Chairperson 29/01/2021." It is obvious that, One, the amendment was to the effect that the applicant (also, the then applicant) was determined to replace the application form which was in Kiswahili, with the English version and not otherwise. Two, that the DLHT granted the prayer with a condition that the amended application was to be filed within 14 days, of which by necessary implication, the time started to run from 29/01/2021 the ruling was delivered, and the expiration was on 14/02/2021. It is unfortunate that the amended application was filed on 17/02/2021, and it is on this date that Mr. Hyera endorsed the same to signify that he was duly served and he received the amended application. li It was filed out of time allowed and without leave to do so. Order VI rule 18 of the CPC which the respondent's advocate cited is categorically clear that if a person after obtaining leave to amend fails to file the amended pleading on time he cannot be permitted to amend after the expiration of such time. It reads-

18. Where a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order; or if no time is thereby limited then within fourteen days from the date of the order> he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the court. As the record bears testimony, the DLHT did not grant leave to the applicant to file the amended application out of time. Thus, the applicant filed the amended application on 17.2.2021 out of time and without leave to do. For that reason, there was no amended application. It is my findings that there was no amended application as it was filed out of time and without leave to do so. For the sake of argument, let me take it that there was an amended application and proceed to consider the status of the previously filed pleadings (the application form) vis a vis the amended pleadings (the amended application), the answer to this is 12 not farfetched, as I have pointed earlier on, the gist to the so christened "amendment" was only to replace the Swahili version with the English one. I have gone through the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 and never came across any express requirement on the language of the application form, the fact that the said Swahili version was admitted and the WSD was prepared and filed means that there was neither language barrier between the parties nor was any party prejudiced whatsoever. In the present case where the applicant's amendment was to translate the application from Kiswahili to English, I am of the firm view the amended application did not extinct the WSD previously filed by the respondent. Thus, there was no need for the respondent to file an amended WSD for the reasons that the WSD was in English language and the amended application did not change substance of the original application. In addition, exhibit D1 was mentioned in the WSD and the same was admitted as "kielelezo D 1" of which I find no injustice worth of the attention of this Court at this juncture. As rightly submitted by the respondent's advocate, since the applicant was the party to application No. 03 of 2019, if he was not 13 pleased with the DLHT decision, the same ought to have channeled through an appeal and not a revision, save for some

exceptions as stated in the TTCL's case, of which none was apparent in this application whatsoever. In the end, I find no manifestation of error material in the records of application No. 03 of 2019, that has occasioned failure of justice to the parties. I hereby dismiss this application for want of merit with costs. It is ordered accordingly. Dated at Babati this 22nd day of January, 2024. J. R. Kahyoza Judge Court: Ruling delivered in absence of the parties. The parties' advocates were unable to connect to the virtual court due to internet problems. B/C Ms. Fatina Haymale (RMA) present. J. R. Kahyoza Judge 22/01/2024 14

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