

TANZANIA / JUDGMENT

MUHONI KITEGE v MACHOKE

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MUSOMA SUB-REGISTRY AT MUSOMA LAND REVISION NO. 5629/2024 BETWEEN MUHONI KITEGE.....APPLICANT AND MACHOKE FRANCIS.....RESPONDENT RULING OF THE COURT 13/06/2024 & 04/07/2024 Kafanabo, J.: This is a ruling arising from an application for revision filed before this court for purposes challenging the decision of the District Land and Housing Tribunal for Mara Region, at Musoma (hereinafter the 'DLHT'). The impugned decision was made in Application for Execution No. 261 of 2023 dated 16/02/2024. This application is made under section 43(1)(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. The application is made by chamber summons supported by an affidavit of the Applicant. The Applicant applies for the pivotal order that the Court be pleased to revise the proceedings of the DLHT and the order thereof, given the injustice done and involved in the said order. The facts of the matter can be briefly stated that this application, to say the least, had its basis in the revision order pronounced by this court on 1 20th February 2023 in Miscellaneous Civil Revision No. 03 of 2023 between the parties herein. After the said order was made, the Applicant applied for execution of the same through Application for Execution No. 261/2023 at the DLHT. On the 16th day of February 2024, the DLHT dismissed the said application for execution on the basis that the High Court in Miscellaneous Civil Revision No. 03 of 2023 ordered the matter to start afresh and that the orders sought to be executed were not granted by the court. The Applicant, being dissatisfied and undeterred, filed this application. When the matter was called for hearing the Applicant fended for himself and Mr. Daudi Mahemba, Advocate entered appearance for the Respondent. In support of the application for revision the Applicant submitted that on 20/02/2023 this Court delivered a decision in Revision No. 03/2023. The decision was self-explanatory as regards land disputes involving the parties herein in various land tribunals. The Applicant submitted that the decision also ordered the Respondent and other buyers to vacate the land in dispute, despite the fact the court also ordered that the cases should start afresh. The Respondent was not satisfied with the decision and thus filed an application for Review Number 01/2023. On 28/11/2023 the said application for review was dismissed by this court. Also on page 3 of the decision for review this court expounded the decision of the application for revision. The Applicant also submitted that thereafter he filed the application for execution in the District Land and Housing Tribunal for Mara, at Musoma 2 (hereinafter the DLHT) in order to evict the Respondent and other buyers. On 16/02/2024 the decision as regards

execution was delivered by the DLHT and the application for execution was dismissed with costs. He submitted that the decision of the DLHT was one sided as it only considered one part of the decision and ignored the other part of the decision which ordered the Respondent and his agents to vacate the disputed area which belong to the Applicant. It was further submitted that it is for this Court to determine whether the decision of the DLHT was proper. The decision of this Court in Miscellaneous Civil Revision No. 03 of 2023 is not supposed to be resisted by the Respondent because the decision is clear. The Applicant also lamented that the DLHT's conduct of not implementing the decision of this Court is evident that the DLHT did not heed/obey to the High Court's Order. That gave a chance to the Respondent and other buyers to continue with their activities on the said land whilst the decree holder, the Applicant herein, continues to suffer. If the case should start afresh, it should start when the Respondent and others have vacated the disputed land. Replying to the Applicant's submissions, Mr. Mahemba, the Respondent's counsel, submitted that they object the application for revision because it has no merits in law. The decision of the DLHT in application for Execution No. 261/2023 is proper in law. In that decision, the DLHT agreed with the Respondent that the Applicant was applying for orders not contained in Miscellaneous Civil Revision No. 03 of 2023. Reading the decision of revision and the application for execution filed by the Applicant are two poles apart; they are quite different. The Applicant applied for 3 eviction of the Respondents and his agents, but the agents were not mentioned in the application. Moreover, the land subject matter of revision was not mentioned or discussed in revision order dated 20/02/2023. It was further submitted that the Applicant made his own orders different from the orders of the Court, which amounted to an abuse of the court process. In rejoinder, the Applicant submitted that he did not introduce new matters in the application for execution. This is because the revision order fully explained the history of the dispute and all the orders that were set aside. The size of the land and the Respondent's agents' names were not mentioned from the beginning that is why he did not mention their names, so he followed the order of the Court. After hearing the parties' submissions, it is apropos for this court to determine whether the application for revision as filed by the Applicant herein is meritorious. The Applicant herein is challenging the decision of the DLHT in Application for Execution No. 261/2023 which declined to execute this court's decision pronounced on 20th February 2023 in Miscellaneous Civil Revision No. 03 of 2023. The decision of the DLHT was based on the fact that the Applicant herein sought to execute orders which were not issued in the decision he sought to execute in Miscellaneous Civil Revision No. 03 of

2023. For lucidity purposes, the substance of the orders sought to be executed vide the Application for Execution No. 261 of 2023 filed in the DLHT are as follows:

- i. That the sale of the Applicant's lands has been set aside 4 ii. The Respondent, the buyer from him, and all agents should vacate the Applicant's land of thirteen (13) acres located at Center 'B' in the Sirorisimba Village, in the Butiama District. (details of boundaries provided in the application); iii. The Respondent, the purchaser from him, and all his agents should vacate the Applicant's land of Nine (09) acres located at Mtukula in the Sirorisimba Village, in the Butiama District. (details of boundaries provided in the application); iv. That the DHLT should remove all their belongings from the area owned by the Applicant including the

foundation for the fence built by the Respondent's agents unlawfully. Moreover, to be in position to understand the application better, it is also important to reproduce the relevant extract of the decision of this Court containing orders sought to be executed by the Applicant. The relevant orders are contained on pages 11 to 12 of the decision in Miscellaneous Civil Revision No. 03 of 2023 which reads as follows: "For the vast interests of justice, I hereby direct that let the matter to start afresh before a competent court of jurisdiction as per current legal regime governing administration and adjudication of land matters in Tanzania. With the court's findings and order, all the pending applications/cases before this court (Misc. Land Application no 32 of 2022, Misc. Land Application no 05 of 2023, Civil Revision no 1 of 2023 and Land Appeal No 77 of 2022) as well as other pending matters before the DLHT connected with the former award by Silori Simba 5 Ward Tribunal are now legally affected with this order. The same are hereby marked as redundant. For this reason, I set aside the sale of the lands belonging to the applicant in respect of all purported execution processes resulting from these chaotic legal processes. The purported buyer or buyers be refunded with their purchase prices by whosoever is holding it. Each part to bear his/her own costs as these determining issues of the matter have been raised by the court suo-motto. I so order and direct." In the light of the foregoing excerpt, it is clear that the decision of this Court in Miscellaneous Civil Revision No. 03 of 2023 pronounced on 20th February 2023 did not determine the final rights of the parties and did not issue any orders capable of being executed by the court for various reasons as stipulated herein below. One, all previous proceedings, orders and decrees thereof issued by the relevant Ward Tribunal or DLHT at appellate level or in execution were quashed and nullified for being tainted with illegalities. Two, this Court set aside the sale of the land belonging to the Applicant and ordered that the purported buyers of the same be refunded their purchase prices by whosoever is withholding it. However, the Court did not categorically describe the relevant Applicant's land that was purchased and did not name the persons to pay and to be paid. 6 Three, the court directed that the dispute as regards the land in dispute to be heard and determined afresh by a competent court vested with jurisdiction over landed matters as per the prevailing laws. Four, no any party was ordered to vacate the land in dispute, that is neither the parties herein, nor any other person as purportedly understood by the Applicant. Fifth, the court did not vest rights of the land in dispute on any person and thus, as directed by this court on 20/02/2023, the appropriate and executable orders may be sought and obtained by any interested party to institute fresh legal proceedings in a competent court for determination of ownership and other rights. Therefore, this means that in the said decision of this Court in Miscellaneous Civil Revision No. 03 of 2023, there was neither decree-holder, nor judgment-debtor in terms of Section 3 of the Civil Procedure Code Cap. 33 R.E. 2019 which defines a both terms as follows: "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made. "judgment debtor" means any person against whom a decree has been passed or an order capable of execution has been made. Moreover, under the said section 3 of the Civil Procedure Code(supra) decree is defined as follows: "decree" means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines

the rights of the parties with regard to all or any 7 of the matters in controversy in the suit and may be either preliminary or final and it shall be deemed to include the rejection of a plaint and the determination of any question within section 38 or section 89, but shall not include-

- (a) an adjudication from which an appeal lies as an order; or
- (b) any order of dismissal for default. In light of the above definitions, and orders issued by this Court, it is irrefutable that the Applicant tagged himself wrongly as a decree holder of an executable decree as regards the order made by this Court on 20/02/2023 in Miscellaneous Civil Revision No. 03 of 2023. This is because there was no conclusive order of the Court determining rights of the parties, instead, there is an apparent and unambiguous order that the matter should start afresh. The said order was also made with a view to clear up the muddle and the chaotic legal processes created by manifold of cases in various courts and tribunals between the parties herein. Substantiating the above is the purported application for execution itself which the Applicant filed in the DLHT seeking to execute the purported orders that were not given by this court. Besides, the Applicant, in his submissions supporting the present application, also admitted that the order of the court he seeks to execute neither mentioned the names of the agents he wants to vacate the disputed land, nor the land itself was described. Therefore, the court knowing that there was no final determination of the rights of the parties, directed that the matter should start afresh in a court vested with jurisdiction to determine the same. However, the Applicant for 8

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