

TANZANIA / JUDGMENT

nuruana hayuma vs emanuel damiano another 2024 tzhc 210 13 february 2024

COURT
TZHCDECIDED
13 February 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATTI MISC. CIVIL APPLICATION NO. 28595 of 2023 (Arising from Misc. Land
Application No 95/2023, Original Land case No. 42 of 2021 from District Land and Housing
Tribunal o f Babati District at Babati) NURUANA HAYUMA (Suing as next Friend o f Lanta
Masayi)..... APPLICANT VERSUS EMANUEL
DAMIANO.....1st RESPONDENT DIAMOND CREDIT RECOVERY CO L T
D2nd RESPONDENT

RULING

6th & 13th February, 2024 Kahyoza, J.: Emanuel Damiano sued Nuruana Hayuma on behalf of
Lanta Masayi for trespass onto the disputed land before the district land and housing tribunal of
Babati at Babati (the DLHT). The DLHT entered an ex-parte judgment in favour of Emanuel
Damiano. Aggrieved, Nuruana Hayuma applied to the DLHT to set aside the ex-parte

judgment.

While the application seeking to set aside the ex-parte judgment, was still pending, Emanuel
Damiano filed application for execution, 1 | P a g e which again Nuruana Hayuma filed the
objection to stay execution but the objection was left unheard and the execution was heard and
granted. The second respondent, Diamond Credit Recovery Co Ltd was appointed to execute the
decree and hand over the land to Emanuel Damiano. Displeased, Nuruana Hayuma instituted an
application for revision to this Court seeking this Court to revise the execution proceedings and
subsequent orders in respect of the Misc. Land Application No. 95/2023. The first respondent
opposed the application by filing a counter affidavit. To support the averment in the Counter
affidavit, Mr. Ndonjekwa submitted strongly that the application for revision application was res
sub-judice as there is still pending an application for setting aside the ex-parte judgment before
the tribunal, i.e. Misc. Application No. 89 of 2023. There are two issues for determination before
this court as follows-

1. Whether, this revision application is res-subjudice?

2. Whether, there is justification for this court to give any direction for the interest of justice? 2 | Page Is the application for revision res subjudice? The first respondent's advocate Mr. Ndonjekwa argued that the matter before this court is res-subjudice and ought to be stayed, because there is pending an application before the DLHT baptized as Misc. Application No. 89/2023 for setting aside the ex-parte judgment. Admittedly, there is still an application for set aside ex-parte judgment before the tribunal instituted by the applicant before this Court. The issue is whether the fact that there is still pending an application for setting aside ex-parte judgment renders the application for revision res-subjudice. It is common knowledge that the doctrine of res-subjudice is intended to limit a plaintiff to a single lawsuit avoiding the possibility of having two contradicting decisions from the same court on the same issue. The Indian court held in *Guru prasad Mohanty & Others v. Biyoj Kumar Das*, AIR 1984 I O L R 447 that- "the purpose of this clause is to safeguard a person from several legal proceedings and to prevent a conflict of decisions. It also tries to minimize the parties' discomfort and effect to the law of res judicata. The doctrine of res-subjudice is also entrenched in our law through the enactment of Section 8 of the Civil Procedure Code Cap 33 R.E 3 | Page 2019 (CPC). For ease of reference, it is apt that the same be quoted, as hereunder- 7Vo court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in Tanzania having jurisdiction to grant the relief claimed. Explanation: the pendency of a suit in a foreign court does not preclude the court in Tanzania from trying a suit founded on the same cause of action. And again, in the case of *Ravji Construction limited v Mohamed enterprises (Tanzania) ltd and Murtaza Ali Hussein Dewji* Civil Case No. 59 of 2022, it stated the conditions for applicability of the doctrine of res subjudice that; One, there must be two suits, one previously instituted and other subsequently instituted; two, issues must be directly and substantially the same in both suits, three, the pending matters must involve the same parties; four, courts in which the matters are pending must be competent to grant the reliefs; and five, that the parties should be litigating under the same title. 4 | Page In the present case, the matter pending before the DLHT is an application beseeching the DLHT to set aside ex-parte judgment setting, whereas the application before this case is seeking this court to call and revise the execution proceedings and the subsequent orders. Thus, the application before this court has nothing to do with an application seeking to set aside the ex-parte judgment or the propriety of the ex- parte judgment. I am, therefore, not persuaded that this matter is res- subjudice to the application pending before the DLHT. Consequently, with due respect, I find and hold that the objection is barren of merit and should be overruled. Is there any justification for this court to give any direction for the interest of justice? The applicant is seeking for revision orders under section 43 of Land Disputes Courts Act, [Cap. 216 R.E 2019]. As stated above, the DLHT decided to execute the decree and the second respondent was appointed to execute the decree and hand over the land to Emanuel Damiano. She applied seeking the DLHT to set aside the ex-parte judgment and grant an opportunity to defend the claim. Before the DLHT determine the application for

setting aside the ex-parte judgment, Emanuel Damiano instituted an application for execution. Hurriedly, the DLHT heard the application for execution and granted it before 5 | P a g e entertaining an application for setting aside the judgment and decree sought to be executed. It is astonishing as to why would a court or tribunal execute an ex- parte decree when there is still pending an application seeking to set aside ex-parte judgment or decree before the same court or tribunal, more so, when the application for execution was filed after the application seeking to set aside ex-parte judgment was filed. The interest of justice, logic or proper case management demands, the court or tribunal faced with the current situation to dispose an application seeking to set aside ex-parte judgment prior to determining the application for execution. It is illogical and does not augur well for a court or tribunal to set aside the ex-parte judgment or decree, it had hastily executed. The DLHT's rush to execute the ex-parte judgment or decree when there was still pending before it an application seeking to set aside the ex-parte judgment was uncalled for and poor case management. It is an irregularity and error that caused injustice, thus, calling the intervention of this Court by way of revision. In the end, I find that the tribunal erred to entertain an application for execution before it disposed of an application seeking to set aside 6 | P a g e the ex-parte judgment. Thus, the tribunal committed an error material to the merits of the case involving injustice. Such an order cannot stand. I nullify and set aside the execution order and return the parties to their original position before the execution order was made. I further, order the tribunal to hear and determine the application for seeking to set aside the ex-parte judgment and do so with dispatch. Costs shall be in due course. It is ordered accordingly. DATED at Babati, this 13th day of February, 2024. John Kahyoza Judge Court: Ruling delivered in the presence of the applicant and the first respondent. The second respondent is absent. B/C Ms. Fatina, (RMA) present. John Kahyoza Judge 13.2.2024 7 | P a g e

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