

TANZANIA / JUDGMENT

samson enos kameeta vs pentecost christian church of buza and 3 others

2021 tzhclandd 586 18 june 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM MISC. LAND APPLICATION NO.278 OF 2019 SAMSON ENOS
KAMEETA..... APPLICANT VERSUS

1. PENTECOSTE CHRISTIAN CHURCH BUZA
2. LIBERATO MBANDO RESPONDENT
3. JAMIRA SEIF
4. YOHANA MARCO MKINDA

RULING

Date of Last Order: 10/04/2021 & Date of Ruling: 18/06/2021 S. M KALUNDE, J. Being dissatisfied by the decision of the District Land and Housing Tribunal for Temeke in Application No. 191 of 2012, SAMSON ENOS KAMEETA, the applicant herein wishes to file an appeal to this Court. Being late, he filed the current application. The application has been brought under section 41 (2) of the Courts (Land Disputes settlements) Act, Cap. 216 R.E. 2002, Section 14 (1) of the Law of Limitation Act, Cap. 89 R.E 2002 ("the LLA") and Section 95 of the Civil Procedure Code, Cap. 33 R.E 2002 ("the CPC") and supported by the affidavit sworn by the applicant. 1 I Page In alternative the 1st, 2nd and 3rd Respondents raised two point of preliminary objections against the application that:

1. The Application contains names of erroneous parties; and
2. The Application was filed under wrong provisions of the laws. The preliminary objections were argued by way of written submissions. Parties adhered to the scheduled ordered by the Court. The 1st, 2nd and 3rd respondents were represented by Mr. Alex Enock, learned advocate, while the Applicant enjoyed the service of Mr. Sylvester Fredrick Aligawesa, learned advocate. Submitting in support of the first point of preliminary objections, Mr. Alex argued that the affidavit filed in support of the application is defective for being sworn by another person, Samson "Enocs" Kameeta while the name appeared in the Chamber Application is Samson "Enock" Kameeta. In his view the two names were different and

therefore rendering the application incompetent. The counsel added that, the remedy available for an incompetent application is to have it struck out with costs. As for the second point of objection, the learned counsel contested that, there is no subsection (2) under section 41 of the Courts (Land Disputes Settlements) Act, 2002 as cited by the Applicant. He added that, the cited law had section 41 without any subsection before the amendment brought about 2 | Page the Written Laws (Miscellaneous Amendments) Act No. 2 of 2010. He implored that there was wrong citation of the applicable provision of the law. On another limb, the counsel insisted that there was no need to cite other laws for extension of time since Section 41

- (2) of Cap. 216 provides for avenue to file extension of time in land matters. The counsel reasoned that, section 14 (1) of THE LLA and Section 95 of the CPC, cited in this application, were unnecessary and renders this Application improper hence should be struck out. In response, Mr. Sylvester argued that, the 1st point of preliminary object does not fall under conditions in the Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors
- (1969) EA 696 at P. 700. The counsel argued that, the objection was rather based on points of facts that calls for evidences to prove the said names of the Applicant. According to him even if the names are not proper, the said names can be rectified under the slip of a pen Rule as it was decided in the case of Jewels and antiques (T) L.td Vs. National shipping agencies Co. Ltd (1994) TLR107. On the second point, Mr. Sylvester submitted that, the section is properly cited to move this Court, and even so the court should not be bound by technicalities as per Article 107A of the Unites Republic Constitution (1997) ("the Constitution"). 3 | Page Having gone through the submissions in respect of the preliminary objection at hand, I now proceed to determine the merits of the preliminary objections. I propose to start my deliberation by discussing the 1st point raised by Mr. Alex that the application contains names of erroneous parties. Mr. Alex's argument was that, the names contained in the affidavit differed from those appearing in the chamber summons, and in the decision of the tribunal. Without any gigs of doubt, I do agree with him that the middle name of the applicant varies in different documents including the affidavit, on name of the parties' section, it read SAMSON ENOCS KAMEETA while in the Affidavit he sworn as SAMSON ENOS KAMEETA. Obviously, there is variation of letter "C" in the middle name. The question now is whether the said variation is really a serious point of law that fit the description in Mukisa Biscuits Case (supra). That answer to that need not detain me much. On this point, I agree with the counsel for the applicant, Mr. Sylvester, that the mistake in the spelling of the name of the applicant is curable under Article 107A of the Constitution which enjoins Court to minimize technicalities and focus on substantive justice. In essence the irregularity could be cured by a simple amendment which is allowable under section 96 of the CPC. Further to that, I am mindful of overriding objective principle brought about by the amendment to the CPC through the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 8 of 2018, which enjoins the courts to do away with 4 | Page technicalities and instead, should determine cases justly. Mindful of the above position, I order the respective application be amended to reflect the correct names of the applicant.

That said, the first point of objection is dismissed. On the second point of preliminary objection Mr. Alex raised the issue of improper citation of the applicable law, that is, section 41 (2) of the Courts (Land Disputes Settlements) Act,

2002. His argument was that subsection (2) of section 41 never existed until the amendment made through Act. No.2 of 2010. But that law being referred here is the one that have incorporated all the amendments including those introduced by Act. No.2 of 2010. I must, however, point out that, Mr. Alex seems to have taken issues with how the law has been cited. Admittedly, the applicant, a lay person cited the Courts (Land Disputes Settlements) Act, 2002, which was replaced by the Land Disputes Courts Act, ap. 216 R.E. 2019 ("the LCDA") through the Revised Edition 2019. However, by the time the present application was filed, the Revised Edition 2019 had not come into operations; and since subsection (2) of section 41 was introduced in 2010, the applicable section was section 41
- (2) of the present LCDA which is the same section to the previous Act. Now that the law has been revised, I think It would be in the interest of justice that the applicant, a lay person, is allowed amend the application to reflect the appropriate legal framework. In arriving at this conclusion, I am being guided by Article 107A of the Constitution of the United Republic of 5 1 P a ge Tanzania Constitution (1997) as well as section 3A of the Civil Procedure Code, Cap. 33 R.E. 2019. On another limb, it is not in dispute that the applicable sections cited are sections 41 (2) of the Courts (Land Disputes settlements) Act, 2002; s. 14 (1) of the LLA and Section 95 of the CPC. I think there was no need to cite the the LLA and the CPC while there was specific provision in the Land Disputes Courts Act, ap. 216 R.E. 2019 ("the LCDA")- In accordance with the section 46 of the LLA, as soon as a particular law provides for a limitation period, the provisions of the LLA ceases to apply. The section reads: "46. Where a period of limitation for any proceeding is prescribed by any other written law, then, unless the contrary intention appears in such written law, and subject to the provisions of section 43, the provisions of this Act shall apply as if such period of limitation had been prescribed by this Act" The appropriate section is therefore, section 41 (2) of the LDCA which provides: 41 (2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order: Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days. 6 | Page In the present case, since the inapplicable provisions were cited alongside the appropriate section of the law, I think the application remains valid. Although, this practice is discouraged as it resembles gambling. That said, the preliminary objections are overruled. The applicant is allowed to amend the chamber application to reflect the appropriate reference of the law and file the same within 21 days of obtaining certified copies of this decision. The application shall proceed to be heard on merits. No order for costs is made. It is so ordered. DATED at DAR ES SALAAM this 18th day of JUNE, 2021. 7 | Page

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