

TANZANIA / JUDGMENT

tarime district council vs josina company limited 4 others 2023 tzhc 21437 29 september 2023

COURT
TZHCDECIDED
29 September 2023

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IN THE HIGH COURT OF TANZANIA MUSOMA DISTRICT REGISTRY AT MUSOMA MISC. LAND APPLICATION NO. 43 OF 2023 (Arising from Misc. Land Application No. 11 of 2023, Misc. Application Nd. 270 of 2016, Misc. Application Nd. 21 of 2012 and Original Land Application No. 78 of 2009) TARIME DISTRICT COUNCIL..... APPLICANT
VERUS JOSINA COMPANY LIMITED.....
1stRESPONDENT MARIBA MARWA.....
2ndRESPONDENT STEPHEN
MUGORE.....3rdRESPONDENT
ALPHONCE KISIRI.....4thRESPONDENT
MWITA WANG'ENYI..... 5thRESPONDENT

RULING

14th & 2nd September, 2023 M. L. KO MBA, 3, Applicant herein through chamber summons made under Section 41 and 43 of the Land Disputes Courts Act, Cap 216 R.E 2019 and Section 79 of the Civil Procedure Code, Cap 33 R.E 2019 accompanied with affidavit of Goodluck Lukandiza, Principle State Attorney of the applicant applying for the following orders;

1. That this honorable court may be pleased to call for and revise the proceedings, decree, Judgment and orders of the district land and Page 1 of 16 Housing Tribunal in Land Application No. 78 of 2009, Misc Application No. 21 of 2021 and Misc Application No. 270 of 2016 to satisfy itself as to the correctness, legality or propriety of the same and revise them accordingly.
2. That, Honorable court proceed to quash, set aside and nullify Judgement, Order and Ruling dated November, 2011, 01 March 2012 and 14 February 2020 respectively.
3. Costs of this application to be followed. ■ The summary of the matter can be stated this way. That on 05/08/1988 the applicant herein writes a letter with reference Number TE/35/VOL.II/307 to respondents requesting them not to develop their land as the applicant intend to use that land for the public interest. Through the said letter applicants were promised to

be compensated a total of Tsh 74,215/= that was 1988. The promise was not honored despite the follow up done hence application No. 78 of 2009 was filed seeking the order. The District Land and Housing Tribunal for Tarime at Tarime (the tribunal) decided that the respondents be paid Tsh. 50,000,000/ within 60 days as compensation for their land. Applicants did not honor the Tribunal order whereby execution via Misc. Application No. 21 of 2012 was filed and was granted on 01/03/2012 that respondent to pay compensation for the tune of Tsh. 50,000,000/. (the Page 2 of 16 first Order). Applicant did not honor that order and the respondent faced the same Tribunal applying for execution via Misc. Application No. 270 of 2016 where on 14/02/2020 the tribunal vacate its previous decision about compensation and declared the respondents to be lawful owners of the disputed land (the second order) after it was alleged by the counsel for the applicant that she cannot pay compensation as the disputed land was returned to respondents. Applicant finds there is irregularity and illegality involved in this matter, knowing they are out of time, via Misc. Land Application No. 11 of 2023 this court grant them time to file application for revision. Here we are. During the hearing of the case Mr. Haruna Matata and Mr. Frank Kashumba learned state attorneys appeared for the applicant and Mr. Marwa Kasanta represented the respondents. Arguing for their application, learned State Attorneys submitted that in suit Application No. 78 of 2009 respondents were awarded compensation of Tshs 50,000,000/= and they again filed execution via Application No. 21 of 2012 where the Tribunal granted execution order for them to be paid Tshs 50,000,000/= as decree holders (herein respondents). Page 3 of 16 They proceeded that in 2016 respondents herein filed execution proceedings no. 270 of 2016 against decision of Application No. 78 of 2009 in that application respondents were declared owners. According to him, in the eyes of the law, Application No. 21 of 2012 and Application No. 270 of 2016 dealt with the same things as it emanates from application No. 78 of 2009. They lamented that the decision issued in 2016 under Application No. 270 of 2016 the issue of respondents to be lawful owners was not discussed at any stage, be it in original Application No. 78 neither Application No. 21 of 2012 under that circumstance he said the Tribunal erred by granting thing which is not in judgment. It was the argument of leaned State Attorneys that when respondents filed Application No. 78 of 2009 they sued Tarime Dsitric Council (Tarime DC) while the land was not under Tarime Dsitric Council by that time it was under Tarime Township Authority. They said the Tarime Township Authority was Gazetted under GN. No. 97 of 2007 and the certificate of establishment was issued. For that matter, it was their argument that Tarime Township Authority was the ones supposed to be sued. To justify their arguments, they cited S. 16 and 17 of the Local Government Authority Page 4 of 16 Act, of 1987 (the act) the township has capacity to sue and be sued and therefore, they said there is illegality when respondents herein file application No. 78 of 2009 and the Tribunal misdirected itself to entertain the matter. Under that circumstance, it was submission of learned minds that the decree was inexecutable as the Tarime District Council was not the owner of the disputed land due to the fact that by the time the suit was filed, Township Authority was already in operation since 2007. To justify their claim of illegality of orders issued by the Tribunal, the dual minds cited the definition of illegality from Blacks' Law Dictionary, 11th Ed at page 815 to mean as anything done contrary to the

requirements of the law. They said the Tribunal erred to issue two execution orders and both be intact. For that they pray this court to declared that judgment and orders are tinted with irregularity and set aside. Responding to the submission by the applicants' counsels, Mr. Marwa request this court to adopt joint affidavit deponed by Mwita Emmanuel and submitted that the source of this dispute is land acquisition which was done by Tarime District Council, the applicant herein when it failed to honour their promise as featured in their letter of 5/8/1988 with reference No. TE/35/VOL.II/307 and order of the court under Application No. 78 of Page 5 of 16

2009. On the issue of who was the right party to be sued, Mr. Marwa submitted that Respondents had issue with Tarime District Council and not Tarime Township so it is the applicant who promised to pay compensation. This being the land issue he said the Tarime Township Authority is not party to this land dispute. For that matter, counsel said under Order I of the Civil Procedure Code we cannot invoke the principle of joinder or non joinder of parties as the matter cannot be dismissed for that reason. On the issue of existence of double orders of the tribunal, Mr. Marwa pray this court to read the order in Application No. 270 of 2016 at page 4 where he finds that the Chairman of the tribunal vacated his previous order and issue another order that respondents are lawful owner and directed that if anybody wants the land there must be fair and prompt compensation. He insisted that the power of executing court is large in order to make sure the decree is satisfied. In justifying why there is two orders on execution, the counsel for the respondents submitted that in the year 2012 when the tribunal issued a decree, the applicant did not honour the order then respondents went back to the tribunal claim for their rights. In order to understand the matter thorough, he requests this court to read page 2 of the ruling in Misc Page 6 of 16 Application No. 270 of 2016 where the applicant was represented by Mr. Alex Ifunya, the State Attorney who informed the court that decree holders are use and occupying the land and therefore they (applicants) cannot pay them compensation. He even requests the Tribunal to visit the locus in quo. The Tribunal confirmed the submission by State Attorney Ifunya. That was the base of executing court to vary its order of payment of Tshs 50,000,000/= and decide to depart from it and order the respondents to remain in their land. Mr. Marwa was of the position that there is no intact order neither irregularity on the decision of the Tribunal. Mr. Marwa complained that this application is delay of time from respondents to benefit from their land whereby applicant wanted to drag the land from respondents illegally. In his view this application is incompetent because the revision application against Land Application No. 78 of 2009 is time barred as application for extension of time which is Application No. 11 of 2023 did not include Application No. 78 of 2009. According to the Law of Limitation Act, Cap 89 part III Item 21, he said the application was supposed to be filed within 60 days. It was his submission that the decision which applicants wants to be revised was issued on 2012, Page 7 of 16 the sixty days were already lapse and therefore is supposed to be dismissed under S. 3 of Law of Limitation Act. Moreover, he submitted that the application is premature as is filed as an alternative to appeal. In case No 78 of 2009 parties were the same and is the one who bring

application for revision. He said it is trite that revision is not for everyone until there is special circumstance then revision can be filed. His argument was supported by the decision in Halais Proken vs. Wela AG (1996) TLR at 269 and Moses Mwakibete vs. Editor of Uhuru & 2 Others (1995) TLR 134 where court provide circumstances for revision to be opted including blockage by judicial process. Counsel insisted that the application at hand lacks elements that render applicant to file revision and not an appeal. Mr. Marwa complained of forum shopping on the side of applicant as there was Misc. Civil Application No. 58 of 2012 where applicant was applying for extension of time to appeal, he said that show applicant is making a forum shopping which is contrary to the law. He insisted that the decision of the Tribunal was not disputed by parties but it is the applicant who wants to benefit over the respondents' land. It Page 8 of 16 was his opinion that in the circumstance this court finds the two execution orders were given illegally, it has to deal with orders alone and leave alone the decision by the Tribunal so that respondents can have time to execute their decree as they have never enjoyed their land since 2012. He finally prayed the application to be dismissed with costs. By way of rejoinder, Mr. Matata State Attorney submitted that the main application was instituted in 2009 and by that time the Tarime Township Authority was in existence. He insisted that the order which was issued in 2016 did not address other orders but chairman write about prayers and the whole ruling does not refer its previous order in 2012 that why he said the two orders are still intact. About the quotation by Mr. Alex Ifunya, the State Attorney who represented Tarime District Council in the cases he said that State Attorney was not a proper party to the suit and was not correct as the land was under Tarime Township Authority. About spearing the Application No. 78 of 2009 he informed this court that the said application has been referred and that ruling in Misc. Land Application No. 11 of 2023 at page 9 this court grant time for revision without specifying application and therefore according to him the application is competent before this court. When they Page 9 of 16 want to file an appeal they were blocked by judicial process that's why they opted for this revision as there are illegalities and there are two orders. I find am subjected the contending arguments of the trained minds for both parties to proper scrutiny. The issue for determination is whether the application has merit. I will start with parties to this application, State Attorney complained that by the time the suit was filed there was in existence of the Tarime Township Authority and that the disputed land is located with the Township Authority. Mr. Matata (State Attorney) even submitted the certificate of establishment in justification for its existance. Mr. Marwa who represented respondents was of the submission .that source of dispute is land acquisition which was done by the respondent and from the cited letter with reference No. TE/35/VOL.II/307 is evidenced that the dispute started years back before the suit was filed and as analysed by the Chairman of the Tribunal. Respondents did no sleep over their rights till 2009 when they filed application. Application No. 78 of 2009 was prosecuted by the Mr. Patrick Muhere, a solicitor in the office of the applicant and among the issues raised during hearing of the said Application, none of them was about contesting that applicant herein to be not properly sued in the said Page 10 of 16 land matter. The same happened while Misc. Application No. 270 of 2016 was heard, the applicant herein

was represented by Mr. Alex Ifunya, the State Attorney who informed the Tribunal that decree holders are using and occupying the land and therefore they (applicants) cannot pay them (respondents) compensation. Mr. Ifunya too did not raise the issue of proper party neither wrong party. This makes me to visit my statute, specifically the Evidence Act, Cap 6 R. E 2019 under section 123 thus; '123. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed, in any suit or proceedings between himself and that person or his representative, to deny the truth of that thing.' Action of Mr. Patrick Muhere and Mr. Alex Ifunya to make appearance in Land Application No. 78 of 2009 and Misc. Application No. 270 of 2016 and represented applicant without any objection, permitted respondents to believe that they sued a proper party and therefore applicant is estopped from claiming that she is and was not a proper party as there was in existence Tarime Township Authority. If at all that position is true in any how, am asking my self why did applicant appeared and participated in the Page 11 of 16 hearing of application while knowing he is not part to. I find this argument is afterthought and less of merit. Turning to the main issue, Application No. 78 of 2009 which is the base of all other orders as it is where the respondents were ordered to be paid compensation. As rightly argued by Mr. Marwa, application for revision was supposed to be filed within 60 days as provided for under Cap 89. In normal eyes the referred application is by far time barred as per cited law. However, Learned State Attorneys submitted that time were enlarged via Misc. Land Application No. 11 of 2023 which was before my Brother Hon. Mtulya, J. I had time to read the referred ruling. Page 9 it reads; 'In the present application, the record is dear and receive the support of the attachment of the dual complained orders and submission of learned minds of the parties. In principle, the teamed officers agreed that there are dual distinct execution orders emanates from one similar judgement of the tribunal in the application. In such circumstances,the record of tribunal be invited in this court through enlargement of time to have scrutinized for proper record and justice of parties.' From the excerpt above, the gist of application in Misc. Land Application No. 11 of 2023 was existence of dual orders tracing its root from similar Page 12 of 16 judgment. It is my finding that the time was enlarged so that this court can scrutinize the dual execution orders and not otherwise. Mr. Marwa for respondent submitted that application is premature as is filed as an alternative to appeal and so far as the revision is not for everyone till there is special circumstance to allow that, while referring the case of Halais Proken vs. Wela AG (supra), being no special circumstance then application may be dismissed. The dual learned informed this court that the process of appeal was blocked by court process when extension of time was denied that is why they opted for revision. I agree with learned minds of State Attorneys that by precedent supplied under this issue, denial of extension of time was court process which block the appeal and therefore revision was correct path. It is now time to discuss the dual orders as complained by applicant. It is in record that respondents were awarded compensation of Tshs 50,000,000/= and they have filed execution via Misc. Application No. 21 of 2012 where the Tribunal granted execution order for them to be paid Tshs 50,000,000/= as decree holders. Applicants did not honor order of

the tribunal since 01/ 03/2012 till 2016 when the second execution application was filed. Page 13 of 16 During hearing of Misc. Application No. 270 of 2016, Mr. Ifunya not only informed the tribunal that decree holders (herein respondents) are using their land and the execution has been taken by event but also invited the Tribunal to visit the disputed land where it was found as acknowledged at page 2 of the ruling that tribunal visited the locus in quo and find that there are more that 50 houses. The learned State Attorney in Misc. Application No. 270 of 2016 declared that the execution has been taken by event as respondents were in occupation of their land. Being so informed, Chairman of the Tribunal noted that the land in dispute has already returned back to respondents and rule out at page 4 that; '...compensation will be applicable only if persons right to land has been deprived or there is acquisition of that land. As In our current situation the judgment debtor declines to take the land from the decree holder, to order her to pay compensation will totally be unfair.' Practically, the first order was taken by event as submitted by applicant that respondents have occupied their land. These words were uttered by a solicitor in the office of the applicant. How can they say that order is intact while they informed the Tribunal that the order was taken by event as Page 14 of 16 respondents have posses their land. I find applicant are denying respondents from enjoying their land just as submitted by the Mr. Marwa. It is true that the second order did nor denounce the first order and therefore in eyes of law there are two orders from the same judgment. This is irregularity which need to be rectified, .the application. Vyas filed under section 41 and 43 of Cap 216 and I find this court has powers under section 43 thus; 43 (1) (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). From the analysis and as prayed by both learned minds represented parties, I hereby nullify and set aside order and ruling dated 01/03/2012 (the first order) and order and ruling dated 14/02/2020 (the second order) and I hereby maintain Judgment delivered on 08/11/2011 emanated from Application No. 78 of 2009. Due to the circumstance of this case, I make no order as to costs. Page 15 of 16 It is accordingly ordered. DATED at TARIME this 29th day of September 2023. hi' M. L. KOMBA Judge Ruling within Tarime District Court premises before Mr. Frank Kashumba, State Attorney and Advocate Marwa Emmanuel for the applicant and respondents respectively. (W M. L. KOMBA Judge 29 September, 2023 Page 16 of 16

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