IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT ARUSHA

PC CIVIL APPEAL NO. 22 OF 2015

(Originating from an Appeal from the ruling of Arusha District Court in Misc Civil Revision No. 26 of 2014 Ruling delivered on the 22nd day of July, 2015 at Arusha District)

PAULO LOTOROVUKI.....1ST APPELLANT
NAFTALI LOGILAKI.....2ND APPELLANT

VERSUS

SIMON LUCAS.....RESPONDENT

JUDGEMENT ON APPEAL

S.M MAGHIMBI,J:

This is an appeal against the Ruling of the District Court of Arusha at Arusha in Misc. Civil Revision No. 26/2014, the same originating from Civil Case No. 184/1999 at Enaboishu Primary Court. The ruling of the District Court followed an application by the respondent herein for the District Court to call and examine the records, particularly the decision of Enaboishu Primary Court Civil Case No. 184/1999 dated 28th August, 2014 for purpose of satisfying itself as to the correctness, legality and propriety of the said decision. In its ruling, the District Court partly allowed the application hence this appeal by dissatisfied appellants. In their memorandum of appeal, the appellants lodged three grounds of appeal that:

1. The District Court Magistrate erred in law and fact by overturning the Primary Court decision passed by Honorable Mongi that the appellants be given the disputed pieces of land after respondent failed to compensate them in time.
2. The District Court Magistrate erred in law and fact by nullifying the decision of the Primary Court passed by Honorable Mongi to fixing the time limit of compensating appellants in which reality respondent failed to comply and the appellant were given disputed pieces of land through court order.
3. The District Court Magistrate misdirected herself in law and fact by its opinion that it is on arrangement of parties on how to compensate each other considering trial court decision that the other should release the land and another one to compensate the same without considering time frame set out by the same trial court.

The appellants prayed that this appeal is allowed with costs. Upon agreement by the parties and by an order of this court, the matter was heard by way of written submissions. Before I embark on determination of this appeal, the brief background of the matter is hereby narrated.

The brief background of the matter before hand is narrated. The main issue of contention that led to execution orders subject to District Revision dates back to the year 1998 when the respondent herein successfully sued four people namely Edward Meuti, Loleji Lejaki, Paulo Lotorovuki (the first appellant herein) and Naftali Loliǵaki (the second appellant herein) vide Civil Case No. 184/1998 at the Enaboishu Primary Court. The suit was for

the recovery of a piece of land measuring eight acres. The Judgment of the Primary Court was delivered on the 22/06/2000 in favour of the respondent herein who was then plaintiff. Subsequent to that decision, the appellants have made several attempts to challenge the decision both before the District Court of Arumeru ("Arumeru DC") and this Court. They include Arumeru DC Civil Appeal No 45/2000, Arumeru DC Misc. Appln. No. 28/2004 High Court Misc. Civil Appeal No. 09/2005 to name a few.

The Arumeru DC Civil Appeal No 45/2000 was dismissed on the 31/07/2003 and on 24/09/2003, the respondent herein lodged an application for execution at the trial Primary Court. The appellants herein and the other defendants in the original suit were ordered to hand the suit land to the respondent herein, a process which was executed through the office of the District Commissioner, Arumeru. The executing officer was the Ward Executive Officer of Olturotu Ward whom in the presence of all the Applicants, duly carried out the execution of the trial primary court judgment, reporting back the executing court by his letter Ref. No. AM/OLT/ARM/MAL/II/86 of 21st January, 2004. Subsequent to the said execution, the appellants herein filed a Misc. Civil Application No. 28 of 2004. During the pendency of the Misc. Civil Application No. 28 of 2004, on 30th April,, 2004, the Respondent deposited TShs.26,000/= to the trial court following an order of the trial court in its judgment, money which was received by the applicants on 21/5/2004 and signed in trial court's record acknowledging receipt. Eventually in the year 2014, an application for execution was again filed at the Primary Court before Hon. Mongi, PCM and

the orders passed thereon have given rise to the appeal at hand after having been revised at the District Court.

Submitting on the first ground of appeal, the appellants submitted that the District Magistrate erred in law and fact by partly revising the primary court decision which gave the Appellants right to own the disputed piece of land after the Respondent failed to compensate them in time limit set by the court. They argued that the primary court magistrate weighed the fact that the Respondent herein never disputed the issue of compensation to the Appellants but failed to compensate them. That since the Appellant ought to release the land to the Respondent, and Respondent should compensate the plaints which existed in the suit land, the 12,992,000/= for Paulo Lotorovuoki. That it was also clear from the records that the Appellants were ready to handle over the disputed land to the Respondent after been compensate the given amount as from public surveyor as the compensation and handling over need to be done in the same time. They hence argued that the District Magistrate grossly erred in law and fact when she partly revised the proceedings by Enaboishu primary court by failing to consider that it was Respondent who failed to prove that the Appellants have failed to release the disputed land for him to compensate them.

The appellants submitted further that the Enaboishu primary court was right on setting time frame for the Appellants to be compensate and failure to it they acquire ownership of the suit land. That there was no sense of having courts of law if the verdict will not be final and conclusive binding the parties hence the order that the Appellants had to be compensated in

30 days failure of which they will acquire ownership of disputed land and not left within the parties themselves to decide.

On the second ground of appeal, the appellants submitted that the District Court Magistrate erred in law and facts by nullifying the decision of primary court by **Honourable** Mongi to fixing the time limit for compensating the Appellants within which the Respondent failed to comply and the Appellants became the owners of the disputed piece of land by courts order. They submitted further that at this juncture, the pertinent questions is whether the primary court was wrong setting time limit for compensation taking into account the Respondent has neglected to compensate the Appellants since 1999. They argued that the primary court as presided by Honorable Mongi made a careful and bold verdict of setting time frame of the Respondent to compensate the Appellant failure of which the disputed land will be handled to the Appellants. That since the Respondent failed to comply with court decision, Enanboishu primary court being court of law and temple of justice ought to set time limit otherwise the suit will take forever taking into account the aspect of Justice delayed is Justice denied. That the court being temple of Justice is constitutionally entitled to and have power to make sure the suits come to finalization and ends without unnecessary delays and cited the maxim "**rei publicae ut sit finis litium**" which means the interest of the general public requires that there must be end to litigation.

On the third ground of appeal, the appellants submitted that the district court Magistrate misdirected herself in law and facts by partly revising the Primary court verdict basing in its opinion that it is on arrangement of

parties on how to compensate each other considering trial court decision that the other should release the land and another one to compensate the same without considering time frame set out by the trial court. That looking on the District court opinion on the said revision that it is on arrangement of parties on how to compensate each other, it rendered essence of having the court of law to be useless. Further that to leave the matter to parties themselves to make arrangement on how to compensate themselves leaves no significances of having the court of law which can give decision binding the parties. The appellants argued that the opinion of the District Magistrate is unenforceable as parties might take forever if the court of law didn't play its constitutional role of deciding cases and finalize the matter taking into account the Respondent failed to compensate the Appellants since 1999. Further that the District Magistrate ought to know that the court of laws are supposed to give decisions which are final and conclusive which will bind the parties and not give the reasoning and verdict which hangs in the air and not conclusive. The appellants hence prayed that the decision of the District Court is revised and this court make an order that the suit property belongs to the Appellants as the Respondent failed to compensate them in time limit as set by court and that the cost of this appeal be borne by the Respondent

In reply, Mr. Lawena submitted started with the appellants' first ground of appeal that the District Magistrate grossly erred in law and fact by overturning the primary court's Decision passed by Honourable Mongi that the Appellants be given the disputed pieces of land after the respondent failed to compensate the appellants in time. He started by praying that this

Honourable court revisit the decision of the trial primary court in Civil Case No. 184 of 1999 whereby in its judgment dated 22nd June 2000, it was decided as follows:

> *"Wadaiwa waachie shamba la boma wenye boma wagawane na kama wakigawana wadaiwa wafidiwe mimea yao yote na wakishindwa wadaiwa wabaki na mashamba yao, ila mimea waliyopanda baada ya kesi kuwa mahakamani haifidiwi mdai amepaswa kurudisha gharama za kuhamisha Mahakama walizotoa wadaiwa shs.26,000/="*

He submitted that the Defendants in that case are all deceased except the second appellant herein. He submitted that the Defendants in the trial Primary court were supposed to release the suit land to the then plaintiff, the Respondent herein, so that he could distribute the same to the members of the "Boma" who would pay compensation to the then Defendants. Any plants that were planted after he matter had been filed in court were not to be compensated. Further that in his decision, Hon. O.M. Mongi – Primary court Magistrate overturned that decision while there was no proof that the Defendants released the suit land to the Plaintiff.

Mr. Lawena submitted further that the purported valuation did not indicate the plants that were compensated and that is why the Respondent herein applied for the revision of the decision of Hon. O.M. Mongi – Primary Court Magistrate as it violated the decision of his fellow Magistrate. On the Appellants' argument that Hon. O.M. Mongi Primary Court Magistrate had the power to overturn the decision of his fellow Magistrate, his reply was that the argument has no merits and that the decision of the Appellate

Magistrate cannot be faulted. He concluded that the 1st ground of appeal has no merits and we pray that the same be dismissed.

On the second ground of appeal that Hon.O.M. Mongi Primary court Magistrate was correct to set time limit within which to be compensated, Mr. Lawena submitted that this claim has no merits. He argued that the Appellants had to prove if they complied with the decision of the trial primary court as they were supposed to prove that they have released the suit land to the Respondent's "Boma" so that the same is distributed to the members of the "Boma" before being compensated. He insisted that in the decision of the trial court, the Appellants were supposed to prove that the suit land had been released to the Respondent's Boma. The purported valuation report had to show clearly that the value done was for the plaints planted before Enaboishu primary court Civil case No,184 of 1999 had been instituted. Failure to do so makes the said valuation report to be useless. That Hon.O.M.Mongi Primary Court did not put into consideration the decision of his fellow Magistrate and thus his decision was a nullify and the first appellate Court correctly nullified that decision.

Mr. Lawena submitted further that this matter has a long history because the decision of the trial Enaboishu primary court was challenged at Arusha District court as Civil Appeal No.45 of 2000 and the appeal was dismissed. That the Appellants herein appealed to the High Court of Tanzania and their appeal was dismissed and that they also filed in this Honorable court Miscellaneous Civil Appeal No. 09 of 2005 praying for stay of execution of the decision of the trial primary court and their application was also dismissed and the Appellants were advised to follow the decision of the

trial Enaboishu primary Court. He hence argued that the delay to be compensated by the Respondent was caused by the Appellants themselves. That they failed to handover the suit land to the Respondent's "Boma", a condition set by the trial court. Further that the Respondent could not grab the suit land against the decision of the trial Primary Court and that the decision of the Appellate District Coot in Civil Revision No.26 of 2014 cannot be faulted.

The contention in this appeal is the execution process of the decree of the trial primary court. The appellants are mainly challenging that which is to be executed as ordered by the District Court in Civil Revision No. 26/2014 which is a subject of this appeal. The issue here is whether or not the orders passed by Hon. Mongi, PCM are valid in the execution of the decree. As stated earlier, the conclusion of the Civil Case No. 184/1999 was on the 21st January, 2004 when execution was done and the on 30th April, 2004 when the respondent deposited the money he was ordered to pay by the trial court. However, on the 28/08/2014, Hon. O.M. Mongi, PCM made a decision "Uamuzi Mdogo" which re-opened the dispute all over and has resulted to the cheos before me. She came up with her own version of the dispute. The introductory para of her decision read:

> *"Katika shauri hili iliamuliwa na Mahakama ya Mwanzo na pia Mahakama Kuu kuwa mdai katika shauri hilo awafidie wadaiwa kwenye shauri hili, mimea iliyoko shambani"*

Owing to this, I have gone back to peruse through the whole of the records of this appeal and discovered that this is the third time that this matter comes before this court. It came as Misc. Civil Appeal No. 09/2005

originating from Arusha District Court Misc. Civil Application number 28/2004 the same basing on Arusha District Court Civil Appeal No. 45/2000. This was an appeal from the appellants herein application for stay of execution. This Court dismissed the application on the ground that the execution sought to be suspended had long been carried out.

There was also lodged another appeal, Misc. Civil Appeal No. 09/2005, which was appealing against a District Order that dismissed the appeal for being res judicata. . The High Court subsequently dismissed the appeal before it in favor of the respondent herein. Then there was a subsequent Misc. Civil Application No. 28/2006 which was seeking for injunctive orders and the application was struck out for reasons that the application has been overtaken by events, referring to the determination of the Misc. Civil Appeal No. 09/2005.

Subsequent to that there was (PC) Civil Appeal No. 15/2010 which was filed by the 2nd appellant herein against the appellant. The appeal was marked withdrawn on the instance of the 2nd appellant. There was also Misc. Civil Application No. 120/2011 and Misc. Civil Application No. 96B/2009 by another defendant in the main case, not any of the appellants herein, both the applications were dismissed for want of prosecution. It did not end there, came Civil Revision No. 2/2014 which was an inspection note against the second appellant who had filed a fresh suit against the respondent herein and the court directed the District court to call for and examine the records of the suit filed at Primary Court, Civil Case No. 105/2004 and the execution process thereto.

Having perused the decisions in all those cases, I have failed to see where Hon. Mongi got the audacity to hold that the High Court ordered that the respondents are compensated over and above what was ordered by the trial court. It was due to the erroneous observation by Hon. Mongi that he assumed the mandate to order a fresh valuation of the plants that are in the disputed land fourteen years after the decision. The learned magistrate totally failed to consider the facts and history of this dispute while making his decision. For instance, in considering how much the appellants should be compensated, he was duty bound to take into consideration the length of time that the respondent was entitled to the land from the decision of the court to the time when he made his order which I found unjustifiable and illegal. For instance, the reason why the execution was not done to date is squarely the fault of the appellants herein hence there was no flicker of reason that the compensation of the appellants should be in the current rate.

Furthermore, there was no any justification for him to have given the respondent only one month to compensate the appellants in that magnitude of the amount of money. Worse enough the dispute that has been pending before the court for more that was pending before the court for 16 years before he made that controversial decision is the fault of the appellants herein. More important so, the decision of the trial court was delivered in the year 2000 that would have formed the basis of the valuation of the plants because for every year that the plants appreciate in value, it was due to the appellant's endless and fruitless litigations they have been lodging.

My further perusal of the records show that on 21/01/2004, the Ward Executive Officer of Olturoto Ward reported back to the Arumeru District Commissioner vide his letter Ref. No. AM/OLT/ARM/MAL/II/86 that the execution of the Order of the trial court in the main Civil Case No. 184/1998 was done after he handed the disputed land to the respondent herein on the 16/01/2004. He was giving feed back to the District Commissioner of the execution of his order vide a latter with ref No. DC/ARUM/J.10/2/XXI/55 dated 23/12/2003. This letter elaborated what was contained in the disputed land and it included trees, coffee plants and banana plants. There was also maize belonging to the then 1st defendant who prayed for time to harvest. The map drawn thereto showed some properties of the 2nd appellant. What I see here is that the appellants want to realize a fantasy of being in unlawful possession of someone's land and still be awarded more than Tshs twelve million for it, indeed that dream may happen in the fantasy world but not in the courts of law.

Further perusal of the records of appeal revealed that on the 09/09/2004 there was a valuation done on the part of the farm occupied by the 2nd respondent and was done professionally by the Village Executive Officer Ilkirevi Village Council, the total value that the respondent was to compensate the appellant was Tshs 2,569,807. I have failed to see why this did not form the basis of compensation of the 2nd respondent's piece of land and instead, ten years later he is unjustifiably condemned to pay the same person, over the same piece of land, a sum of Tshs. 12,922,000/- accrual of which is the fault of the side to compensated. Hon. Mongi also failed to respect the decision of the High Court in Misc. Civil Appeal No.

09/2005 which was an appeal from the appellants herein application for stay of execution, had he read the judgment therein he would have seen that this Court dismissed the application on the ground that the execution sought to be suspended had long been carried out. For him to come and make the decision he made not only did violate the decision of his fellow Primary Court Magistrate, but was in total disobedience of the decision of the High Court.

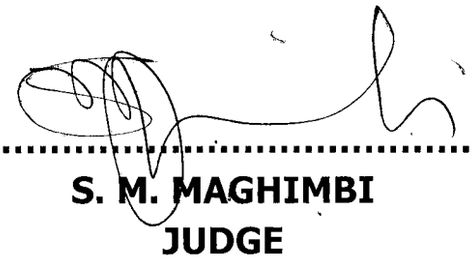
Having made those findings, I hereby invoke my revisional powers, vary the decision of the District Court by quashing and setting aside the decision of Hon O. M. Mongi PCM as he went ahead and made a subsequent decision he had no mandate to make. I further order the appellants herein to immediately release the suitland to the respondent before they can be compensated. The compensation of the appellant shall not in any way be according to the valuation made by Hon. Mongi. Since the appellants have been wondering from one court room to another without success, the fault of the delay in compensation cannot be imposed to the respondent herein but on themselves. Furthermore, since on the 16/01/2004 the execution was done after the disputed land was handed to the respondent herein, the appellants are only still in occupation of the Suitland because contrary to the decision of the trial court, they refused to vacate the Suitland which was handed to the respondent way back in the year 2004. Hence if anything, the appellants have been in unlawful occupation of the Suitland since 2004 when the same was handed to the respondent by the Ward executive officer.

Therefore the valuation done by the "Afisa Kilimo/Mifugo on the 09/09/2004 for food crops and on 11/10/2004 for forestry plants and witnessed by the 2nd appellant Naftali Logilaki which ordered the appellants to be compensated a total sum of Tshs. Two million, five hundred and sixty nine, eight hundred and seven thousands (Tshs. 2,569,807/=) SHALL BE the amount to be paid by the respondent herein to the appellants. He cannot be condemned to pay the appreciated value which has no basis for something which was never his fault. The compensation shall be made within six months ***AFTER*** the appellants have handed over empty possession of the suitland to the respondent as ordered by the trial court magistrate in 2000. The appellants shall pay the costs of this appeal and the costs of the revision at the District Court.

That said, I find the appeal devoid of merits and is consequently dismissed with costs as prescribed above.

Appeal Dismissed

Dated at Arusha this 09th day of August, 2018



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S. M. MAGHIMBI

JUDGE