

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND REVISION NO. 06 OF 2020

(Originating from Application for Execution No. 26 of 2014 before the District Land and Housing Tribunal for Arusha at Arusha)

ONESMO T. L. METILI.....APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF CHAMA

CHA MAPINDUZI.....RESPONDENT

RULING

21/10/2021 & 20/01/2022

GWAE, J

In the District Land and Housing Tribunal for Arusha at Arusha (DLHT), the respondent filed execution application vide Application No. 26 of 2014 whose order was issued on 24th August 2020 against the present applicant, Onesmo T. L. Metili who was ordered to demolish and remove all his fixtures erected in the suit land and vacate the said premises within fourteen (14) days from the date of the order.

Initially, the applicant was the respondent in the original land dispute and the respondent was the applicant. Through ex parte judgment entered on the 19th October 2016, the applicant was accordingly ordered to pay the outstanding rent to the tune of Tshs. 9,800,000/= and to vacate the suit land, demolish and remove all his fixtures erected thereto. This was followed by an application for extension of time to set aside ex parte judgment, which was nevertheless dismissed for want of merit.

The records are further to the effect that, during hearing of the application for execution the applicant through his wife prayed to have the matter settled out of the court, it is further evident that the applicant had settled the outstanding rent, even the respondent has acknowledged the same through his counter affidavit that, the applicant/judgment debtor paid the decretal sum by installments as ordered by the tribunal. However, no deed of settlement was filed in the tribunal despite several adjournments to allow the applicant to finalize the preparation and signing of the same, consequently, on 24/08/2020 the tribunal issued an order that the applicant to demolish and remove all his fixtures erected in the suit land within fourteen (14) days from the date of the order and failure to comply with the

order, the court broker appointed by the tribunal was to proceed enforcing the respondent's decree.

It should also be noted that throughout the hearing of the application for execution, the applicant herein was reported to be sick by his wife Mrs. Anna Onesmo who appeared on his behalf.

It is now the allegation of the applicant that, the tribunal issued an order for the applicant to vacate the suit land without considering the ongoing amicable settlement between the applicant and the respondent. The applicant further contended that, the tribunal issued the order without affording the applicant right to show cause as to why execution should not be issued.

When the application was called on for hearing before me, the applicant appeared in person while the respondent was represented by advocate Haruna Msangi.

Supporting the application, the applicant merely adopted the contents of his affidavit and went further to state that he was not accorded right to be heard when the tribunal issued an order for him to vacate the suit land

nor did the tribunal consider the developments effected by the applicant thereat.

Mr. Haruna on the other hand contended that the deed of settlement had not been filed in the tribunal and that it was the applicant himself who failed to make appearance to the tribunal and therefore it was his fault justifying the tribunal to issue the eviction order.

In his rejoinder, the applicant stated that, it is true that the deed of settlement had not been filed in the tribunal because it was not signed and more so he submitted that, his absence was because of his serious sickness and that on the material date his advocate attended to the tribunal but was late for only five minutes.

Having briefly outlined what transpired in the Tribunal and in this application, I will now determine one issue, notably; whether there was illegality in the issuance of the eviction order without according the applicant right to be heard.

As stated herein above, in this application the applicant is basically complaining on the issuance of the eviction order without considering the ongoing settlement and without according him right to be heard. The records

in this case are so clear that the parties opted to have the matter settled out of the tribunal followed by various adjournments that is November 2018 to 24yh August 2020. It is further evident that in the course of settling the matter the applicant paid the amount that was ordered to be paid. The respondent's counter affidavit also supports this assertion as it is stated at paragraph 5 of the counter affidavit that the applicant/judgment debtor paid the decretal sum by installments as ordered by the tribunal. However, despite the fact that it is undisputed that the decretal sum was satisfied by the applicant, yet no deed of settlement was filed in the tribunal as proof that the matter had been settled by the parties for the matter to be marked as settled. In the absence of a filed deed of settlement or oral parties' admission of full settlement, the tribunal had no any proof that the matter was settled in order to mark the matter as settled or to give other orders.

It should also be recollected that, in the main suit, the ex parte decree was to the effect that the applicant to pay the outstanding rent of Tshs. 9,800,000/= and also to vacate from the suit land to demolish and remove all the fixtures erected thereat. As there were two orders given by the tribunal and in this case, it was the payment of the of the outstanding rent

that is said to have been settled therefore this court finds that the tribunal was justified to have given the complained eviction order as it did.

Coming to the question as to whether the applicant was accorded the right to be heard by the tribunal. From the records it is clear that throughout the hearing of the application for execution the applicant herein never entered appearance except one Mrs. Anna Onesmo who introduced herself as the wife of the applicant and that the applicant was very sick. In the proceedings as reflected by the records the said Mrs. Anna appeared before the executing tribunal representing the applicant so to say but there are no reflections as to whether the said Mr. Anna Onesmo had obtained a power of attorney to legally represent the applicant in the said application. A power of attorney is known to be a formal instrument by which one person empowers another to represent him or act on his behalf for certain purposes as per Order III Rule 2 (a) of the Civil Procedure Code Cap 33 Revised Edition 2019.

In the absence of a power of attorney to the said Anna Onesmo was not made a party to the case. I alive that the right to be heard is fundamental principle of natural justice nevertheless, this court is of the belief that, the applicant herein had knowledge of what was being transpiring in the tribunal

during execution of the respondent's decree through his wife who was regularly attending the tribunal's sessions that is why he was able to settle the outstanding rent. More so, litigation of this particular case ought to have come to an end.

In the upshot, the applicant's application is dismissed as no material error in the impugned order by the Hon. Chairman, in the circumstances of this matter, I find just and fair to refrain from making an order as to costs.

It is so ordered.




M. R. GWAE
JUDGE
20/01/2022