

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

SHINYANGA

LAND REVISION NO. 4 OF 2020

(Arising from Land Application No. 16 of 2020 and Miscellaneous Application No. 93 of 2020 In District Land and Housing Tribunal for Kahama at Kahama, Hon. Lekamoi, Chairman)

JANE JULIUS AYALL.....1ST APPLICANT

JULIUS AYALL.....2ND APPLICANT

VERSUS

DEO WILLIAM HABI.....1ST RESPONDENT

MOSHI ZEPHANIA ZEPHANIA.....2ND RESPONDENT

RULING

26th Sept & 5th Oct 2022

Nongwa, J.

Jane Julius Ayall and Julius Ayall, herein after to be referred to as 1st and 2nd applicants respectively, parents of the 2nd respondent, filed an application for revision praying for the court to call for and inspect the correctness of the record of the proceedings in land application no. 16 of 2020 and Miscellaneous Application No. 93 of 2020, District Land and Housing Tribunal for Kahama at Kahama. The respondents in this application are Deo William Habi and Moshi Zephania Zephania herein to be referred to as 1st and 2nd respondents respectively.

The application has been made under section 41, 43(1) (b) and (2) of the Land Dispute Court Settlement Act, Cap 216, R.E. 2019 and section

95 of the Civil Procedure Code Act, Cap 33 R.E 2019 supported by the affidavit of the two Applicants which has been countered by the 1st respondent only.

The applicants have been represented by the learned counsel, Mr Benedict Pius Chang'ambwe from Jamhuri and Company Advocates of Dar es salaam while the 1st respondent has been enjoying the representation of the learned counsel, Mr. Wilson Magoti Exq. The applicants' prayers before this court are for the orders that I quote as they are;

- i. This court to call for and inspect the correctness of the record of the proceedings in land application no. 16 of 2020 and and Miscellaneous Application No. 93 of 2020 In District Land and Housing Tribunal for Kahama at Kahama, (Hon. Lekamoj, Chairman) and revise the proceedings and make such decision or order therein as it may think fit.*
- ii. The status quo be maintained and attachment of the suit property Plot no. 463 block G Busoka Street, Kahama stayed pending determination of the instant application.*
- iii. Costs to be borne by the respondents,*

In a nutshell the background of this application as noted from the records of the tribunal are that; Deo William the first respondent had successfully sued the second respondent Moshi Zephania Zephania who is alleged to be the daughter of Jane and Julius Ayall through an ex-pate judgment in Land Application no. 16 of 2020. In that application the issue was on ownership of the suit property a house located at Busoka plot no. 463 block G which he claimed to have purchased on 25th November 2019 from the 2nd respondent, Moshi Zephani Zephania. The evidence that was

received by the Trial tribunal were two sale agreements one showing Moshi Zephania Zephania had bought the plot from one Benadetha Kafula Mtangi on the 28th April 2019 and the second showing sale of the said plot to the 1st respondent in the application at hand.

Surprisingly, the parents of Moshi Zephania Zephania, who are the applicants in the present application for revision, in their affidavits, have deponed and attached a sale agreement showing that on the 28th April 20219 Jane Julius bought the same plot from the same person who is alleged to have sold the same to Moshi Zephania Zephania the daughter of Jane Julius Ayall as per affidavit of the 1st applicant she bought the said plot in joint efforts with 2nd applicant and constructed a house for their daughter to live in after the place she used to live being attacked by floods. Upon obtaining an order for vacant possession, that is when it came to the knowledge of the applicants that their house has been affixed with eviction order, hence this application for revision that was filed on the 10th August 2020 and the applicants managed to secure the second prayer on the same date before Hon. Mdemu J. who ordered the status quo to be maintained pending hearing of the application for revision.

Being a land revision matter, I have gone through the cited provision and in particular section 41 and 43 (1) (b) and (2) of the Land Dispute Court Settlement Act, Cap 216, R.E. 2019 and for clarity I wish to reproduce the same here;

'41.-(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

43.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-

(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional 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.

(2) In the exercise of its revisional jurisdiction, the High Court shall have all the powers in the exercise of its appellate jurisdiction.'

Section 95 of the Civil Procedure Code Cap 33 R.E.2019 also empowers the court to give any necessary order for the interest of justice, it states;

'S. 95. Nothing in this code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the end of justice or to prevent abuse of the process of the court.'

When the matter came for hearing, the learned counsel for the applicants Mr. Pharles Malengo, submitted that the applicants had filed an objection proceeding objecting the house that they bought and the one which the 2nd Respondent who is their daughter was residing, they lodged an objection proceeding objecting their house being handled to first Respondent.

That after the application being filed, there happened irregularity that was not normal, the objection proceeding was not determined at all and from the proceedings of the tribunal of 28/07/2020 in Misc. Application No. 93/2020 which shows that decree holder who is first respondent prayed for eviction order and the tribunal issued the eviction order, appointed the court broker to evict the 2nd Respondent. That despite that the tribunal discovered that there is objection proceedings filed, it continued to execute while stating that the 1st Respondent was part in the objection proceedings. The Irregularity is on the 1st order, of appointing Mkasswa Court Broker to evict the 2nd respondent from the house and handle the same to Decree holder but on the second order the Tribunal, recognizes that the 1st Respondent should not develop or demolish the house pending hearing of application No. 101 of 2020. The counsel for the applicants added that, the tribunal, after being aware of the objection proceedings, was not supposed to order for eviction or appoint Court Broker until objection proceedings is heard.

He referred the position in the case of **Katibu Mkuu, Amani Fresh Sports Club vs Dodo Umbwa Mamboya and another TLR 2004** page 326 where the court stated that where an objection is made to the attachment of any property, the court is bound to investigate the claim or objection.

The Counsel also invited the court to the case of **Ms. Sykes Insurance Consultant Co. LTD VS Ms. Sam Construction Co. LTD Civil Revision No 8 of 2010** at page 16, where the Court referred Order XXI Rule 57 (2) of the Civil Procedure Code. Therefore, it is the position of law that upon objection proceeding being filed, the court had to stop execution proceeding until the objection has been determined. In that view tribunal was wrong to handle the house to 1st respondent before

determining the objection proceedings that had been filed. To date the objection proceeding has not been determined. I therefore pray this court to state that for Kahama District Land and Housing Tribunal issuing eviction order, while there is an objection proceeding lodged, is material irregularity that has brought major miscarriage of justice by denying the Applicants right to be heard.

Mr. Pharles Malengo insisted that it is the position of law that where any decision of the court or anybody giving a decision on a matter that other people have interest, that the court has to hear those people who are interested parties. That land application No. 16 of 2020 is the main case that gave rise to Misc Land application No.93/2020 and the problem is with this application No. 95/2020. He prayed for the court to exercise its powers under the cited provisions to nullify the proceedings of Kahama District Land and Housing Tribunal in Miscellaneous Application No. 93/2020 in which the court should determining the objection proceedings first and all orders given to that effect be nullified and order that the objection proceedings be determined before another Chairman for the interest's justice, and costs be borne by the respondent that is all your honour.

In reply, the learned counsel Mr. Wilson Magoti for 1st respondent, argued that, the case of **Ms. Sykes Insurance** and that **Katibu Mkuu** (supra) are total distinct from what is in the case at hand. That in those cases, it is dealing with sale of the house, and court broker was to sale the house while in the case at hand is to evict the J/Debtor.

Objection proceeding that is being refereed has no connection to this case, the Tribunal issued eviction order and maintained the status quo since the parties had an application at the tribunal of which the status

is unknown. The applicants do not explain the status of the objection proceedings as of now.

The counsel insisted that it is the position of the law that those who are not party to a case would not have gotten chance to be heard in that matter for they are not parties to case. That it was proper if they submit that they were not party to the case and have now filed objection proceedings showing that they are interested party instead of submitting as if they were party of the land Application a thing which has not been stated. They were not party to land application No. 16 and 93/2020, through the application, the 1st applicant in this application Jane Ayall says she is a mother to second Respondent wife to 2nd respondent is on the owner of the suit land and as part of Matrimonial properties but the application is distinct from what the counsel have submitted. In the application at hand Applicants seems to have interest on the property handed to the 1st respondent, they have attached the sale agreement. Those evidence adduced do contradict itself by saying that the one who sold to them was benedicta, while in the agreement it shows Benadeta Kafula Mtagi and not Benadicta as per his evidence. The applicant also brings up issues that the property is matrimonial arguments that are not involved in the matter before the court. The counsel argued further that the two applicants do not deserve any qualification of being interested party. In short, most of the argument by the respondent's counsel were directed to the objection proceedings as if this court was now hearing the objection proceedings.

I have gone through the records in land application no. 16 of 2020 and Miscellaneous Application No. 93 of 2020, District Land and Housing Tribunal for Kahama at Kahama, and found that the applicants concerns

begin from the orders of tribunal during execution of the decree, Miscellaneous Application No. 93 of 2020 where the tribunal appointed the court broker to evict the Judgment debtor while was aware that there is pending objection proceedings emanating from the said execution proceedings. As stated by the counsel for the applicants, the court stated that where an objection is made to the attachment of any property, the court is bound to investigate the claim or objection. This is also the position in the cited cases of **Katibu Mkuu, Amani Fresh Sports Club** and **Ms. Sykes Insurance Consultant Co. Ltd** (supra) and the law is very clear that upon objection proceeding being filed, the court had to stop execution proceeding until the objection has been determined. These cases are not distinguishable to the scenario we have now as stated by the respondent's counsel, sale, or attachment are just among modes execution of which a decree holder would wish to seek for assistance of the court.

OXXI 57.- rule (1) of the CPC, provides that;

Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other respects, as if he was a party to the suit:

Provided that, no such investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed.

In the present case, the tribunal received the objection proceedings from the applicants and is yet to determine the objection proceedings that had

been filed by the applicants. It is evident from the orders in miscellaneous Land application no. 93/2020 where the tribunal appointed the court broker to evict the judgment debtor but not to demolish or dispose the house pending hearing of the application no. 101/2020 in which the applicants here are the parties.

Even the applicant's counsel admit that the applicants were not parties to the two cases and that is why they to lodge objection proceeding which to date has not been heard so they decided to come to the High Court to challenge the execution No. 93/2020 by way of Revision so as they can be heard by the lower tribunal.

Obviously, the applicants derive their locus in these issues through the objection proceedings they filed at the tribunal, the same is yet to be determined, it could be proper if they wait for the tribunal to hear the objection proceedings. Otherwise, the parties are strangers as they have no locus even to file this revision.

I therefore find that the application for revision has no merits, the application is dismissed with costs.

It is so ordered.

Dated and delivery at this 5/10/2022




V.M. Nongwa
Judge
5/10/2022