

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC LAND APPEAL NO. 40 OF 2023**

**IMELDA SELESTINE BULYOTA.....APPELLANT**

***VERSUS***

**JUMA YUSUPH MSUMI.....RESPONDENT**

**JUDGMENT**

26/09/2023 to 29/09/2023

**E.B. LUVANDA, J**

This matter has had a chequered history, litigants have been lingering in Tribunal and Court corridors since the inception of Land Case No. 136/2011 at Kunduchi Ward Tribunal over Plot No. 02 Block "G" Tegeta, which was decreed in favour of Imelda Selestine Buliyota (the Appellant herein) and Juma Yusufu Msumi (Respondent herein) was ordered to demolish his structure including to accord vacant possession. That was on 25/03/2013.

This verdict sparked a series of causes as hereunder listed:-

1. Misc. Application No. 162/2016 execution proceedings initiated by the Appellant where the Respondent entered appearance on 08/06/2016,

thereafter went missing thereby on 04/07/2016 the Tribunal warranted execution to proceed.

2. Misc. Application No. 301/2016 for extension of time before the Tribunal, was dismissed on 21/03/2017 for a delay of four months to file the extension from when the Respondent alleged become aware of the judgment of the ward Tribunal.
3. Misc. Land Application No. 296/2016 for stay of execution at the Tribunal, dismissed on 28/03/2017, for a technical defect that the Respondent cited Bunju Ward Tribunal instead of Kunduchi Ward Tribunal.
4. Misc. Land Application No. 612/2017 stay of execution.
5. Misc. Land Application No. 576/2017 Land Division, for extension of time, struck out on 15/12/2017 for wrong citation.
6. Misc. Land Application No. 1136/2017 Land Division for extension of time against Misc. Application No. 301/2016, it was granted on 17/12/2018.
7. Land Appeal No. 200/2018 Land Division, struck out on 07/06/2016 for it being incompetent cited Land Appeal No. 102/2016 instead of Misc. Land Application 301/2016.

8. Misc. Application No. 1035/2021 Tribunal, for extension of time against the decision dated 25/03/2013 of the Ward Tribunal, dismissed on 11/11/2021 for delay of seven years, and for being res judicata.
9. Misc. Application No. 114/2022 Tribunal for execution of Ward Tribunal decision.
10. Misc. Application No. 160/2022 Tribunal for stay of execution, where on 16/02/2023 the Tribunal quashed the proceedings of the Kunduchi Ward Tribunal in Land Case No. 136/2011 and set aside the judgment dated 25/03/2013, on account that the erstwhile chairman of the Kunduchi Ward Tribunal made an affidavit dated 05/03/2020 deponed that by the time the alleged judgment was delivered on 25/03/2013, the Kunduchi Ward Tribunal was not existing, for it was extinguished and banned by the Counsellor and Ward Executive Officer as per a letter dated 01/08/2012 attached to the affidavit, and that his signature appearing therein was forged. In view of that, Ms. Amina Macha learned Counsel for Applicant Respondent herein) moved the Tribunal to quash the judgment dated 25/03/2013. The learned Chairman entertained this prayer made vide an application for stay of execution.

The Appellant is aggrieved by that cause taken and the verdict of the Tribunal, hence preferred this appeal on the following grounds:-

1. The District Land and Housing Tribunal of Kinondoni lacked jurisdiction to determine, quash and set aside the proceedings and judgment of the Kunduchi Ward Tribunal in Land Case No. 136 of 2011 without an actual appeal, a remedy if sought was/is time barred.
2. The District Land and Housing Tribunal of Kinondoni erred in law for invoking section 34(1)(c) of the Land Courts Disputes Act [Cap 216 R.E. 2019] in nullifying or quashing and set aside proceedings and judgment of the Kunduchi Ward Tribunal in an application for stay of execution.

Mr. John Ray Gamaya learned Counsel for Appellant submitted that the Tribunal lacked jurisdiction to quash and set aside the proceedings and judgment of Kunduchi Ward Tribunal in Land Case No. 136/2011 without an appeal, which in all remedies available to the Respondent the matter was time barred. He submitted that the Tribunal ought to observe and determine if was clothed with jurisdiction to try and determine the controversy or dispute before it. He cited the case of **Juma Yusuph Msumi vs. Imelda Selestine Bulyota** Misc. Land Application No. 576/2017. He submitted that the Tribunal lacks jurisdiction to determine a time barred action. He cited the case of **Tanzania Revenue Authority vs. Tango Transport Company Ltd**, Civil Appeal No. 86/2009 CAT. He submitted that the

Tribunal entertained the matter which was time barred without leave. He submitted that all attempts made by the Respondent to apply for extensions of time were fruitless. He submitted that an attempt made by the Tribunal to entertain and grant the orders subject of appeal, was to bypass court procedures to properly prosecute and challenge the Kunduchi Ward Tribunal decision, arguing it was illegal and abuse of court process.

Ground number two, the learned Counsel submitted that section 34(1) of the Land Courts Disputes Act, Cap 216 R.E. 2019 invoked by the Tribunal caters for appeal matters only especially during hearing the appeal, making inquiries, considering the records and receiving additional evidence, shall sit with two assessors. He faulted the Tribunal for invoking it in an application for stay of execution, to quash and set aside proceedings and judgment of the Kunduchi Ward Tribunal in Land Case No. 136/2011, argued it being improper and erroneous. He submitted that, the rule is that parties are bound by their pleadings, arguing that the Tribunal ought to confine to the chamber summons and affidavit before it.

In reply, Capt Ibrahim Mbiu Bendera learned Counsel for Respondent combined the first and second ground of appeal and submitted that the grounds are baseless, based on a wrong premises, argued that the case filed

before the Tribunal Misc. Application No. 114/2022 was an application for execution which caused the Respondent to file Misc. Application No. 160/2022 to stay the execution pending the intended appeal which was received by the Tribunal but was not admitted due to non availability of the Kunduchi Ward Tribunal judgment from Land Dispute No. 136/2011. He submitted that the ruling of the Tribunal is clear that the affidavit of Midufu Mussa was not the basis of the ruling, it was on the irregularity of Kunduchi Ward Tribunal having only one woman member contrary to section 11 of Cap 216 which require not less than four members or eight members whom three shall be women. He submitted that section 34(1) (c) of Cap 216 was correctly used from powers conveyed to the Tribunal by section 36(1) (c) and (2) Cap 216 which empower the Tribunal to examine the record of proceedings of the ward Tribunal for the purpose of satisfying itself if proceedings have contradicted any law. He submitted that the Tribunal had adequate jurisdiction to conduct revision by taking judicial notice of the judgment of Kunduchi Ward Tribunal before giving orders of execution or stay under section 34(1)(c) of Cap 216. He submitted that under section 36(2) Cap 216, the Tribunal has all powers conferred to it in the exercise of appellate jurisdiction.

It is common ground that Misc. Application No. 160/2022 where the impugned order or decision made on 16/02/2023, was an application for stay of execution of Misc. Application No. 114/2022. On its ruling dated 16/02/2023, the learned Chairman did not make it precisely whether was sitting an appellate Tribunal or exercising revision powers. For another thing at the first paragraph the learned Chairman prefaced on what Mr. Midugu A. Mussa deponed in his affidavit on 05/03/2020 that the impugned judgment was illegal, because the Kunduchi Ward Tribunal was abolished. On the second paragraph the learned Chairman stated to have gone through the judgment of the Kunduchi Ward Tribunal, and found that only one lady sit as a member instead of three ladies, and termed it as irregularities and thereby quashed the proceedings and set aside the judgment, purporting to invoke the provisions of section 34(1) (c) Cap 216. Surprisingly on the drawn order, the reasons for quashing proceedings and setting aside the judgment were explained, I quote,

**"AMRI**

*Maombi yamekuja leo kwa ajili ya uamuzi mbele ya Mhe.*

*J.W. Silas Mwenyekiti, Baraza la Ardhi na Nyumba,*

*Kinondoni.*

***AMBAPO:*** Tarehe 25/03/2013 Baraza la Kata la Kunduchi lilitoa uamuzi ambao umepingwa na Mwenyekiti wa Baraza hilo kipindi hicho ndugu MIDUGU A. MUSSA kupitia kiapo chake cha tarehe 05/03/2020 ambapo alieleza kwamba Baraza lake halikutoa hukumu hiyo kwasababu Baraza hilo lilikuwa tayari limeshavunjwa wakati hukumu hiyo batili inaandikwa;

At paragraph four of the purported affidavit, the deponent Midugu Amiri Mussa, stated, I quote,

*"Leo nikiwa ofisini kwa Capt. IBRAHIM Mbiu Bendera ambaye ni wakili wa Bw. Juma Yusuph Msumi amenionesha inayodaiwa kuwa ni hukumu ya Baraza la Ardhi la Kata ya Kunduchi iliyotolewa tarehe 25 March, 2013.*

To my opinion, this paragraph alone without going to the contents of other paragraphs, ought to be a ground for the learned Chairman to approach this affidavit with utmost care and disregard or disqualify it ab initio. This is because the decision maker alleged to have appeared in the office of the Counsel of the Respondent, no explanation were given as he appeared by chance, exdentally or was officially summoned



or by courtesy, let alone the consideration behind making such an affidavit. If the deponent was smart enough and was confident with what he deponed, why he did not relay those information to the District Land and Housing Tribunal personally. At paragraph five, he allege that his signature is forged. To my understanding procuring a Tribunal judgment by forgery, is a serious allegation, but no statement was forthcoming from the learned Chairman who entertained it or the deponent if the alleged forgery was reported to any nearest police station for the culprits to be indicted.

Importantly, upon receiving this affidavit, why the Chairman did not take time to contemplate to initiate revision proceedings for purpose of conducting an inquiry to satisfy to the a genuiness or otherwise legality or correctness of the impugned judgment. This is because the judgment of Kunduchi Ward Tribunal was signed by four members and the Secretary, surprisingly only the chairman made an affidavit, and there is no explanation regarding the whereabouts of other three members and the secretary. In the affidavit the deponent did not say if the rest members and Secretary, also their signatures were forged, neither asserted that the rest members and Secretary are potential culprits for fraud and forging his signature. This is because in the affidavit, the

purported chairman of the Ward Tribunal disowned his signature alone and said nothing regarding other members and the Secretary.

Why the learned Senior Counsel for Respondent did not take initiative to visit or assign a junior lawyer at the defunct Kunduchi Ward Tribunal or Kinondoni Municipal Council to establish the factual ground regarding tenure and functionality of Kunduchi Ward Tribunal. Why the learned Counsel instead led the purported chairman of Ward Tribunal alone to visit at his office. To my view this matter has gone beyond adjudication, rather borders ethical issues. Why the alleged geniuses of signatures, closure of the Tribunal are raised in 2020 after expiry of seven years indeed after all efforts and attempts to challenge the impugned decision is almost getting stuck.

On its order, the learned Chairman cited the provision of section 34(1) (c) Cap 216, as enabling provision to the cause taken. However, as alluded by the learned Counsel for Appellant, that provision is all about making an inquiries where necessary during hearing of an appeal where the Tribunal must sit with assessors. Herein there was no any pending appeal before the Tribunal and the Chairman was sitting alone. The alleged appeal said to be stuck at admission stage for alleged the

judgment of the Trial Tribunal is missing, is a misleading argument because the said judgment is attached to the application for stay. Even if the appeal is underway at admission stage, the same is invalid for want of leave to file it out of time, therefore the Tribunal could not make any order based on invalid proceedings before it.

At any rate it was a serious misdirection and fatal error on the part of the learned Chairman to entertain an argument of the learned Counsel for Respondent who abandoned her cause of stay, instead sneak to bypass the procedures, recourse and proper forum for appeal or revision, and allowing it. To my view quashing proceedings and setting aside the judgment for lower Tribunal vide an application for stay, is a brand new remedy unknown to the world of civil procedure and rules.

In fact, no superior court can condon or tolerate such a practice and conduct. Litigants are given a free advise to follow procedures available for seeking appropriate redress at a given time instead of shortcut which are always temporary. That said, the ruling and drawn order dated 16/02/2023 cannot let to stand anylonger.

It is a brogated and nullified as if it never existed. The appeal is allowed with costs.



  
E.B. LUVANDA  
**JUDGE**  
29/09/2023

Judgment delivered through visual court attended by Capt Ibrahim Bendera learned Counsel for Respondent and Mr. John Ray Gamaya learned Counsel for Appellant.



  
E.B. LUVANDA  
**JUDGE**  
29/09/2023