

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MISC. LAND APPLICATION NO. 43 OF 2023

(Originating from Land Application No. 11 of 2023 before Hon. Kahyoza

DR which emanates from Land Case No. 05 of 2014)

MOHAMED ALLY ABRI OBJECTOR

VERSUS

DR. ANTONY AMBILIKILE NSOJO 1ST RESPONDENT

STANSLAUS AMBILIKILE NSOJO 2ND RESPONDENT

FAMARI INVESTMENTS (T) LTD 3RD RESPONDENT

RULING

Date of last order; 14/12/2023

Date of ruling: 06/03/2024

NGUNYALE, J.

For the easy of determination of this application I wish to start by stating briefly the historical back ground of this matter which is to the effect that; Dr. Antony Ambilikile Nsojo and Stanslaus Ambilikile Nsoja hereinafter referred to as the 1st and 2nd respondents filed Land case No. 43 of 2023 in this court against the third respondent FAMARI INVESTMENT (T) LTD seeking a declaratory order that the suit land which is located at Chimbuya

Village was the property of the 1st respondent. The third respondent in her defence stated that he was not the owner of the suit land, he was a mere tenant who rented the same from the objector, it was wrong for him to be sued in claiming ownership. The matter went to full trial, upon completion of the trial the matter was decided in favour of the 1st respondent. The 1st respondent was declared the owner of the suit land and the existing certificate of title be cancelled. The Registrar of titles was ordered to rectify the Land Register and insert the name of the 1st respondent as the rightful owner of the plot while the 3rd respondent was to vacate from the suit land.

The applicant MOHAMED ABRI complained that the suit land was his property and he was issued with title deed in 2015, he has been condemned in Land case No. 05 of 2014 without being heard. He filed Land Case No. 7 of 2019 against the 1st and 2nd Defendants. The suit was struck out by this court (Utamwa, J) for being incompetent because the applicant did not implead necessary parties i. e the alleged vendor of the land to him and the authority which allocated land to him or issued him with title deed. He could not file a new suit according to law instead he came with the present application per Section 48 (1) (e) and 95 Order XXI

Rule 57 (1) and (2) of the Civil Procedure Code Cap 33 R. E praying for the following orders; -

- 1. This court may be pleased to grant order to respondent to stop on proceeding with execution without the involvement of the applicant who is the owner of the property.*
- 2. This Court may be pleased to order that the Land Case No. 05 of 2024 was filed wrongly due to the fact that the registered owner, the Commissioner for Lands, and District Authority was not joined in the case as necessary party.*
- 3. This Honourable court be pleased to order that the 3rd respondent had no locus stand to the land in dispute and he cannot take the position of the owner in alternative.*
- 4. The court be pleased to order that the execution in un maintainable for non-joinder of the owner and the allocating authority in Land Case No. 05 of 2014.*
- 5. Any other relief(s) this court may deem fit and just to grant.*
- 6. Costs of this application.*

The application was supported by an affidavit sworn by Mohammed Ally Abri the applicant in which he deponed that he is the lawful owner of Plot No. 03 Block A Chimbuya, Mpemba Urban Area, Certificate of title No. 33483 MBYL Mbozi District. On 26th June 2023 he was served with an application for execution No. 11 of 2023 between the 1st and 2nd respondent versus 3rd respondent for a demand of payment of 320,000,000/= and the named plot. The plot which they subjected to execution was his land and after reading the proceedings which he received from the 3rd respondent he discovered that event the

respondents were aware that he was the owner of the land in dispute but none of them bothered to join him in the case.

He deponed further that 3rd respondent was just a tenant and he was not having any power to represent the objector in any form. In the order against the 3rd respondent in Land Case No. 05 of 2014 he was denied a right to be heard by the 1st and 2nd respondent for not joining the objector while knowing that he was the owner of the property in dispute. The 1st respondent filed a counter affidavit in which he deponed that the application had no legal legs upon which to stand because it contravenes the order of this court dated 30th July 2020 (Utamwa, J) in Land Case No. 7 of 2019 where the objector was supposed to file a new case and implead the necessary parties. His claims in this application could easily be resolved in a new case. The third respondent in the counter affidavit supported the application in its entirety that the 1st and 2nd respondent knew very well that the suit land was the property of the objector who was not a party to Land Case No. 05 of 2014.

Having read thorough the application and the supporting affidavit, I find that the applicant as if needs this court to correct its own decision in Land Case No. 05 of 2014 the move which is illegal. This court has no jurisdiction to rule that the applicant is the owner of the suit land. The

issue of ownership was determined in Land Case No. 05 of 2014. The fact that Land Case No. 05 of 2015 was heard and determined by this court, this same court cannot turn and rule that the matter was wrongly registered for lack of impleading necessary parties as pressed by the applicant. All the prayers of the applicant touch and concern the jurisdiction of this court, this court has no jurisdiction to grant. The court is not ready to act without jurisdiction to challenge its own decision in Land Case No. 05 of 2014 as ruled on 21st December 2017. The court of appeal has several times warned the Judges of the High Court to fault fellow judges by acting as appellate authority. This was the position in the court of appeal case of **John Barnaba Machera vs North Mara Gold Mine Limited**, Civil Appeal No. 204 of 2019 Court of Appeal at Mwanza (unreported) prohibited judicial officer of the same rank to act as appellate court to another judicial officer that;

"We say so because, had it been that the successor Judge abided by the order made by the predecessor Judge,This was not compatible with a sound policy to avoid multiplicity, duplicity and endless ligations. It is settled principle that litigation must come to an end - see: Abdon Rwegasira v. the Judge Advocate General, Criminal Appeal No. 5 of 2011 (unreported). Three, this was a misdirection of the successor Judge who sat as an appellate Court over the decision of his fellow Judge of the same court which was, with respect, irregular."

Guided by the above authority, this court is not ready to fall in the trap of correcting its own decision as decided by a fellow judge of similar rank in the ladder of justice.

I therefore agree with the 1st respondent that the best option to challenge Land Case No. 05 of 2014 was by filing a new case as suggested in Land Case No. 07 of 2019 on 30th July 2020 otherwise to appeal to the Court of Appeal of Tanzania.

The only remedy which I can grant at this stage is the remedy which will protect the interest of the applicant who seem to have title deed over the suit land in order to uphold the interest of justice at the meantime.

The facts of the case persuade this court to believe that execution of the decree in Land Case No. 05 of 2014 directly touches the direct interests of the applicant and the third respondent. Guide by the principle that justice must have eyes and those eyes must look fairly I am convinced to rule that no execution shall take place without the involvement of the applicant who has direct interest over the subject matter. The subject matter I am speaking about is Plot No. 03 Block A Chimbuya, Mpemba Urban Area, Certificate of title No. 33483 MBYL Mbozi District.

Consequently, the application is granted to the extent that no execution proceedings shall be done in Land Case No. 05 of 2024 without the

involvement of the applicant who has interest to the subject matter Plot No. 03 Block A Chimbuya, Mpemba Urban Area, Certificate of title No. 33483 MBYL Mbozi District. Order accordingly.

Dated at Dar es Salaam this 06th day of March 2024.



D. P. Ngunyale

Judge

06/3/2024

Ruling delivered this 6th day of March 2024 in presence of Mr. Victor C. M. Mkumbe learned Counsel for the 1st and 2nd Respondents and Shaban Mtung'e for the applicant linked vide video conference from Mbeya High Court.



D. P. Ngunyale

Judge

06/3/2024

