



IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

LAND CASE REVISION NO. 2 OF 2018

*(Arising from Appeal No. 43 of 2017 of DLHT for Karagwe at Kayanga, original Civil Case
No. 69 of 2016 of Mabira Ward Tribunal)*

DEOGRATIAS KWEYAMBA -----APPLICANT

VERSUS

NICODEM GRATION-----RESPONDENT

RULING.

1/11/2020 & 27/11/2020

KAIRO, J.

The application before me is for prayers to examine the records of the District Land and Housing Tribunal (hereafter the DLHT) for Karagwe proceedings in Appeal No. 43 of 2017 arising from Mabira Ward Tribunal land Case No. 6 of 2016 for the purpose of satisfying itself as to the correctness, legality or propriety of the proceedings and the decision delivered on 7/12/2017. The Applicant further prays for any other relief this court would deem fit to grant and further, the cost be provided for.

The application was preferred under Section 43 (1) (B) of the Land disputes Court Act No. 2 of 2002, Cap. 216 of 2002. As usual, the application is supported by the affidavit sworn by the Applicant. Both parties are self-represented. The Respondent has refuted the prayers for revision by the Applicant arguing the same to lack merit.

The Respondent has also raised a point of Preliminary objection when filing his counter affidavit to the effect that this court has no power to entertain the application for revision over the Tribunal's decision order which is appealable. However, when invited for oral submission on 6/10/2020 to amplify the same, the Respondent prayed to withdraw the P.O raised and proceed with the hearing of the revision. He therefore prayed for an order to have it disposed by way of written submission. The court granted both prayers after receiving no objection from the Applicant. By consensus of both parties, a schedule to file the written submission was drawn and the parties abided with accordingly to which I commend them.

In his affidavit and written submission to amplify what he has deposed, the Applicant started by giving a brief background of the dispute whereby he contended that in year 2008, the Respondent herein instituted case No. 37 of 2014 against one Marco Kamala at Mabira Ward which ended in favor of the Respondent. That following the said decision, the Respondent applied for execution but the said execution was carried against the land of the Applicant who was not a part to the suit nor a party to the execution proceedings. The Applicant went on to submit that upon discovering of the said misnomer that the land attached by the Respondent wasn't the one decreed/ordered by the tribunal, the he instituted suit No. 16 of 2016 against the Respondent so as to

recover the land wrongly given to the Respondent to own. He further contended that the suit was filed before Mabira Ward Tribunal which issued the executed order. However, before determination of the matter, the suit file was transferred to Karagwe DLHT un-procedurally without any notice to the Applicant. He further submitted that sometimes on 1/10/2016, the Mabira Ward Tribunal formed a special committee to verify the correctness of the execution carried out to satisfy the decree in Land Dispute No. 37 of 2015 between Nicodem Gration the Respondent herein and Marco Kamala. The committee discovered that the land in dispute between the Applicant and the Respondent in this case wasn't the one to be attached by the Respondent during execution. The Applicant attached the said report by Mabira Ward Tribunal as "annexture D" praying the court to refer it as part of his application (*sick*).

The Applicant went on to submit that he was denied an opportunity to be heard by the DLHT when the suit was transferred to Karagwe DLHT which he argued to be against the principles of natural justice as well as Article 13 (6) (a) of the constitution of the United Republic of Tanzania 1977. He contended that this court has Jurisdiction to determine this matter pursuant to Section 43 (1)(a) and (b) of Cap. 216 RE 2002 (*supra*) quoting in verbatim what the section stipulates. He further argued that the act of the DLHT to order the transfer without complying to the procedures and the attachment of the property which wasn't a subject matter in land dispute No. 37 of 2015 infringed the Applicant's constitutional right guaranteed in Article 24(1) of the constitution which guarantees ownership of a property and protection thereto. He added that, in his view, his legally owned property shall be protected by

the orders of this court which he is seeking the court to grant. He concluded his submissions by praying the reversal of the DLHT's decision otherwise he stands to suffer an irreparable loss together with his family.

In his reply, the Respondent started by raising objections (PO) to the effect that this application for revision is not properly before the court as it was filed out of time prescribed by law. According to him, the law requires an application under the CPC, the MCA or other written Law for which no period of limitation is provided by Law of Limitation, to be filed within sixty days adding that the same was provided under item 21 of the schedule of the Law of Limitation Act cap. 89 RE: 2019. He further contended that, the decision which the court is invited to revise was delivered on 7/12/2017 and the application or revision was filed on 6/2/2018, about 62 days from the Judgment date. Thus, this application ought to be dismissed under Section 3(1) of the Limitation Act Cap. 89 RE: 2019. He cited the case of **Tanzania Rent a car Ltd vrs Peter Kimulu; Civil Application No. 226/01/2017** CAT at Dsm (unreported) to support his argument.

The Respondent raised another P.O to the effect that the application is improper and incurably defective for being preferred by a person who had a right to appeal, as he was an applicant in Civil Case No. 6 of 2016 at Mabira Ward Tribunal and a Respondent in Appeal No. 43 of 2017 at the DLHT for Karagwe and cited the case of **Adamu Majura & Another vrs Maulid Amuli Land revision No. 6 of 2013** BKB HC-(unreported). Wherein the court observed; *"the situation under which the remedy for revision can be availed is where there is no remedy for appeal and further that application or revision cannot be used as an alternative to an appeal---"*.

The Respondent further attacked the Applicant for spending much time discussing the Civil Case No. 37 of 2014 which is not the subject matter for this revision, arguing that the Applicant was to apply for objection proceedings in the executing court and not to file a fresh suit at Mabira Ward as he did. The Respondent further criticized "annexture D" titled "*kuhakiki Eneo la Ardhi yenye Mgogoro baina ya wadaawa Deogratias Kweyamba vrs Nicodem Gration*" attached to the written submission as an evidence which he argued to be un procedural and cited the case of **Tanzania Union of Industrial and Commercial Workers (Tuico) at Mbeya Cement Comp Ltd vrs Mbeya Cement Co. Ltd and Another** [2005] TLR 41 at Pg 48. Which held "*---It is now settled that, a submission is a summary of arguments. It is not evidence and cannot be used to introduce evidence. In principle all annextures, except extracts of judicial decisions or textbooks, have been regarded as evidence of facts. Their annexture to submissions has been condemned ---, where there are such annextures, they have to be expunged from the submission and totally disregarded ---and shall be ignored*". He thus prayed the court to take that stance by expunging the document and ignore it.

The Respondent also refuted the contention that the DLHT for Karagwe ordered for the transfer of Civil Case No. 6 of 2016 to itself without complying to the proper procedure contending the argument to be cooked lies and with no truth. He wandered on the said contention since the matter the Applicant seeks to revise is Land Appeal No. 43 of 2017 which was preferred by the Respondent at the DLHT and both parties attended as per typed order of 7/12/2017. He insisted that this court has no jurisdiction to determine this

matter due to the pointed-out anomalies above. Besides, passing, through the Applicant's affidavit and his written submission, there is no any illegality or irregularity pointed by the Applicant in Case No. 6 of 2016 and Appeal No. 43 of 2017 which is subject to this application; instead the Applicant is arguing on Civil Case No. 37 of 2014 which is not the subject matter in this application whereby the remedy for the said case was to apply for the objection proceedings which he never exhausted. He concluded by arguing that this application is misplaced, misconceived and bad in law for being maliciously filed and stands as an abuse of the court process and prayed the same be dismissed with cost.

In his rejoinder the applicant submitted that the argument that the application was filed out of time is vague and misleading arguing that both section 22(4) of the MCA (supra) and cap. 216 provides the revision proceedings to be instituted within the period of 12 months. He added that the Applicant filed this application not more than 3 months after receiving the Judgment documents, as such the argument is not correct and the Law of Limitation doesn't apply.

Reacting to the argument that an application for revision cannot be used as an appeal, the Applicant argued that both are remedies provided by law which the court has the mandate to determine. He added that he decided to file for revision to invite the court to satisfy itself on the correctness, legality or propriety of the proceedings and the decision delivered on 7/12/2017.

Regarding the argument that the Applicant was to file objection proceedings, the Applicant dismissed the same contending that he wasn't aware of the execution proceedings as he wasn't a part to the suit concerned.

Further that he got the information concerning the attachment of his property when instituted the trespass suit No. 6 of 2016 at Mabira Tribunal. He thus concluded that his argument is misleading. The Applicant also insisted that the attack by the Respondent to address/talk on Civil Case No. 37 of 2014 is misleading as well as this is the case which resulted to wrong/unlawful execution. He reiterated his prayer to have his prayers granted to alleviate the loss he would suffer.

After going through the parties' affidavit and counter affidavit together with the written submissions for and against the application, the main issue for determination before the court is whether the application for revision is meritorious.

Before going into the *nitty gritty* of the application, the court found it imperative to address the points of preliminary objections raised by the Respondent in his written submission.

First, I wish to point out that generally point of Preliminary Objection need to be preceded with notice [Refer the case of **Joseph Obeto vrs Ali Suleiman Khamis; Commercial Case No. 16 of 2006** (unreported)]. The purpose is to avoid taking the other party by surprise. Nevertheless, despite the absence of the notice, the court will address them all the same having in mind that the points go to the root of the matter if proved as they have the effect of ousting the Jurisdiction of the court.

Starting with limitation wherein the Respondent has argued that the matter was filed beyond the time limitation provided under item 21 of the schedule of the Law of Limitation Act Cap. 89 RE: 2019. Suffice to state that, the matter at hand has originated from the Ward Tribunal (Mabira), as such the Law of Limitation Act (*supra*) is not applicable in such matters with much respect.

In his second P.O which the Respondent argued that the Applicant was to institute an appeal and not revision which contention was refuted by the Applicant, I wish to point out that this P.O was formerly raised but later on 6/10/2020 when the Respondent was invited to amplify the same, he withdrew it. It is surprising that he has again raised the same in his written submission. However, the court wish to address the same as hereunder:

In his application, the Applicant has invited the court to examine/inspect the proceedings and determine whether or not there has been errors material to the merits of case subject to impunity involving injustice and make necessary orders as it deems fit. The said orders may either have the effect or revising the proceedings or not. In my understanding, the provision under which this application is brought, confers the mandate to this court to make revision regardless of whether the right to appeal exists provided there is an error material to the merit of the case involving injustice. As such the section goes beyond Jurisdictional issues. Thus, the Respondent's interpretation of section 43 of Cap. 216 is a misconception with much respect. I am aware that he cited the case of **Adam Majura (*supra*)** but the same being a High Court case is not bound to this court. Thus this P.O. has no merit as well.

The Respondent has attacked the annexing of "exhibit **D**" to which I join hands with. Being an improper procedure as rightly argued by the Respondent, this court hereby expunges the said exhibit off the court record.

The Respondent has also argued that the Applicant was required to file objection proceedings in the circumstances of this case. I concede that objection proceedings would have been the correct action to take. However, the question is whether the Applicant knew the existence of the execution proceedings. The Applicant throughout has contended that he wasn't aware of the execution proceedings, but became aware of it when he went to file a trespass claim against the Respondent at Mabira Ward when the execution was already finalized.

The contention wasn't countered by the Respondent and the record doesn't show otherwise. In those circumstances, the court is inclined to agree and resolve that the Applicant wasn't aware of the execution proceedings as he contended.

Having found that all of the raised P.O to have no merits, I now revert to proceed determining whether the decision of the DLHT subject to impunity consist of any error material to the merits of the case that involved injustice to warrant the grant of the prayers in this application.

As earlier alluded, the records reveal that the matter originated at Mabira Ward Tribunal as case No. 6 of 2016. However, the record is silent with regards to the finality of the case at Mabira Ward. According to the Applicant, the file was called by the DLHT and cited as Appeal No. 43 of 2017. To the best of my knowledge; it is the legal stance that appeal emanates from the

decision which disposed/determined the rights of the parties. The record of Mabira Ward doesn't show that the parties were heard and judgment delivered, which means no appeal could be instituted into the circumstances. As such I agree with the argument of the Applicant that the action to transfer/or call for record of the Mabira Ward which hasn't yet determined the rights of the parties and institute the appeal out of it was an error/irregularity which resulted to injustice on the part of the Applicant as he was not given/afforded with an opportunity to be heard. I should point out clearly here that, the DLHT can legally call the record of the Ward Tribunal when prompted, but when such a scenario happens what is to be considered is revision and not an appeal.

Further scrutiny to the proceedings of the DLHT shows that there was an Application No. 43 of 2017 as well. However, it is neither stated and the records are silent as to how does it relates to Appeal No. 43 of 2017 having in mind both concerns same parties. But also, the proceedings do not show argument submitted by the parties in neither Misc. Application No. 43 of 2017 nor Appeal No. 43 of 2017. Nevertheless, they all boil down to the fact that the Applicant wasn't heard as he had rightly argued. The said omission amount to going against the principles of natural justice and further it's the violation of Article 13 (6) of the constitution of the United Republic of Tanzania 1977 [Refer the case of Mbeya-**Rukwa Auto Parts and Transport Ltd vrs Jestina George Mwakyoma; Civil Appeal No. 45 of 2002** CAT MBY (unreported). The court has held times and again that the denial of the right to be heard in any proceedings would render the said proceedings a

nullity. [Refer the case of **DPP vrs Sabina Tesha & Others (1992)** TLR 237].

I am aware that the Applicant has also argued that the execution attached the wrong property. Suffice to state that, the issue or question was to be determined by Mabira Ward Tribunal in Case No. 6 of 2016 as such this court cannot address it now for being premature.

The court having found that the Applicant's right to be heard was curtailed/denied as above analyzed, this court hereby orders as follows:

- i) The proceedings and orders of the DLHT in appeal No. 43 of 2017 as well as in Misc. Application No. 43 of 2017 are hereby quashed and set aside.
- ii) The court further orders the return of the case file to Mabira Ward Tribunal to proceed with the matter from where it ended. For avoidance of doubt the case file number remains the same.
- iii) Considering the fact that the Panel of members who presided over the matter might not be available due to passage of time, this court orders that in the circumstance, new panel of member can proceed to hear the dispute as the same hasn't started to be heard when transferred to the DLHT.
- iv) I further order that the determination of the case be given priority being a long-time matter.
- v) No cost is awarded.

It is so ordered.


L.G. Kairo
Judge

27/11/2020

R/A Explained.




L.G. Kairo
Judge

27/11/2020.

Date: 27/11/2020

Coram: Before Hon. Kairo,J

Applicant: Present in person

Respondent: Present in person

B/C: Gosbert Rugaika

Court: The matter is for ruling and the same is read over in chambers before both parties in chambers today.




L.G. Kairo
Judge

27/11/2020.