

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE REVISION NO. 12 OF 2010

(From the Decision of the District Land and Housing Tribunal of **KINONDONI** District at **KINONDONI** in Land Case/Application No.43 of 2010)

PIUS MEZAAPPLICANT

VERSUS

**1. PAUL KIMICHA
2. GRACE KIMICHA
3. HANNA KIMICHA
4. PATRICIA SOKO KIMICHA
5. MWANGATI AUCTION MART**

.....RESPONDENTS

R U L I N G

FIKIRINI, J:

Pius Meza hereinafter referred as an applicant moved this court by way of Chamber summons made under the Lands Disputes Court Act 2002 and Order 21 Rule 24 (1) and Section 19 of the CPC 1966 No. 49 together with other enabling provisions of laws requesting for two things:

1. *Restraining order to the respondents from evicting the applicant pending the determination of this application.*
2. *Calling and examination of the records of the Kinondoni District Land and Housing Tribunal in Application No. 43 of 2010 and satisfy itself as to the correctness, legality or propriety of the decision or order made therein.*

The application is supported by sworn affidavit of the applicant Pius Meza. The respondents through their counsel one Jamhuri Johnson filed a counter affidavit in response to the application. The application itself was argued by way of written submission addressing the preliminary point of objection raised on the competency of the application before this court after a none and wrong citation of the relevant provisions of the laws.

It was the respondents counsel's submission that no particular provision of the law was cited in relation to the Land Disputes Courts Act, No. 2 of 2002, while the said law has 57 sections. According to the counsel the application was incompetent and to support his position he cited two Court of Appeal cases to that effect. The cited cases were ***Citibank Tanzania Ltd vs. Tanzania Telecommunications Co. Ltd & 4 Others, CAT, Civil Application No. 64 of 2003 (Unreported)*** and ***Almas Iddie Mwinyi vs. NBC & Others, CAT Civil Application No. 88 of 1988*** (Unreported).

It was as well submitted that Order 21 Rule 24 (1) refers to stay of execution where a decree has been sent to another court for execution. No decree has been sent to this court,

the provision was therefore not relevant. Likewise, section 19 of the CPC, Cap 33 R.E 2002 which refers to objections to jurisdiction had no relevancy to this application. The current application is therefore defective for failure to cite the relevant enabling provision of the law and hence rendering the application incompetent. He thus prayed for the dismissal of the same with costs.

Reacting to the submission, the applicant in his submission admitted the error that instead of typing section 79 of the CPC relating to revision, it was typed section 19. It was his submission that the omission was not fatal as the substance remained the same. To strengthen his argument the applicant cited the case of ***Abubakari Mohamed Mlenda vs. Juma Mfaume [1989] TLR 145***, Nchalla, J;

Counsel for the applicant admitted that there was correctly no decree before this court for execution emanating from the District Land and Housing Tribunal but there is an eviction order on the strength of the decree dated 30th October 2004 based on the decision by Bunju Ward Tribunal. Of course five (5) years have elapsed since the decision which has not been appealed against came out and before the eviction order was issued on the 19th March 2010. Since the time to lodge an appeal has elapsed the applicant has resorted to this court so that it can exercise its revisional powers.

In addition, the applicant submitted that the suit land lay fallow for 12 years and he had legally occupied and developed the same. Moreover, the Ward Tribunal decision had not been challenged. And the procedure adopted by the late retired Judge Kimicha to get decision in his favour

was untenable, coercive and illegal and hence needs to be revised under section 79 (1) © of the CPC, Cap 33 R.E. 2002. Otherwise Order 21 Rule 24 (1) was properly cited.

In rejoinder the respondents counsel emphasized on proper procedures of amending a documents to be followed. And as for the cited case of Abubakari (supra) it was his submission that the same has been overtaken and the position in place is wrong citation is fatal and renders the proceedings a nullity. He as well cited the case of **Yusuf Manji & Another vs. Reginald Mengi & Others, High Court Dar es Salaam, Civil Case No. 40 of 2006** (unreported) Kalegeya, J:

Likewise, the respondents counsel submitted that there was actually nothing to be revised by this court as orders complained of were made by the District Land & Housing Tribunal which has powers to enforce orders of Ward Tribunal under section 16 (3) of Act No. 2 of 2002, Cap 216, R.E. 2002. Otherwise the provision does not give this court powers to stay the execution or revise those proceedings. Powers of revision are under section 42 of Act No. 2 of 2002, but that provision has not been cited in this application.

The respondents counsel further in his rejoinder challenged the move by the applicant to argue the merits of the intended revision since the order of this court regarding the written submissions was in respect of preliminary point of objection raised and not otherwise. Equally, he submitted that this court was not the appellate court for matters decided by the Ward Tribunal. On that he prayed for the struck out of the application with costs.

I have carefully gone through the application and the submissions made by the counsels for the parties. I would start by highlighting that I only considered the preliminary points of objection raised and nothing else. And without wasting much time, I will go straight to the point that citation of wrong provision and/or none citation at all of the enabling legal provision moving the court to act is fatal and renders the proceedings a nullity. This position has been taken time without number by both the Court of Appeal and the High Court.

The decisions of the Court of Appeal in cited cases of Citibank and Almas Iddie (supra) and that of the High Court in the case of Manji (supra) have actually carried the day in this application. This is because in this particular case no specific provision was cited from the Land Disputes Courts Act, No. 2 of 2002 which could have moved this court to act. The law has 57 sections, for one to expect the court to sift through all provisions to get to the exact one would be cumbersome. More so, that would have been a wasting of court's precious time if not tasking it with unwarranted responsibilities. The applicant or its counsel was supposed to cite the proper provision of the law which would have moved this court. Section 42 of the Act No. 2 was essentially the relevant provision as far as this application is concerned. That provision reads:

“The High Court (Land Division) shall in the exercise of its appellate jurisdiction have power to take or order the District Land and Housing Tribunal to take and certify additional evidence and whether additional evidence is taken or not, to confirm, reverse, amend or vary in any manner the decision or order appealed against.”

In this application the above provision was not cited. This court was therefore not properly moved.

As if that was not enough, the chamber summons also wrongly cited provisions of section 79 of the CPC, Cap 33 R.E 2002 instead of section 19 of the CPC. This provision relates to objections to jurisdiction. The provision was therefore not relevant to the application at hand. It was the applicant's counsel submission that the omission was not fatal to the application as far as the substance was the same. And to hone home is point he cited the case of **Abubakari** (supra). With due respect to the counsel for the applicant, I do not agree to his position. To me wrong citation or none citation of the relevant provision is not only fatal but improper as well and especially for the learned personnel.

Similarly, Order 21 Rule 24 (1) of the CPC Cap 33 R.E. 2002 cited seem not relevant to the application at hand as there is no any decree in relation to this case which had been brought before this court for execution. The applicant's counsel does not dispute that fact but argued that since the time within which the appeal could be filed has elapsed the only resort was revisional procedure and hence application of Order 21 Rule 24 (1). Sincerely, there is nothing to revise before this court, since the questionable order complained of emanated from the District Land which had power to enforce the Ward Tribunal decisions under section 16 (3) of the Act No. 2 of 2002. This court under section 42 of Act No. 2 of 2002 could only revise orders emanating from the District Land and Housing Tribunal.

In light of the above I am of the conclusion that the application before this court is defective for failure to cite relevant enabling provisions of the law and hence rendering the application incompetent. The application is therefore struck out with leave to re-file citing proper provisions of laws.

It is so ordered.

Ruling Delivered this 30th day of August 2012 in the presence of parties.

P.S. FIKIRINI

JUDGE

30TH AUGUST 2012

Right of Appeal Explained.

P.S. FIKIRINI

JUDGE

30TH AUGUST 2012