IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO.20 OF 2020

(Arising from the District Land and Housing Tribunal for Kinondoni at Mwananyamala, in Land Case Application No. 508 of 2001)

HASSAN MOHAMED MATANGALU (As an Administrator of the Estate of the late Maua Mohamed)..... APPLICANT

VERSUS

AMINA NASSORO..... RESPONDENT

RULING

OPIYO, J.

Supported by his affidavit, the applicant, one Hassan Mohamed Matangalu, under section 43(1)(a), (b) and 43(2) of the Land Disputes Courts Act, 2002(Act No. 2 of 2002) and section68 (e) and 95 of the Civil Procedure Code, Cap 33 R.E 2002, seeks for an order of the court to call for and examine the records of the District Land and Housing Tribunal of Kinondoni District in respect of the Execution case No. 508 of 2020, to satisfy itself as to the correctness, legality or propriety of the ruling so entered in that case by Hon. Lung'wecha. Further prayer is that, this court should order maintenance of status quo pending the hearing of this application. The applicant was represented by Levina K.P Kagashe, the learned Advocate.

On the other hand, the respondent, Amina Nassoro who enjoys the legal services of the learned Advocate Josia Noah Samwel did object the hearing of this application on two points of law that; (1) the application

was brought under a wrong provision of law and or lacks the proper citation of the enabling provision and (2) the application is un-procedural.

The matter was disposed off by written submissions and in brief the submissions of both parties were as follows. Mr. Josiah Samwel submitting for the respondent was of the view on the 1st objection that, the applicant did not cite proper laws applicable in such application. According to him the proper citation of the said laws was (1) "The Land Disputes Courts Act, R.E 2019 and (2) The Civil Procedure Code, R.E. 2019."

Mr. Josiah went on to argue that, section 43(1) of the Land Disputes Courts Act deals exclusively with the supervisory functions of this Court and not revision. Section 68(e) and 95 of the Civil Procedure Code are irrelevant in this application. Section 68(e) of the Civil Procedure Code provide powers to the court to make interlocutory orders while section 95 of the Civil Procedure Code is all about inherent powers of the High Court. He argued that, the applicant did not cite any enabling provision in respect of the order of maintenance of status quo. Therefore, his first and second prayer should fail for non-citation and wrong citation of the enabling provision as stated in the of **Kinondoni Municipal Council versus Alphonce Buhatwa, Civil Application No. 20 of 1997, Court of Appeal of Tanzania at dar Es Salaam(unreported),** where it was stated that:-

> *"It is a practice of this court that a proper provision of the law has to be cited by the applicant who wishes to move the court in applications. Several decisions of this court have decided that a wrong citation of law renders an application incompetent."*

On the second objection, the submissions of the respondent's counsel were that, the origin of the instant application is the respondent's application for execution lodged at the District Land and housing Tribunal of Kinondoni. The order of execution was subsequently granted in favour of the respondent. Therefore, the only remedy available to the applicant is an application to stay the execution of the decree issued in favour of, the respondent. Since the applicant claims to have a pending appeal before the Court of Appeal as against the decision whose decree is sought to be executed then he would have invoked the application of Rule 2(3) and (4) of the Court of Appeal Rules and present his application for stay of execution at the Court of Appeal of Tanzania immediately after he had lodged his appeal.

On the third objection, the respondent's counsel maintained that, the application is omnibus hence cannot be entertained by this court as provided in the case of **Rutagatina C.L versus The Advocate Commettee and Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010, Court of Appeal of Tanzania at Dar Es Salaam (unreported)**, where the court of appeal held that:-

> *"an application for extension of time and an application for leave to appeal are made differently..., since the applications are provided under different provisions, it is clear that both cannot be lamped up together in one application."*

In reply, Levina Kagashe, the learned Advocate for the applicant was of the view that, the respondent's counsel has deliberately construed section 43(1) (a) and (b) in isolation with intent to mislead the court. The marginal notes on the said provision state clearly what the whole provision of section 43 of the Land Disputes Courts Act is all about supervisory and

revisional powers of the court. Therefore, the provisions cited as enabling provisions in this application are correct including sections 68(c) and 98 of the Civil Procedure Code, Cap 33 R.E 2019.

In regard to the second prayer of maintenance of *status quo*, her view is that, the court according to these provisions is empowered to make orders with regard to the maintenance of *status quo*. She cited the case of the case of **Maxcom Africa PLC versus UDA Rapid Transit PLC, Commercial Application No.97 of 2018, High Court of Tanzania, Commercial Division (unreported)**, where it was observed that, under section 68(c) of the Civil Procedure Code, the Court is vested with statutory powers to make an order to prevent the end of justice from being defeated. Therefore, to the orders prayed in the chamber summons may be made under the cited sections of law as long as the court is convinced that they are just and convenient.

On the second objection, it was submitted by the applicant's counsel that the course taken by the applicant is the right one and it is in accordance with the law, since the impugned decision contain serious illegalities and errors on the face of the record which were committed by the Chairman of the tribunal.

On the 3rd ground that, this is an omnibus application, the applicant's counsel maintained that, the prayers in the chamber summons are all attainable as this has been the spirit of the court in Rutagatina's case (supra). Also the case of **Gervas Mwakafilwa & 5 Others versus The Registered Trustees of Moravian Church in Southern Tanganyika, Land Case No 12 of 2013** was cited, where the holding was that:-

...compilation of several separate, but interlinked and interdependent prayers in one chamber summons indeed prevents multiplicity of proceedings. A combined application can still be supported by a single affidavit, which must then provide all necessary facts that will provide justification for granting each and every prayer in the chamber summons. The fear single affidavit cannot properly support more than one prayer is over the top. On balance affidavit is not mystical or magical creature that cannot be crafted to fit the circumstances of a particular case. It is just a vessel through which evidence is presented in court.

I must hasten to say, however that I'm aware of the possibility of an application being defeated for being omnibus especially where it contains prayers which are interdependent. I think, where combined prayers are apparently incompatible or discordant, the omnibus application may inevitably be rendered irregular and incompetent."

She therefore, prayed for the preliminary objections to be overruled.
In his rejoinder, the respondent's counsel maintained on the 1st objection that, there are no proper provisions required to move this court for the reliefs thought in this application. On the 2nd objection the respondent insisted that, the proper remedy was for the applicant to apply for stay of execution at the Court of Appeal of Tanzania where his appeal has already been lodged and not bring the instant application. As for the application being an omnibus, the respondent's counsel reiterated his submissions in chief and added that, for an omnibus application to stand in court, the prayers in the application must be related. That, in this application, that condition has not been met.

Having painstakingly considered the submissions of both parties through their respective counsels, I will now turn to determine viability of the points raised. I prefer to start with the 3rd point of objection. In the said objection the arguments of the respondents' counsel is that, the application is untenable for being omnibus. The applicant's disputed this notion and maintained that, the prayers are interrelated, hence, a kind of omnibus that should be allowed to proceed into hearing.

The settled rule as far as omnibus applications are concerned emphasizes that, for an omnibus application to stand in court, the prayers in the chamber summons must be interrelated or interlinked **{see Gervas Mwakafilwa case(supra).** the issue for determination is therefore whether the prayers in this application are interlinked or interrelated, capable of being determined in the same application. In the instant application, the applicant seeks an order to revise the decision entered against him at the District Land and Housing Tribunal for Kinondoni at Mwananyamala, in Land Case Application No. 508 of 2001 and also to order maintenance of status quo in relation to disputed property. The facts further reveal that, Land Case Application No. 508 of 2001 for which revision is sought was execution proceedings. Now, are the two prayers above interlink or interrelate with each other? The answer, in my considered view is no. The two prayers as envisaged in the applicant's chamber summons are not interrelated or interlinked. They are two different prayers, each having its own purpose with regard to the dispute at hand. Each also requires different yard sticks for its determination. There is no interrelation between them to constitute allowable omnibus application, as correctly argued by the counsel for the respondent. That being said, this application is in my view bad in law as the prayer for revision and that of maintenance of *status quo* of the suit property cannot

go together and joined in the same chamber application and therefore it goes without saying that the application at hand is incompetent. (see the case of **Rutagatina** and that of **Mohamed Salimin** (supra)

Even if it was possible to determine the two in the same application, still the circumstances of this matter hinder this court's power to grant any of the prayers. This is based in the context of the second point of objection. This court cannot at the same time maintain status quo in relation to the property execution of which is underway or has already been concluded and revision of the same is also before it. This is tantamount to granting stay of execution through a backdoor awaiting determination of the revision application on the same by it. The record shows that appeal in relation to the disputed property was already determined by this court in in Misc. land Case Appeal no 2/2014 (Mgonya, J.). The applicant herein was aggrieved and have already filed the appeal to the Court of Appeal against this court's decision. The case to which revision is sought was centered on execution of a decree which was in favour of the respondent, and for which appeal is before the Court of Appeal, hence, revision of the said execution proceedings will not affect the original decree issued earlier on by the District Land and Housing Tribunal for Kinondoni and subsequently by this court, save for the execution order. Therefore, the only remedy available to the applicant was an application to stay the execution of the decree issued in favour of the respondent. Since the applicant claims to have a pending appeal before the Court of Appeal as against the decision whose decree is sought to be executed, then, he would have invoked the application of Rule 2(3) and (4) of the Court of Appeal Rules and present his application for stay of execution at the Court of Appeal of Tanzania immediately after he had lodged his appeal, rather

than filing revision of execution proceedings before this court. In the circumstances, the court is not competent to revise the proceedings.

This is also valid in relation to the second prayer of maintenance of *status quo.* To give an order of maintenance of *status quo* of the suit property in the above circumstances is very un-procedural as it will affect a decree (decree in the main suit) which was not complained about by the applicant in the instant application.

Therefore, as I uphold the second and third points of objection, this gives me no reason to discuss the first point of objection. In the end, I struck out the application at hand. No order as to costs

M.P. OPIYO,

JUDGE

8/2/2021