IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIV. CAUSE NO.78/1986

ALLY SHABANI KILIMA..... APPLICANT

Versus

PATRICK S. LUPOKELA..... RESPONDENT

# R U L I N G

KYANDO, J:

This is an application for the prerogative orders of certiorari, mandamus and prohibition in respect of the decision of the President to revoke a right of occuparcy comprised in certificate of Occupancy No. 186255/63. The application is by Chamber Summons supported by an affidavit of the applicant and accompanied by a statement as usual. The statement does not show the grounds for the application although the affidavit in support shows them to be denial of natural justice, in that the applicant was not heard before the revocation was made, fraud and failure to show good cause for the revocation.

The respondent, the Director for Lands apposes the application and he has filed a counter-affidavit. He states in the counter-affidavit that the revocation was made for good cause (non-payment of land rents) and that notices of intention to revoke were sent to the applicant but there was no response from him.

In para 5 of the Statement it is stated that the applicant asked to be furnished with a copy containing the decision to revoke his right of occupancy "but a certain S.M. Watuta refused to furnish him with the same". It is stated that instead he was given a mere letter, annexed to the statement as Annex. 'E'. In paragraphs 3, 6 and 9 of the counter affidavit the respondent states:-

> "3. The Statement in para 1 of the affidavit of (Ally Shabani Kilima filed herein) is admitted save that Ally Shabani Kilima is no longer entitled to possession of the said piece of land since his right of occupancy over the same was revoked on the 19th

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February, 1985, as evidenced by annexture 'A' and 'B'.

6. The statement in para 4 is admitted save that the letter dated 10.5.1985 signed by one P. Mturu was written without authority from the Director and letter with reference number LD/93289/11/SMW dated 21.3.86 was minsconstoned in the sense that grounds for revocation contained in the memorandum and instrument of revocation hereby annexed and marked 'A' and 'C'.

9. Para 7 and 8 are denied. Two notices with reference numbers LD/932289/1/MSKK of 10.12.1983 and LD/93289/1/MSKK of 25.2.82 respectively were served to Kilima to show cause as to why his right of occupancy should not be revoked and none of these notices was acknowledged by the said Kilima."

Now, Annexetures 'A' and 'B' mentioned in Para 3 above has not been annexed to the counter-affidavit. Nor is annexture 'C' mentioned in para 6 or copies of the notices mentioned in Para 9 above been annexed. As seen the applicant says he was not supplied with a copy of the instruments revoking his right of occupancy and none has been filed. It therefore becomes impossible to determine the application, the basic evidentrary documents are lacking . It is ever impossible to decide whether the revocation complained of was actually made or not. What is to be done? I have, as I hereby do, to direct the respondent to supply the applicant with a copy of the document revoking his right of occupancy so that he can annex it to the statement or affidavit in support. The respondent too is also directed to annex to the counter-affidavit the missing annextures referred to in para 3 and 6 of the counter-affidavit.

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He is also to annex copies of the notices mentioned in para 9. This will entail amendment of the papers of the application and this is granted to both sides. Then the matter is to come up for decision - either by myself or by any other Judge. The respondent is to comply with the directions made herein against him within three weeks from the date of this ruling.

L.A.A. KYANDO
JUDGE

4.2.97:
Coram : Kyando, J
For the applicant - absent, not notified.
For the respondent- Mr. Salula, SSA.
Court;$ As applicant is absent, ruling on 13.2.97. He is to be notified.

L.A.A. KYANDO
JUDGE

13.2.97:
Coram : Kyando, J
For the applicant - absent, not served.
For the respondent- absent.

ORDER:- Ruling a date to be notified by the Registrar as I have to return to Dodoma.

L.A.A. KYANDO
JUDGE
13.21997.

14.2.97:
Coram: A.R. Manento SDR. H/C
Parties- absent.
ORDER:- Judgement on 27.2.97. Parties to be notified.

MANENTO, SDR.
14.2.97.

27/2/97:

Coram : A.R. Manento, SDR- H/C
Present in person for the applicant.
Mrs. Ndosi - for the respondent.
C/C. Lai.

COURT:-

The ruling is read before the parties today, 27th February, 1997.

A.R. MANENTO
SDR.
27/2/1997.