

**IN THE HIGH COURT OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**HC. CIVIL REVISION No. 06 OF 2019**

*(Arising from Applications No. 216 of 2015 and 347 of 2015 of the District Land and Housing Tribunal for Mwanza)*

**SELEMANI LUTUNDUJA .....APPELLANT**

**VERSUS**

**MANAGER MKOMBOZI SACCOS & ANOTHER .....RESPONDENT**

**RULING**

01<sup>st</sup> October, & 30<sup>th</sup> November, 2020

**TIGANGA, J.**

Through an administrative complaint to the Honourable Judge in charge of High Court - Mwanza Zone, Mr. Nasimire learned Advocate who was representing the Applicant, complained of the two conflicting orders of two different Chairpersons of the District Land and Housing Tribunal in two Land Applications that is No. 216 and 347 both of 2015 before the same tribunal and over the same subject matter which is the house at Lyoma in Kwimba District.

His complaint is centred on the following premises, one that in the Land Application No. 347/2015, the applicant sought and obtained the judgment against the respondents, restraining them from the suit house, the subject matter of the complaint. While in Application No. 216/2015





which is still pending an order is sought to evict the applicant from the same suit house.

Also that on 19/07/2018 one of the chairman (Hon. Masao) while citing Misc. Application No. 14B of 2010, ordered the applicant to give vacant possession, and subsequently on 5/12/2018, another chairperson Hon. Philip D ordered the restoration of Selemani Lutunduja (the applicant) in the suit house. However, on 22/01/2019, the same Tribunal (Hon. Philip, D chairperson) vacated the earlier order dated on 05/12/2018 which was ordering the restoration of the said applicant, and appointed and instructed Wassa Court Broker to evict the applicant from the suit house.

He complained of the conduct of the above mentioned matters by the District Land and Housing Tribunal to be so confusing to the extent that unless the High Court promptly intervenes with the view of examining the legality of the said conduct, the applicant will be greatly prejudiced.

He asked the office of the Hon. Judge in-charge to give guidance on the following issues:-

1. Whether the Tribunal was justified in vacating its order dated the 5<sup>th</sup> day of December, 2018 and making another order dated the 22<sup>nd</sup> day of January 2018.
2. Whether in so vacating its earlier order, the Tribunal was not *functus officio*.
3. Whether the conduct of the cases in question by the Tribunal was justified in view of the pendency of the application No. 216/2015.





Following that complaint, his Lordship the Judge in charge ordered the revision proceedings to be commenced and the complained of case files be called so that they can be inspected by this court to satisfy itself on the correctness, legality and propriety of the orders complained of.

That was done, the records were called and after these proceedings were commenced, parties were summoned but only the applicant through Mr. Nasimire appeared, the Respondent did not appear. Following that non appearance of the respondent, Mr. Nasimire, learned Advocate, was given the summons and ordered to once again serve the respondent, but despite the service, they did not appear.

Mr. Nasimire, did not appear on two occasions, the application was dismissed before my brother Honourable Siyani, J, that was before it was restored by an order dated 08/07/2020 given via Misc. Civil Application No. 185 of 2019. After the same was restored, once again, other summons were issued and served through the Kimiza Village Executive Officer on 29/09/2020, and the same was returned with an endorsement that the respondents refused summons.

Following that state of affair, Mr. Nasimire was ordered to address the court exparte. In his address to this court by written submission filed on 07/10/2020, Mr. Nasimire reiterated what is contained in the complaint letter and submitted that, he strongly feel that this is a fit case for revision in terms of section 43 (1) (b) of the Land Disputes Court Act [Cap 216 R.E 2019], he submitted that was based on the following reasons.





**One,** that the Tribunal chairperson, (Hon. Philip) was not justified in vacating her order dated 05/12/2018 and making another order dated on 22/01/2019 without assigning any reasons to the prejudice of the applicant.

**Two,** by vacating its earlier orders, the Tribunal was *functus officio*. He cited the case of **Bibi Kisoko Medard vs Minister for Lands and Human Settlement Development** [1983] T.L.R 250, that in matters of judicial proceedings, once the decision has been reached and made known to the parties, the adjudicating tribunal thereby becomes "*functus officio*". He also cited the decision of **Akiba Commercial Bank Limited Vs Raya and Another** (2008) 1 EA 110.

**Three,** the conduct of two cases in question was not justified in view of the pendency of the application No. 216/2015 between Robert Siyantemi Vs Seleman Lutundija and two others. He submitted that it was not proper to put Robert Siyantemi into possession of the suit house before the conclusion of the said case because the said Robert Siyantemi was praying *inter alia* for an eviction order against the Respondent including the applicant herein. He submitted that it was doubtful whether there was executable decree against the applicant.

He asked for three orders namely;

1. Restoration of the Applicant into the suit house and the maintenance of the status quo pending the hearing and final determination of Application No. 216/2015. Robert Siyantemi vs Seleman Lutundija & 2 others.



2. The hearing of Application No. 216 of 2015 Robert Siyantemi Vs Selemani Lutunduja & two others to its finality by a different chairperson of the competent jurisdiction other than Hon. Philip and Masao chairpersons.
3. Costs of this application.

Now, from what I have put in summary above, at this juncture, what I am required to do is to examine the two records that is Land Application No. 347/2015 (supra) and 216/2015 (supra) and find whether the two chairpersons were justified to issue the orders they issued.

To appreciate the genesis and nature of the proceedings subject to Revision, it is important to point out that these proceedings traces their history way back in 2010, when Seleman Lutunduja filed Misc. Application No. 14/2010 against manager Mkombozi Saccos Bank Limited and S. L. Isangi Court Broker, in which the cause of action was arising from an exorbitant accumulation of a loan of Tshs. 4,950,000/= (the principal amount) with the interest of Tshs. 1,188,000/= totalling Tshs. 6,138,000/=. That although the loan was being paid but it has been raising exorbitantly without knowledge of the applicant to arrive to such sum of Tshs. 5,567,400/=

This matter was however dismissed for want of cause of action on 13/07/2010 by Hon. Mogasa chairperson, thereafter followed execution proceedings which commenced on 15/07/2011 before Mwashambwa, Chairman. On 15/11/2012, the application for execution was dismissed for failure to comply with the court order and failure to prosecute it.



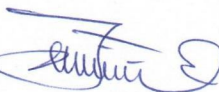


However, on 23/11/2012, the applicant filed another Misc. Application under certificate of urgency, to restrain the Respondent selling the suit houses. This application was also dismissed after the tribunal had realised that the applicant was employing delay tactics. The dismissal was made on 07/12/2015 by Hon. Sillas, Chairperson.

Following that order, the applicant once again filed Application No. 347/2015 which was basically seeking for restraining the respondent from making any interference therein or disposing the suit property. That application was heard *ex parte* and allowed on 11/11/2016 thereby restraining the respondents from making any interference therein or disposing the suit property.

From the record, the proceedings of Application No. 347/2015, ended there, but when it was still pending, Application No. 216/2015 was also filed by Robert Siyantemi who was the applicant, against three respondents namely Selemani Lutunduja, Innocent Mihayo and Andrea Suesue, the applicant being abona~~fi~~de purchaser of the suit house, the same having sold to him through a public auction conducted by S.L. Isangi Auction Mart and Court Broker after the 1<sup>st</sup> respondent's failure to abide with the agreement with Mkombozi Saccos. Among the orders sought in Application No. 216/2015 are;

- a) Declaration that the applicant is a bonafide purchaser of the suit premises.
- b) An eviction order against the respondents.

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- c) An order for compensation against the respondent but in favour of the applicant for any waste committed on the suit premises.
- d) Costs and any other relief that the court may deem fit and just to grant.

Hon. Dorothy P, who happened to be the chairperson who handled Application No. 216/2015 up to 31/10/2018, made an order that there were the multiplicity of applications over the same subject matter assigned to different chairpersons, those application being Application No. 14/2010, 14B/2010 and 14C/2010, the last being filed by a person who claimed to be a wife of the applicant, that for smooth handling and avoidance of the conflicting orders, the same be consolidated and assigned to a single chairperson. That order was made on 22/01/2019 and the matter were consolidated as ordered.

The record shows that, on that very date, the applicant in Application No. 216/2015 asked the tribunal to vacate the order dated 05/12/2018, as he was the bonafide purchaser of the suit house.

The 1<sup>st</sup> Respondent asked the order to be intact pending hearing and determination of the matter according to the consolidated files. The Tribunal after passing through the case file, realised that the order which was issued on 19/07/2018 and executed on 28/11/2018 which ordered the 1<sup>st</sup> Respondent to vacate from the dispute land, and since the 1<sup>st</sup> Respondent appeared before the Tribunal and prayed the order to be stayed pending determination, the prayers was granted pending determination of Misc. Application No. 14C/2018. The Applicant in that case

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the bonafide purchaser, filed a letter asking for the nearest date for hearing but on 22/01/2019 when the matter was called for hearing following his request, he was not present, following his absence, therefore the court decided that the order dated on 19/07/2018 should stand, the order dated 05/12/2018 was therefore vacated. The second respondent was restored to the disputed land as per the order dated 19/07/2018, till it is decided otherwise.

By that order WASSA Court Broker was appointed to execute the order. However, on 28/01/2019 Hon. Philip D, who is the same person as Dorothy P, but uses the names interchangeably in the proceedings, withdrew from the conduct of the matter after she had noted that there was a complaint letter which was complaining against the order she issued on 22/01/2019 and ordered the same to proceed before Hon. Masao, chairperson.

From the above summary of the proceedings, it is established that the order complained against is that of 22/01/2019 which vacated the order of 05/12/2018. These orders were made by the same chairperson but apparently on their face value basing on two different cases. While that of 05/12/2018 was made under Misc. Land Application No. 14C of 2018 (arising from Misc. Civil Application No. 14B of 2010, which original from Application No. 14/2010, in that application Selemani Lutunduja was applying against Manager Mkombozi SACCOS Bank Limited, Robert Siyantemi and WASSA Royal and Court Broker, he was asking for temporary injunction restraining the respondents and their agents to vacate the applicant (Selemani Lutunduja) from the suit premises and



allow him to enter the premises pending the determination of the main case inter partes. That Application was granted, and the applicant Seleman Lutunduja was restored to the suit house by that order dated 05/12/2018.

However, in the period of less than two months on 22/01/2019, under Application No. 216/2015 the same chairperson vacated the order she granted on 05/12/2018.

According to the proceedings of 22/01/2019, the order dated 05/12/2018 was vacated simply because the applicant did not appear without reasons. In my considered view, this is not justified, as there is no concrete reason given as to why the order was vacated. An order given under Misc. Application No. 14C/2018 was an order given in the nature of temporary injunction, which according to Order XXXVII Rule 3 of the Civil Procedure Code [Cap 33 R.E 2019] should be in force for a period specified in the order, but not exceeding six months. Also see **African Trophy hunting Limited Vs The Hon. Attorney General and 4 others**, Civil Appeal No. 25/1997 (CAT) at Dar es salaam (unreported). **Also see, John Joseph Magazeti & 3 Others vs Gabriel Mushi @ Gabriel Stephen Masha & 2 Others**, Misc. Civil Application No. 43 of 2019 Hc-Mwanza.

The order issued on 05/12/2018, did not specify time of its validity, and by the time it was vacated, six months had not yet lapsed. That means there was no justification, legal or factual, for vacating an order made in another case without concrete reasons.

It is also, as properly cited by Mr. Nasimire, that the chairperson was *functus officio* having made an order, restoring the complainant in these





revision proceedings, and without any change of the circumstances, to vacate it and make another order over the same subject matter. In **Bibi Kisoko Medard, Minister for Lands, Housing and Human Settlement Development and Another** [1983] TLR 250 in which it was held *inter alia* that;

*"In matters of Judicial proceedings once a decision has been reached and made known to the parties the adjudicating Tribunal thereby becomes functus officio".*

Therefore having made the decision, and made it known to the parties, it was not proper to vacate it even on temporary basis. It would have been proper if the chairperson would have gone to the merit and made an order at the end. That would not have created any legal problem because even in the Application No. 216/2015 that is one of the prayers under paragraph 7 (b). Ordering the vacant possession or eviction against the person who was in occupation is tantamount to granting preliminary decree in the matter which has not been heard.

That said, I find the error revisable in terms of section 43 (1) (b) of the Land Disputes Court Act [Cap 216 R.E 2019]. I hereby revise the order made by her honour, the Chairperson on 22/01/2019, and order that it was not proper to vacate the order dated, 05/12/2018. Consequently, the order made on 05/12/2018 is therefore restored.

However, I have noted with greatest concern that this matter has taken so long in court. As Hon. Philip D, chairperson had already withdrawn herself from the conduct of the matters; I thus order that the matter be placed before another chairperson of competent jurisdiction for

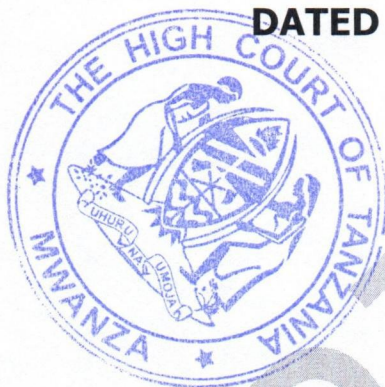




continuation of hearing and final determination. For the interest of justice, I think this is a fit case in which given the circumstances of the case, and the time that the matter has taken in court, I need to direct and actually fix time within which this matter must be finalised before the tribunal so that the interest of the parties involved can be adjudicated and decided. In my considered view, four months from the date of this order is enough. Therefore this matter must be heard and determined to its finality **within four months** from the date of this order.

It is so ordered.

**DATED** at **MWANZA**, this 30<sup>th</sup> November, 2020



**J.C. TIGANGA**  
**JUDGE**  
**30/11/2020**