

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 604 OF 2020

SALIMA NGONGOWELE.....APPLICANT

Versus

HABASI NGONGOWELE..... RESPONDENT

RULING

04/03/2021 & 08/04/2021

Masoud J.

The applicant filed the present application against the respondent. She was seeking for the orders that this court be pleased to grant "*..leave an order for to dismissal the ex-parte order for execution as the applicant was not notified (summoned) of the application*" and this court be pleased "*..to stay execution of this order for ex-parte drawn order dated 6th day of May 2019.*"

The affidavit supporting the application was affirmed by the applicant. She stated in the affidavit that she is a judgement debtor in Misc. Application No. 96 of 2018. The said matter ordered her vacant possession from the

disputed land so that the same is handed over to the respondent. She averred further that the order was made pursuant to regulation 23(3) and (4) of the Government Notice No. 174 of 2003.

She went on to state that the decision of the ward tribunal of Lukade was made ex-parte against her. She was not summoned to attend and appear. The ward tribunal that presided over the matter ex parte was not properly composed as it had only one female member contrary to the requirements of the law. She learnt from good Samaritans that the disputed land was due for execution. As a result, she visited the District Land and Housing Tribunal of Mahenge only to learn that there was a ruling against her whose copy and drawn order were then availed to her.

Despite being served as per the proof of service on the record, the respondent never appeared before the court. He did not also file a counter affidavit. The matter was then ordered to proceed ex-parte by filing written submissions. The submissions in chief by the applicant were duly filed in compliance with the order of the court.

The arguments in the written submissions were not that clear. I have had to struggle to make sense out of it whilst having regard to the thrust of

the reliefs sought and the averments in the affidavit of the applicant. I noted that the applicant was complaining about the failure of the district tribunal to entertain her when he approached it for stay of execution. She had thus no other option but to file the present application in this court.

I also noted that the applicant was complaining about a confusion that occurred with the opening of Mahenge District Land and Housing Tribunal. As a result, one having a case at Kilombero/Ulanga District Land and Housing Tribunal would be directed to visit the Ulanga office. It was amidst such confusion that she was availed the copy of the ruling and its drawn order at Ulanga Office.

As I was pondering on the application and the submissions made by the applicant, I was clear that the instant application is an example of cases revealing how lack of representation may occasion failure of justice. From the record which were availed, it appears that the execution proceedings that the applicant is complaining about were a result of an ex-parte decision of the ward tribunal of Lukande. The decision was against the applicant. The said decision was then a subject of execution proceedings which were effected ex-parte at the District Land and Housing Tribunal of Kilombero/Ulanga against the applicant.

It is clear from the present application that the applicant is not only aggrieved by the execution which was commenced at the district tribunal but also the ex-parte decision of the ward tribunal which was made against her. Her major complaint is that she was not notified of or summoned to appear in the proceedings before the district tribunal and the ward tribunal. It was also her complaint that the ward tribunal that passed the ex-parte decision against her was not properly composed.

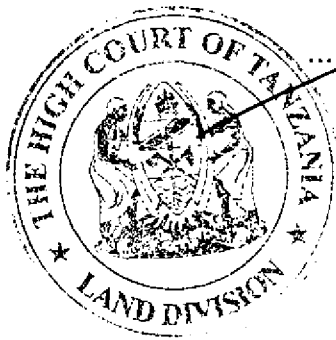
In view of the above context, the question is whether the application is properly before this court, regard being had to the reliefs sought by the applicant and the ex-parte decision of the ward tribunal which is still valid. Despite the apparent confusion in the reliefs sought, it is my take that the applicant is praying for dismissal of an ex-parte order emanating in the execution application. It has nothing to do with the ex-parte decision of the ward tribunal from which the execution proceedings arose.

I think the application in its present form cannot be competent. If the applicant was properly advised, she would have embarked in challenging the ex-parte decision, and applied for stay of execution of the ex-parte decision. The application could as well fail for lack of clarity of the reliefs

sought. When all is done and said, I am of a settled view that the application is in its present form unmaintainable.

In the event, and having found that the application is incompetent, and thus not maintainable, it is accordingly dismissed. In the circumstances, I make no order as to costs.

It is so ordered.



B. S. Masoud

Judge

08/04/2021

**MAHAKAMA KUU YA TANZANIA
(DIVISHENI YA ARDHI)**

ILİYOKETI DAR ES SALAAM

MAOMBI ANUAI YA SHAURI LA ARDHI NA. 604 LA 2020

SALIMA NGONGOWELEMWOMBAJI

DHIDI YA

HABASI NGONGOWELEMJIBU MAOMBI

24/2/2021 & 08/04/2021

MUHTASARI WA SHAURI

1. Maelezo mafupi ya shauri

Mwombaji aliomba amri ya utekelezwaji wa uamuzi wa baraza la kata iliyotolewa upande mmoja itupwe

2. Uamuzi wa Mahakama

Maombi yametupwa bila gharama.

3. Sababu za Maamuzi

Maombi yameletwa pasipokufuata utaratibu wa kushughilikia kwanza uamuzi wa baraza la kata ulotolewa upande mmoja na kuomba kusimamishwa kwa utekelezwaji wa uamuzi huo wa upande mmoja

Angalizo:

1. Lengo la muhtssari huu ni kueleza maamuzi ya mahakama katika lugha nyepesi ya Kiswahili.
2. Muhtasari huu ni kwa ajili ya taarifa tu na hivyo hauna nguvu ya kisheria
3. Uamuzi kamili wenye nguvu ya kisheria unapatikana unapatikana katika tovoti <https://tanzlii.org/tz/judgments>