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IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL REVISION NO. 27 OF 2003

ALEX MAGANGA APPLICANT

VERSUS

**1. AWADH MOHAMED GESSAN }
2. DAR ES SALAAM CITY COUNCIL } RESPONDENTS**

RULING

ORIYO, J.:

The application for Revision arose out of Civil Case No. 269 of 1995 at Kisutu Resident Magistrate's Court, Dar es Salaam. The suit was instituted by the applicant, Alex Maganga, on a dispute over Plot No. 65, Block "C" Mbezi Beach (hereinafter referred to as "suit premises"). The second respondent, the Dar es Salaam City Council, had "double allocated" the suit premises to the applicant and the first respondent, Awadh Mohamed Gessan. Thereafter the second respondent made attempts to revoke the applicant's rights over the premises and have him vacate in favour of the first respondent upon the latter's payment to the applicant for the unexhausted improvements. In the plaint, the following orders were sought:-

1. A declaration that applicant is the lawful owner of the suit premises.
2. A permanent injunction against the respondents from in any way dealing with the suit premises.
3. Damages
4. Interest and Costs.

In its Written Statement of Defence, the second respondent raised a preliminary objection that the suit was incompetent for failure to issue a 30 days statutory notice of intention to sue to the second respondent before initiating the suit; which was contrary to Section 97 of the Local Government (Urban Authorities) Act, No.8 of 1982. The trial court (learned Wambali, RM) upheld the objection and marked the suit Against the second respondent withdrawn on 24/4/98.

For the sake of clarity I will reproduce the last paragraph of the ruling dated 24/4/98:-

"In the final analysis I order that the plaintiff did not follow proper procedure in suing the second defendant before the

court as required. **The second defendant is thus withdrawn** (sic) and the preliminary objection sustained. However, the plaintiff is still at liberty to sue the second defendant upon following proper procedure because I do not think that the suit can proceed at this stage with the first defendant only without joining the second defendant who is the necessary party."

On 25/10/2002 the applicant served the second respondent with a 30 – days Notice of his Intention to sue it in respect of the suit premises. A copy of the notice which was also served on the first respondent and acknowledged on 29/10/2002 was attached to the supporting affidavit as Annexure "A 26". Having complied with the legal requirement, the applicant applied to rejoin the second respondent in the suit. On 14/2/2003, the trial court (learned Seme RM), dismissed the application on the ground that the applicant had failed to comply with the trial court's earlier ruling of 24/4/98; hence the application for revision.

This application was brought under Section 44 (1) (b) of the Magistrates Courts Act 1984 for the following orders:-

1. That the ruling dated 14/2/2003 by the Hon. Magistrate S.S. Seme be set aside.
2. That this court allow the amendment of the Civil Case No.269/95 so as to join the Director of Dar es Salaam City Council.

The parties argued the revision by way of Written Submissions. The applicant prosecuted the application in person while the first respondent used the services of Mr H. Mtanga, learned counsel and City Solicitor's office advocated for the second respondent.

It is apparent from the submissions that the respondents opposed the application at the trial court primarily because of the length of time that Civil Case No.269/95 had been pending in Court. Secondly, the respondents contended that the applicant should have proceeded to file a fresh suit against the second respondent after the expiration of 30 days. Thirdly was the contention that by applying to join the second respondent in Civil Case No. 269/95; the applicant contravened the earlier decision of the Court dated 24/4/98 as reproduced above.

On the other hand, the applicant contended that he had complied with the earlier order of the trial court of 24/4/98 by issuing the second respondent with a 30 days Notice of intention to sue on

25/10/2002. He argued that it was appropriate for him to apply to rejoin the second respondent in civil case No. 269/95 because it would have been a duplication to institute a fresh suit while the earlier one was still pending in court.

I have perused the application and affidavits and I have studied the respective submissions of parties. I totally agree with the respondents that it had taken the applicant unduly long to prosecute civil case No. 269/95. At the same time, I must confess that I was a bit baffled by the interpretation given by the trial court on 14/2/2003 to its unambiguous, earlier decision of 24/4/98. The court's earlier decision marked the suit withdrawn against the second respondent because the latter had no notice of the applicant's claim as required by law. The trial court further stated categorically **that civil case 269/95 could not proceed with the first respondent only without joining the second respondent who was a necessary party.** In order to appreciate the point, I will reproduce part of the impugned trial court's decision of 14/2/2003 at page 1 of the typed Ruling:-

"..... the last page of the judgment of Hon. Wambali – RM reveal that the applicant is at liberty to sue the Director of City Commission. The problem is that, the applicant has attached a purported notice

which was already adjudged. Not only that, the need to sue the Director of City Commission has not been complied with It was decided that, the applicant is at liberty to sue the Director of City Commission in the same weight as the defendant at hand. The applicant has not done that. It is a misconception on the part of the applicant that the applicant is required to join the Director of City Council."

Obviously, in the face of the above extract from the impugned decision of the trial court; it was not only a distortion of its earlier decision but a total contradiction. While the earlier decision stated that civil case 269/95 could not legally proceed against the first respondent without joining the necessary party who is the second respondent; the trial court simply stated the opposite on 14/2/2003.

With due respect to the learned trial magistrate, the decision of 14/2/2003 contradicted its earlier decision of 24/4/98. On the foregoing premises, I hold that there was an error material to the merits of the case involving injustice to the applicant. I therefore allow the application for revision. Consequently I quash the proceedings and set aside the decision of 14/2/2003; and the second

respondent is joined as second defendant in civil case No.269 of 1995 in terms of Order I rules 3 and 10 (2) of the Civil Procedure Code, 1966.

The applicant to have the costs of the application.

The trial record is to be remitted to Kisumu Resident Magistrates Court to proceed with civil case No. 269/95 on merits before another magistrate of competent jurisdiction.

Accordingly ordered.

(K.K. ORIYO)

JUDGE

1,205 Words.