

IN THE HIGH COURT OF ZANZIBAR
HOLDEN AT VUGA
CIVIL APPLICATION NO. 15 OF 2012
FROM ORIGINAL CIVIL CASE NO. 81 OF 2012
OF THE LAND TRIBUNAL

ALI SALEH JUMA (**MRUNDI**) ----- APPELLANT

V E R S U S.

KHADIJA SALUM ABDALLA ----- RESPONDENT

Date of Revision: 17/10/2012.

R E V I S I O N .

RABIA H. MOHAMED, J.

Applicant **Ali Saleh Juma (Mrundi)** who is the Defendant in the Main Suit has filed an application under Order L. Rule I, Order XI Rule 14 and section 129 of the Civil Procedure Decree Cap. 8.

The Respondent in this application is **Khadija Salum Abdalla** who is also the Plaintiff in the main case.

In the Chamber Summons the Applicant has prayed for the following:-

1. Mahkama ikubaliane na Ombi la Muombaji la kuyafanyia Mapitio maombi na Amri ya tarehe 14/6/2012 ya Mahkama ya Ardhi iliyotolewa na Mwenyekiti wa Mahkama ya Ardhi.

2. Mahkama itengue Amri ya upande mmoja iliyotolewa ya kumzuia Muombaji kuendeleza ujenzi katika eneo lake.

3. Amri nyengine halali itakayokuwa muafaka kwa muombaji.

The application is supported by an affidavit affirmed by the Applicant.

In his Affidavit the Applicant has averred that there is a Civil Case with No. 81 of 2012 pending before the Land Tribunal, which was filed on 13th July, 2012. The next day after the suit was filed an ex-parte order of Temporary Injunction was issued restraining any use, transfer, selling, mortgaging, hiring and any construction from taking place in the disputed area until the matter is heard inter parte.

The Orders, which are the basis of this application, are Order L. rule 1 which relates to applications for review and Order XI rule 14, which relates to application to set aside an ex-parte decree.

Both two Orders as mentioned above relates to applications, which can be entertained by the court which passed the decree or give the order. Order L, rule 2 and Order XI rule 14 reads:

Order L rule 2:

"2 An application for Review of a decree or order of a court, not being a High Court, upon some ground other than the discovery of such new and important matter of evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the fact of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed...."

"Judge" means the presiding officer of a Civil Court".

A Civil Court has been defined in the same section, that is, section 2 of Cap. 8 to mean:-

"Civil Court" means the High Court and any court subordinate thereto other than a District Court....."

Order XI rule 14:

"In any case in which a decree is passed ex-parte against a Defendant, he may apply to the court by which the decree was passed for an order to set it aside;"

For the above explained reason this court is of the opinion that the application for review and or application to set aside the ex-parte order cannot be entertained by this court but the court which decided the matter subject to the application before me.

Having taken this view in the matter, I have also discovered from the records of the trial court that it is necessary for me to apply my powers under section 90 of the Civil Procedure Decree Cap. 8 to revise the Land Tribunal ex-parte decisions.

I did not have to call for the records of the case since the same are already here with me.

On 14th June, 2012 the Land Tribunal conducted two ex-parte hearing. The records of the hearing which did not have a Coram shows that the Applicant, a recognized agent, Abdalla Omar was heard whereby two assessors gave their opinion to the said court. Then the court then gave a Ruling which reads as follows:-

R U L I N G.

1. Ombi la Muombaji limekubaliwa.

2. ABDALLA OMAR, ni Muwakala na Msimamizi halali wa Mdai katika shauri hili.

Sgd: Haroub Sh. Pandu

14/6/

Then the court heard the Chamber Application, who also shows a very short submission of the Applicant and the opinion of assessors. Followed by the Ruling of the court, which reads:-

RULING.

1. Ombi la Muombaji limekubaliwa.
2. Temporary Injunction Order itolewe hadi shauri (Ombi) litakaposikiliziwa kwa pande zote (2).
3. Taasisi husika ijulishwe AMRI hii.

Sgd: Haroub Sh. Pandu

14/6.

From these two rulings, I first wish to define the meaning of the word Ruling as was defined in the Black's Law Dictionary, 8th Edition to mean:-

*"The out come of a courts decision either on some point of law or on the case as a whole –
..... is a term ordinarily used to signify the outcome of applying a legal test when that outcome is one of relatively narrow impact. The immediate effect is to decide an issue in a single case".*

I wish also to discuss on the necessity of conducting ex-parte injunctions. An application for ex-parte injunction is one, which the other party is not put on notice before the application is determined by the court. These kinds of applications are conducted in a situation of real urgency and because it is necessary that the subject matter to the dispute be preserved pending the determination of a suit.

Looking at the definition above the Chairman of the Land Tribunal did not apply a legal test to reach into the so called Rulings of 14th June, 2012. In such the two so called rulings are not Rulings in the legal sense.

That being the case I am of the view that the Chairman of the Land Tribunal has acted in the exercise of his jurisdiction but with material irregularity. In such the whole proceedings in the case must be quashed and set aside. The case is to be remitted back to the Land Tribunal for the application to be heard inter parte.

Sgd: Rabia H. Mohamed

Judge

17/10/2012.

Court: This order of revision was read this 17th October, 2012 in the presence of Applicant and the Respondent.

Sgd: Rabia H. Mohamed

Judge

17/10/2012.

I hereby certify that this is a true copy of the Original.

Sgd. **GEORGE J. KAZI**

REGISTRAR

HIGH COURT

ZANZIBAR.

