

IN THE HIGH COURT FOR ZANZIBAR

HOLDEN AT VUGA

CIVIL REVISION NO.06 OF 2016

(FROM CIVIL APPEAL NO. 4 OF 2008 OF THE DISTRICT COURT MWANAKWEREKE)

1. NASSOR ALI NASSOR APPLICANTS
2. PANDU ALI NASSOR

VERSUS

1. SWAGHIRU KHAMIS JUMA ... RESPONDENTS
2. ASMA KHAMIS JUMA

RULING

This ruling arises out of the application made by the Applicants, Nassor Ali Nassor and Pandu Ali Nassor who are represented by learned advocate, Mr. Mbwana J. Mbwana against the Respondents, Swaghiru Khamis Juma and Asma Khamis Juma who are represented by learned advocate Mr. Ali Omar. The application was brought by way of chambers application filed under sections 90 (c), 119, 126 and 129 of the Civil Procedure Decree, Cap. 8 of the Laws of Zanzibar. The application is supported by an affidavit sworn by the 2nd Applicant, Pandu Ali Nassor.

In this application the Applicants are asking the Court to grant two orders; first order of extension of time to do revision and the second is to do revision of the decision of the District Court Mwanakwerekwe (Hon. Janet Sekihola (DM) Retired) delivered in 30.7.2008.

The Background to the case is that the Applicants filed a Civil Case No. 27 of 2005 in the Primary Court Mwanakwerekwe against the three Respondents, namely: Swaghiru Khamis Juma, Asia Khamis Juma and Zubeir Baraka. The

Applicants were claiming that on 15.8.1995 they purchased a plot of land situated at Bububu from Moh'd Suleiman for Tsh 60,000. In 2004 when they visited the said plot they found that the 1st and 2nd Respondents have trespassed in the said plot and started construction of the house. The Respondents, on the other hand, claimed that they have purchased the disputed plot from Zubeir Baraka (the 3rd Defendant in the original civil suit). The case was heard by Maisara A. Maisara (PCM) and delivered his judgment on 8.1.2008 in favour of the Applicants who were declared to be the owners of the disputed plot of land and the Respondents were ordered to remove their construction in the disputed plot.

The Respondents were aggrieved by the said decision and they appealed to the District Court in Civil Appeal No. 4 of 2008 before Janet Sekihola (DM Retired). The learned DM heard the matter and delivered her ruling on 30.7.2008. She allowed the appeal and advised the parties to institute a fresh suit in the Land Tribunal. In her judgment she mentioned that the Court received a letter of the Registrar of the High Court dated 15.5.2006 which ordered all Courts to transfer all land matters which were instituted before them but not yet heard to the Land Tribunal. The Civil Case No. 27 of 2005 before Hon. Maisara was instituted on 27.5.2005 but the hearing of the case started on 11.9.2006. Therefore, when the PCM was hearing the case he had no jurisdiction to hear the same and was supposed to transfer the case to the Land Tribunal, instead he finished the case and delivered his ruling. Hence, the learned DM allowed the appeal and directed the parties to file a fresh suit in the Land Tribunal.

The Applicants following the advice from the District Court filed Civil Case No. 96 of 2008 in the Land Tribunal. The case was heard by learned Magistrate of the Land Tribunal (Said H. Khalfan (RM)). The learned RM delivered his ruling on 09.09.2014 and declared that the suit is res-judicata. The Applicants then on 8.7.2016 came to this Court with this application for extension of time and for revision.

Mr. Mbwana, the advocate for Applicants submitted that in this application there are two applications in one; first is the application for extension of time. He started by narrating how the case started in Primary Court and the decision was delivered which was appealed to the District Court, which decided that the case was not supposed to be there. Hence, they went to the Land Tribunal which decided that the case was res-judicata. Mr. Mbwana continued that the Applicants then returned to the Primary Court for execution, but the file remained there for a long time and later they heard that the file was called by the Registrar and then returned to the Primary Court but there was no solution to the problem. He submitted that this is the circumstances which lead to the delay in filing application for revision and that is the reason why they are asking for extension of time to do revision of District Magistrate's decision.

With respect to the second application, Mr. Mbwana submitted that it is an application for revision of the District Magistrate's decision asking the parties to institute a fresh suit in the Land Tribunal. He added that the decision was taken on the basis of a letter of 5.5.2006 from the Registrar of High Court. He argued that when the decision of DM was made the case has already been heard and was before her on appeal. Therefore, it was not right for the DM to send it to the Land Tribunal. Further, Mr. Mbwana submitted that confusion was added when the Land Tribunal ordered that the matter was res-judicata, and the Primary Court also did not do anything on the execution. He prayed that this Court should decide whether it was proper to send the case to the Land Tribunal or the DM should have heard the appeal, and he also sought the direction of the Court of what the Applicants should do.

Mr. Ali Omar on the other hand started by attacking the affidavit in support of the application. He submitted that it was defective as it was sworn by one person only. Secondly, the jurat lacked attestation in accordance with Notary Public Decree. It does not say where it was sworn. Therefore, he prayed that there is no application before this Court. He cited the case of *Mohamed I.A. Abdulhussein V. Peters Kampapu Ltd* [2005] TLR 383 where the Court of Appeal held that affidavit which does not state in the jurat the place where it

was sworn is defective. Therefore, he submitted that the application supported by defective affidavit is incompetent and should be dismissed.

Mr. Ali continued by saying that the Applicants complied with DM's decision to file the suit in the Land Tribunal. If he was aggrieved further he could have filed revision since 2008, but he waived his right. Further, he added that after the decision of Land Tribunal the Applicant could have asked for review in the Land Tribunal under section 41(1) and (2), but he did not do that, which means they waived that right.

Further, Mr. Ali added that the case before DM finished in 2008; this application was brought in 8.7.2016 more than eight years after the case. Therefore, the application is baseless and barred by limitation. He cited the case of **Tanga Cement Company Ltd V. Christopher Company Ltd** Civil Appeal No. 133 of 2006f (unrep.) where the Court of Appeal held that the court does not have the authority to waive limitation. He prayed that the application should be dismissed under section 3 of the Limitation Decree as it is time barred.

Mr. Mbwana in his reply submitted that the affidavit was proper as it was written in the jurat that it was sworn in Zanzibar. He added that the affidavit was sworn by one person as the other was absent at that time. With regard to delay he explained that the delay has already been explained and in addition the case when it started it had no advocate and the parties went to the Land Tribunal as directed by the Court. He prayed that justice should be done to the parties.

Before deciding whether the affidavit supporting the application is defective or not. This Court feels first it should determine whether the Applicants can bring in Court two applications in one application commonly known as omnibus application. The Court of Appeal has issued clear guidelines regarding omnibus application. In **Alex Maganga V. Abubakari Mkakile & Another** Civil Application No. 36 of 2013 (Unrep.) and **Alphonse Buhatwa V. Julieth Rodha Alphonse** Civil Application No. 19 of 2013 (Unrep.), the Court of

Appeal clearly specifies that the rules of Court of Appeal do not provide a room for bringing an application which is omnibus in nature. In both two cases the Court quoted the case of Rugatina C. L. V. The Advocates Committee and Another, Civil Application No. 98 of 2010 (Unrep.) where the Court stated:

“In totality of the foregoing, we are satisfied that the Rules do not provide for an omnibus application. For this reason, we hereby strike out this omnibus application”.

Similarly, in Alphonse Buhatwa (supra) the Court of Appeal also cited the case of Mohamed Salimin V. Jumanne Omary Mapesa, Civil Application No. 103 of 2014 (Unrep.) where the Court stated:

“As this Court has held for time(s) without number an omnibus application renders the application incompetent and is liable to be struck out...”.

Similarly, in our Civil Procedure Decree, Cap. 8 of the Laws of Zanzibar, there is no provision allowing a party to bring an application which is omnibus in nature. Therefore, in the upshot following this defect, this Court is of the view that the application is incompetent and is hereby struck out.

But this application has brought in Court a very serious matter which has caused great hardship to both parties and this Court feels it should be determined in order to clarify the position of law and what course the parties should take.

The facts of the case in the subordinate Courts are very clear and I will not repeat them here. But it is a fact that the Legislature in 1994 passed a law called the Land Tribunal Act and under this law the Land Tribunal was vested with powers to determine all land disputes. Hence, other Courts did not have

jurisdiction to determine land disputed, but the Tribunal did not start its operation immediately and therefore, the courts continued to hear land disputes. It was in 15.5.2006 that the Registrar of the High Court issued a letter to all Courts to transfer all land disputes which were not yet heard and determined to the Land Tribunal. The case before Primary Court was filed on 27.5.2005 before the letter was issued, but the Primary Court Magistrate started hearing the case on 11.9.2006 when the letter has already been circulated in Courts. Therefore, at that moment the PCM had no jurisdiction to entertain the said suit. The fact that he continued with the hearing and delivered his judgment is immaterial. He had no jurisdiction to entertain the suit and his decision is null and void. Therefore, the decision of the DM not to hear the appeal on merit is correct. And her advice to the parties to file a fresh suit to the Land Tribunal was also a correct one.

Now, we are turning to the decision of the Land Tribunal which declared that the suit is res-judicata. It is submitted that if the learned magistrate of the Land Tribunal had gone through the decision of the DM on appeal he would not have reached that conclusion. The suit before him was a fresh suit and there was no issue of res-judicata. Further, the decision is so strange when the DM in charge of Mwanakwerekwe District Court informed the Chairman of the Land Tribunal administratively by a letter dated 11.8.2008 about the reason why the DM cannot continue with the case and why the case was instituted a fresh in the Land Tribunal. Therefore, the magistrate of the Land Tribunal should have proceeded with the hearing of the case before him, and it was not res-judicata. This is all this Court can say at the moment as this application is for revision of the DM's decision and not a revision of the Land Tribunal's decision. Therefore, a proper remedy the parties can seek is to challenge the decision of the Land Tribunal if that challenge is not barred by limitation.

All in all, this application is struck out for being incompetent as it is omnibus in nature. There is no order as to cost.

It is so ordered.

(Sgd) ABDUL-HAKIM A. ISSA
JUDGE
22/8/2017

COURT

The ruling was delivered in Chambers on this 22.8.2017 in the present of Pandu Ali Nassor for Applicants and in the presence of both Respondents.


(Sgd) ABDUL-HAKIM A. ISSA
JUDGE
22/8/2017

COURT

The right of appeal is explained.

(Sgd) ABDUL-HAKIM A. ISSA
JUDGE
22/8/2017

I certify that this is a true copy of the original.



ALI AMEIR HAJI
DEPUTY REGISTRAR
HIGH COURT ZANZIBAR