

IN THE HIGH COURT OF ZANZIBAR

HELD AT CHAKECHAKE PEMBA

CIVIL APPLICATION No. 09 OF 2024

(An application for revision of an order given by the Land Tribunal at Machomanne in the execution of the decree given in the Civil Case No. 65 of 2007, Hon. Yahya Ussi Yahya, Deputy Chairman Land Tribunal, Pemba)

OTHMAN SAAD KOMBO APPLICANT

VERSUS

- 1. SHAABANI KOMBO SAAD**
- 2. MOH'D OTHMAN MOH'D**
- 3. SALUM KOMBO SAAD**
- 4. MOH'D KHAMIS SAID**
- 5. SULEIMAN SAID MUSSA**

RESPONDENTS

RULING

07th October, 2024

A. I. S. Suwedi, J

Before this Court, the applicant, 2nd respondent and 4th respondent appeared without legal assistance, and the 1st and 3rd did not appear without notice despite receiving a summons. The 5th respondent refused to accept the summons and gave information that he no longer wanted to appear in Court for this matter. Hence, the application was heard in their absence under Order XI, Rule 12 and section 129 of the Civil Procedure Decree, Cap 8 of the Laws of Zanzibar. Being invited to submit their case, the applicant requested this Court to revise because the Land

Tribunal erred in executing the order, which was quashed. Besides, he prayed for the Court to take his application and the supporting affidavit as submitted. An eye to the applicant's affidavit contains nine paragraphs given the history of the matter, but the central theme is the mistake committed by the Land Tribunal in executing the quashed order.

The 2nd and 4th respondent on their side did not reply to the affidavit, and they also decided to leave the matter at the Court's disposal.

Let me start by passing you through the records. The applicant, **Othman Saad Kombo**, is requesting this Court to invoke its revisionary powers under section 90 (c) of the Civil Procedure Decree, Cap 8 of the Laws of Zanzibar, against an order of the Land Tribunal given in the execution of the decree of Civil Case No. 65 of 2007. The case was between **Shaabani Kombo Saad** (1st respondent), **Moh'd Othman Moh'd** (2nd respondent) and **Salum Kombo Saad** (3rd respondent) as the plaintiffs, and **Moh'd Khamis Said** (4th respondent), **Suleiman Said Mussa** (5th respondent) and the applicant as the defendants for the plot of land situated at Mikinduni Chonga, Chakechake. It was determined on 07/03/2011 in favour of the plaintiffs (the 1st, 2nd and 3rd respondents herein); the sale between the 4th, 5th and the applicant was declared invalid, the applicant was given six months to remove his crops from the disputed area, and he was required to demand his money from the sellers.

The decision aggrieved the applicant; he appealed to this Court, Civil Appeal No. 41/2011, and subsequently, he applied for review, Application No. 47/2011. The application was determined on 16/03/2015 that Civil Case No. 65/2007 was res-judicata. The plaintiffs (1st, 2nd and 3rd respondents) seemed to have no locus to file a suit, and finally, the proceedings and judgement of Civil Case No. 65/2007 were quashed. The decision given in Application No. 47/2011 was also extended to Civil Appeal No. 41/2011, and the parties were reminded that the active judgment is that of Civil Case No. 44/2005 of the Primary Court earlier filed before Civil Case No. 65/2007.

The strange thing I saw within the record is that the Land Tribunal afterwards executed the decree in Civil Case No. 65/2007, which was quashed. Through the letter with reference No. **MAP/D/Vol. I/ /2021**, dated 20/10/2021, the Deputy Chairman of the Land Tribunal informed the Court Broker about the execution of the decree of Civil Case No. 65/2007 and that he should arrange a date to go for the execution of the said order.

In truth, I must admit that what the Land Court did was a legal mistake. Proceeding, judgments, and orders that a higher Court has quashed are no longer valid. The Court/Tribunal cannot sit and enforce a

decision that a Higher Court has quashed. Doing so is like grinding water in a mill, so the application has merit.

For the reason stated, I am invoking revisionary powers under section 90 (c) of the Civil Procedure Decree, Cap 8 of the Laws of Zanzibar, by quashing and setting aside the proceedings of the execution of the decree given in the Civil Case No. 65/2007 by the Land Tribunal. The parties are advised to follow the orders in Application No. 47/2011. Each party bears its costs.

DATED at CHAKECHAKE – PEMBA this 07th day of October 2024

A handwritten signature in blue ink, appearing to read 'A. I. S. Suwedi', with a large circular flourish on the left side.

A. I. S. Suwedi

JUDGE