

Appeal Revision is the only remedy

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(COM: RAMADHANI, J.A., LUBUVA, J.A., And LUGAKINGIRA, J.A.)

CIVIL APPLICATION NO. 21 OF 1999

BETWEEN

AHMED ALLY SALUM. APPLICANT

AND

1. RITHA BASMALI
2. KITENGE FURAHISHA RESPONDENTS

(An Application for Revision of an Order of
the High Court of Tanzania at Dar es Salaam)

(Msumi, J.K.)

dated the 17th day of March, 1999

in

Civil Revision No. 20 of 1996

R U L I N G

RAMADHANI, J.A.:

This matter started in the Resident Magistrate Court as Civil Case No. 164 of 1993 where the second respondent was the plaintiff and the first respondent was the defendant. There was an ex parte decision in favour of the second respondent. That aggrieved the first respondent who unsuccessfully applied to set aside that judgement. She applied for revision in the High Court, Civil Revision No. 20 of 1996 but the application was withdrawn by her advocate on 16/05/97. Consequently, the second respondent applied for execution and an attachment order was issued.

A proclamation for sale of a house was made and an auction took place on 09/08/97 where the applicant emerged the highest bidder. The applicant paid the required 25% of the purchase price on that day and eleven days later he paid the balance to the auctioneer who paid it into the court on the same day. The applicant wrote a letter to the court seeking vacant possession and that was granted. That prompted the first

respondent on 06/11/98 to seek to restore the application for revision. The first respondent went to NSUMI, J.K. with a complaint and obtained an ex parte administrative order staying the occupation of the premises by the applicant. The applicant reacted by filing objection proceedings which were dismissed by the Hon. J.K. Thus the applicant has resorted to these proceedings to revise the administrative order of the Hon. J.K.

For the applicant was Mr. Mselem, learned advocate, who argued that the applicant was a bona fide purchaser for value and as such he should not have been disturbed. He cited Peter Adam Mboweto v. Abdallah Kulala & Another, (1981) TLR 335. Secondly, the learned advocate submitted that the applicant was condemned unheard contrary to the principles of natural justice. Thirdly, Mr. Mselem said that the learned J.K. erred in dismissing the objection proceedings. Lastly, the learned advocate pointed out that the learned J.K. was misled when he regarded the second respondent as the one who had applied for the eviction of the first respondent. The truth is that the applicant applied for the eviction order.

Mr. Kayinga, learned counsel, represented the first respondent. In our opinion, the trump card of his submissions was the argument that the applicant was not the purchaser of the premises and so, the auction had to be conducted afresh. The learned advocate laboured a great deal trying to substantiate his stand. However, he conceded that the applicant was the highest bidder and that the 25% down payment was paid on the auction day as required by law.

The only argument left was that O XXI R 83 of the Civil Procedure Act demands that the purchaser pays into court the balance of the purchase price within 15 days of the sale. In the instant case the balance was paid into the court within the prescribed time by the auctioneer and not by the purchaser, the applicant. That was his only

remaining ground for saying that the applicant is not the purchaser. But that is scraping the barrels of argument. The most important requirement of that Rule, in our opinion, is that the balance of the purchase price is paid into the court within 15 days of the sale. It is not crucially significant who physically pays the money in court.

We are satisfied that the applicant was the purchaser of the house in question. We are also satisfied, and as conceded by Mr. Kayinga, that the Hon. J.K. did not give the applicant a hearing and that he administratively stayed the occupation of the premises by the applicant. We agree with Mr. Mselem, and as was decided in Peter Adam Mboweto, the applicant as a bona fide purchaser for value should not have been disturbed. With due respect, we are of the decided opinion that the learned J.K. erred and we quash his administrative order.

We must add two things: One, as the applicant was not a party to the court proceedings, he could not have appealed and that revision was his only remedy. Two, the grant of vacant possession to the applicant by the R.M.'s Court following his application by a letter was also contrary to the procedure.

The application for revision is granted with costs. The order of the Hon. J.K. is set aside. The applicant to have vacant possession of the house in question.

DATED at DAR ES SALAAM this 9th day of May, 2000.

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A.S.L. RAMADHANI
JUSTICE OF APPEAL

D.Z. LUBUVA
JUSTICE OF APPEAL

K.S.K. LUGAKINGIRA
JUSTICE OF APPEAL

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

(A.G. MWARIJA)
DEPUTY REGISTRAR