

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(ARUSHA DISTRICT REGISTRY)**

**AT ARUSHA**

**LAND APPEAL NO. 21 OF 2018**

**ISRAEL JOSEPH ..... APPLICANT**

**VERSUS**

**STEPHANO JOSEPH ..... RESPONDENT**

**BEFORE: I. MAIGE**

**JUDGMENT**

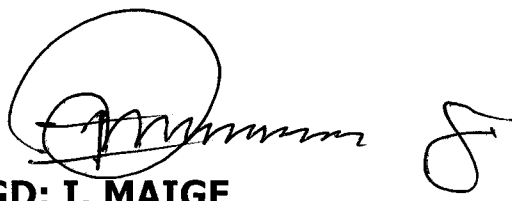
1. This appeal is against the eviction order of the District land and Housing Tribunal for Arusha in Application for Execution No. 357/2015.
2. The application in the respective proceedings was for execution of the decision of the Ward Tribunal for Sokei dated 15/11/2012 which had awarded a decree of vacant possession of the suit property in favour of the Respondent.
3. It is not in dispute that before the Application for Execution No. 357/2015, the Respondent had filed a similar application which was

registered as Application for Execution No. 46/2013. It was disposed of by the Hon. Chairman D. W. Mangore on 10/4/2014 when he made the following findings;


*"In the event and for reasons and ground stated above the decision of Sokoni Ward Tribunal cannot be executed for not describing the Land in dispute and showing it measurements. The parties are advised to file a fresh application before the trial subject to Law of limitation.*

4. The latter decision was made on 10/4/2014, whereas the former was made on 8/3/2018.
5. In his first ground of appeal, the DLHT is faulted for making an order executing the decision of the Ward tribunal while it had previously held it to be unexecutable.
6. In his written submission support of the first ground through this advocate Gospel Savan, the appellant contended, correctly in my view, that it was an abuse of the court process for the Respondent to file a fresh application for execution while the same court had held that the decision in question was incapable of being executed.

7. In his written submission in rebuttal, I have observed, Mr. Sevein John, learned advocate for the applicant, emphasized on the power of DLHT under section 16(3) of Land Disputes Court Act to execute orders by ward tribunal. He did not make any useful comment on the propriety of the DLHT to make a decision executing the same order it had declared to be unexecutable.
8. In my view, for the reason of its earlier decision that the order of the Ward Tribunal was incapable of being executed, the District Land and Housing Tribunal was fanatus officio to subsequently make another decision to the vice versa.
9. On that reason, the appeal succeeds to that extent of the first ground of appeal. The order of the District Land and Housing Tribunal executing the order of the ward tribunal is hereby set aside and the proceedings thereof quashed. I will not consider the second ground in the circumstance. The Respondent is condemned to pay costs of prosecution of the appeal. It is so ordered.

  
**SGD: I. MAIGE**  
**JUDGE**  
**8/11/2018**

Right to appeal is duly explained

  
**SGD: I. MAIGE**  
**JUDGE**  
**8/11/2018**

Date 8/11/2018

Coram: hon. Maige, J

Appellant: Gospel Sanara and Elias Mollel, Advocate

Respondent: Lawena, Advocate

**Court:** Ruling delivered, appeal allowed

  
  
**SGD: I. MAIGE**  
**JUDGE**  
**8/11/2018**