

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND REVISION NO. 2 OF 2018

(From the Decision of the District Land and Housing Tribunal of Arusha
District at Arusha In Land Application No. 341 of 2014)

HUSSEIN HAMIS TOKEA

(Administrator of Estate of the

Late OMARI HAMISI MHANGO.....**APPLICANT**

VERSUS

PAULO ZEPHANIA MSHOMBA

(Administrator of the Estate of the late

KARAIN MSHOMBA) **RESPONDENT**

KARAIN MSHOMBA

RULING

27/11/2019, 4/12/2019

MWENEMPAZI, J.

The applicant complained by way of letter to the Judge in charge of High Court which letter was received at the High Court Registry Arusha on the 23rd March, 2018. The gist of the complaint was that the respondent herein filed Application for Execution, No. 341 of 2014, in the District Land and

Housing Tribunal seeking to execution of the decision of Muriet Ward Tribunal in Land Application No. 137 of 2009 between Karaine Mshomba and Omari Mhango. According to the applicant, it was wrong for the District Land and Housing Tribunal of Arusha to execute the decision as the same was quashed by the same forum in Land Appeal No. 64 of 2010.

In the letter of complaint, the applicant submitted that it is true that the Respondent successfully sued the Applicant's father in the Muriet Ward Tribunal in Application No. 137 of 2009. The claim was for a farm of two (2) acres. However, the applicant herein filed appeal in the District Land and Housing Tribunal of Arusha at Arusha after his father had passed away and him undergoing necessary legal procedure of being appointed as administrator of the estate of the late Hamis Muhango. The appeal was registered as Appeal No. 64 of 2010. The appeal was allowed and the decision of the Trial Ward tribunal was set aside. The respondent filed an appeal in the High court and it was registered as Land Appeal No. 22 of 2013. According to the letter by the applicant the appeal was dismissed and the standing decision is that of the District Land and Housing Tribunal of Arusha. At this point, parties have differed in understanding and I think that is where the dispute is coming into existence.

The Respondent has filed a reply letter, of course, I had to relax rules for him on how to present his case so that I can afford him the right to be heard. He filed a reply letter to explain himself. The respondent referred the court to the decision in the appeal at the High Court. He submitted that the high court ruled that the appeal in the District Land and Housing Tribunal of Arusha was a nullity as it was filed out of time. That the appeal was struck out on the reason it emanated from a nullity.

I have read the record of the Ward Tribunal of Muriyet, District Land and Housing Tribunal of Arusha and the High Court of Tanzania at Arusha. In the Ruling of Hon. Mugasha, J(as she then was) she observed as follows, I quote:-

"As earlier pointed out, Judgement of the Ward Tribunal was delivered on 24/06/2009 while appeal to the District Land and Housing Tribunal was filed on 04/08/2010 that is, after expiry of 406 days from the date of the Judgement sought to be appealed against. This contravenes section 20(1) of the Land Disputes Courts Act, Cap. 216 R.E.2002 which provides: -

"Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing Tribunal within forty-five days after the date of the decision or order against which the appeal is brought"

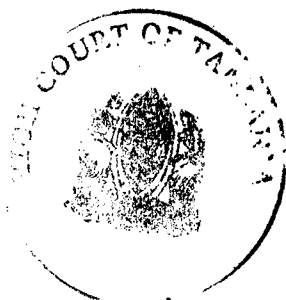
Therefore; the appeal in the District Land and Housing Tribunal was time barred because the appellant in the District Land and Housing Tribunal (now the respondent) did not seek and obtain leave to file the said appeal out of time. In that regard; the Judgement and Decree in Appeal entered by the District Land and Housing Tribunal are a nullity. In the premises; since the appeal at hand stems from a nullity, consequently; there is no proper appeal known in law before this Court. Therefore, the purported appeal is struck out. In that respect, the decision of the Muriyet Ward Tribunal in Land Application No. 137 of 2009 stands to be binding to the parties until properly challenged."

The record of the District Land and Housing Tribunal of Arusha, shows that the applicant in this application made an attempt to apply for extension of time to pursue an appeal against Muriet Ward Tribunal decision. The application was registered as Miscellaneous Application No. 308 of 2016, and the applicant was Hussein Hamis Tokea. The respondent was Karaine Mshomba. However, the person appearing on his behalf in the High Court is Paul Zephania Mshomba, an administrator of the late Karaine Mshomba. That application No. 308 of 2016 was dismissed by the Ruling dated 30th January, 2017 on the reasons that no sufficient cause was shown by the applicant.

Under the circumstances, the applicant in this application has wrongly complained on the application of execution made by the Respondent in Application No. 341 of 2014. The proceedings and orders in the application for execution were correct and legal. The reasons are clear in the decisions of the High court. Without challenging the decision of the Muriet Ward Tribunal the applicant has no basis to fault the execution of the decision.

For the reasons the application is dismissed. Since it is the court which called the record for revision *suo moto*, I order that each party will bear his own cost.

It is ordered accordingly.




T. MWENEMPAZI

JUDGE

4/12/2019