

IN THE HIGH COURT OF TANZANIA  
(MUSOMA DISTRICT REGISTRY)

AT MUSOMA

MISC. LAND APPEAL NO. 36 OF 2020

*(Arising from decision of the District Land and Housing Tribunal for Mara ta  
Musoma in Misc. Application No. 582 of 2019)*

JOSEPH MWITA MAGIGE ..... APPELLANT

*VERSUS*

MOKAMI WEREMA GESAYA ..... RESPONDENT

RULING

28<sup>th</sup> and 28<sup>th</sup> September, 2020

KISANYA, J.:

At the District Land and Housing Tribunal for Mara at Musoma, the respondent, **Mokami Werema Gesaya** applied for execution of the decision/judgment rendered against the appellant, **Joseph Mwita Magige** by the Rung'abure Ward Tribunal in Land Application No. 2 of 2019. She prayed the said judgment to be executed by evicting the appellant, (the then judgement debtor) from the disputed land.

When **Joseph Mwita Magige** was called on to show cause as to why the execution should not proceed, he objected the application on the reason that, the typed judgement attached to the application was different from the hand written. His objection was overruled by the District Land and Housing Tribunal which went on to grant the application. Thus, **Joseph Mwita Magige** was ordered to vacate the disputed land. Determined to

challenge the said decision, **Joseph Mwita Magige** lodged the present appeal.

Upon being served with petition of appeal, **Mokami Werema Gesaya** through the services of Emmanuel Gervas (Advocate), raised a preliminary objection on the following point of law:

- 1. That, the Appellant has contravened the provision of the law Order XLI Rule 1 of the Civil Procedure Code, Cap. R.E. 2019 as the decree is not subject to appeal.*

At the hearing of the preliminary objection, the appellant and respondent appeared in person. Having noted that the appeal is against the execution order which is not covered in the list of appealable orders specified under section 74 and Order XL, Rule 1 of the Civil Procedure Code, Cap. 33, R.E 2019 (the CPC), the Court asked the parties to address whether appeal was competent.

When the respondent was called to submit in support of the preliminary objection and the issue raised by the Court, she conceded that she was not an expert of the legal issues. She then left for the Court to decide on the same. In response, the appellant was of the firm view that, the eviction order issued by the District Land and Housing Tribunal is appealable because the disputed land belongs to him. The respondent rejoined by submitting that, the eviction order was not appealable and that, the appellant ought to have appealed against the judgement of the Ward Tribunal which gave rise to the execution proceedings.

In the light of the above, the issue for consideration is whether the decision of the District Land and Housing Tribunal is appealable. This

issue goes to the root of the matter on the competence of the appeal at hand. Appealable orders to this Court are specified by the law. They are listed in section 74 and Order XL of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC). An order arising from the execution proceedings as in the matter hand where, the appellant was evicted from the disputed land is not among of the appealable orders provided for under section 74 and Order XL, Rule 1 of the CPC. The appellant was supposed to have challenged the decision of the Ward Tribunal which gave rise to the execution proceedings, apply for revision of the execution proceedings, litigate the questions relating to execution under section 38 of the CPC or make use of Order XLI, Rule 1 of the CPC. None of the available remedies was exercised by the appellant. He opted to appeal against the ruling that was to the effect of evicting him from the disputed land.

The position that an execution order is not subject to appeal was stated by this Court in **Ignasio Ignas Vs Rose Hanselem Mpangala**, Civil Appeal No. 65 of 2017, HCT at Dar es Salaam (unreported) when my brother Hon. Siyani, J. held that:

*“In the final analysis, I agree with counsel Roman that issues of Jurisdictions of the court in orders which are not appealable under either section 74 or order XXI (sic) Rule 1 of the CPC can be challenged by way of Revision under section 78 (supra). Allowing Appeals against any Order relating to execution which otherwise were not intended by the drafters of our laws to be appellable and or where the law provides other mechanism for challenging them; will be opening a floodgate of endless litigations.”*

I associate myself to the above position. The present appeal is against the execution order/ruling that evicted the appellant from the disputed land. The said order is not covered under section 74 and Order XL, Rule 1 of

the CPC which outline appealable order Therefore, the impugned ruling is not appealable.

For the foresaid reasons, the appeal is incompetent before the Court. It is hereby struck out with costs.

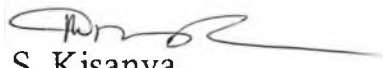
DATED at MUSOMA this 28<sup>th</sup> day of September, 2020.



  
E. S. Kisanya  
JUDGE  
28/09/2020

Court: Ruling delivered in the presence of the appellant and the respondent. B/C Mariam, present



  
E. S. Kisanya  
JUDGE  
28/9/2020