

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

MISC. LAND APPEAL NO. 33 OF 2020

(Arising from the District Land and Housing Tribunal for Mwanza in Misc. Land Applications No.5 & 120 of 2020)

AMRI HASSAN APPELLANT

VERSUS

DOTTO RAMADHANI RESPONDENT

JUDGMENT

Date of last order: 24.11.2020

Judgment Date: 11.12.2020

A.Z.MGEYEKWA, J

At the centre of controversy between the parties to this appeal arises from the decision of the District Land and Housing Tribunal for Mwanza. The material background facts to the dispute are not difficult to comprehend. I find it fitting to narrate them, albeit briefly, in a bid to appreciate the present appeal is that: The appellant filed an application for leave to file an application out of time to restore Land Appeal No.136

of 2017 by setting aside dismissal order dated 7th August, 2018 which was born out of his non-appearance made by Hon. Mayeye S.M.

The District Land and Housing Tribunal did not determine the matter on merit because the respondent filed a counter-affidavit and raised preliminary objections that the application for leave to extend time to restore the Land Appeal No. 136 of 2017 was out of time and brought under a wrong provision of the law. On the second objection, the respondent complained that the application is bad in law and not maintainable because it was taken over by event because the order in Land Appeal No. 136 of 2017 was already been executed. The Chairman dismissed the application for being taken over by event.

Undeterred, the appellant has come to this Court seeking to assail the decision of the Tribunals on two grounds of appeal as follows:-

- 1. That, that the trial court erred both in law and facts when ruled out that the appellant's Misc. land Application No. 05 of 2020 cannot be granted because it has been taken over by event.*
- 2. That the trial court erred both in law and facts when ruled out that the appellant's Misc. Land Application No. 120 (B) cannot be granted because it has been taken over by event.*

When the appeal was placed before me for hearing on 24th November, 2020, the appellant was represented by Mr. Chiwalo Samwel and the respondent appeared in person, unrepresented.

Submitting first, the appellant's Advocate argued that they have filed two appeals which were consolidated against Applications No.05 and No. 20 of 2020 before Hon. Mayeye. On the first ground of appeal, Mr. Chiwalo argued that the tribunal faulted itself to ground that their applications were taken by the event. He argued that the appellant instituted a Land Case No.42 of 2017 at Buswelu Ward Tribunal and lost the case. He added that dissatisfied, the appellant filed an appeal before the District Land and Housing Tribunal of Mwanza.

The learned counsel for the appellant went on to argue that the suit was dismissed for non-appearance, he realized that the 30 days lapsed. He added that thus he was required to file an application for extension of time to file an application for restoration. Mr. Chiwalo went on to argue that the respondent on his side proceeded to file an application for execution and the court issued an order for execution. he added that thereafter, the appellant filed an application for extension of time to file an application for restoration and also filed an application for extension of time to set aside the *an exparte* order.

Mr. Chiwalo went on to state that the respondent filed an objection before the District Land and Housing Tribunal for Mwanza complaining that the applications are taken over by event. He lamented that the tribunal had no good reason to declare that the matter was taken over by event. Mr. Chiwalo went on to state that the respondent moved the tribunal under Rule 30 (1), (2) of the Land Disputed Court Regulation No. 23 and in his view he stated that the cited Rule requires a Chairman after receiving an application from the court broker to dismiss the pending application. He argued that the Rule requires the District Land and Housing Tribunal if there is no doubt or any injustice then the Chairman can dismiss the matter.

The learned counsel continued to argue that execution took place on 10th January, 2020 while the appellant lodged his application on 07th January, 2020. He further argued that the application was already before the tribunal. He added that the essence for the appellant to file an appeal was to proceed with his appeal and execution even when it is effected cannot be a bar. He argued that the appellant cited section 24 of the Land Disputes Court Act which allows a party to file an appeal to the higher court and section 25 of the Land Disputes Court Act relates to stay of execution. He went on to assert that the objection raised by the

respondent was requiring evidence. To bolster his submission he cited the case of **Mukisa Biscuits Manufacturing Ltd v East Distributor Company** (1969) EA. It was his view that the District Land and Housing Tribunal was somehow right not to allow the Execution Application No. 120 B of 2020 however, the Chairman entered into an error when he disregarded Application No.05 of 2020. He lamented that even if the execution was allowed but in the appellant's application to restore his appeal was a separate application it was based on Land Appeal and not related to execution.

In conclusion therefore, Mr. Chiwalo urged this court to allow the appeal with costs.

Resisting the appeal, the respondent had no much to say. He argued that the appellant filed an appeal while the respondent filed an execution and the same was effected. In conclusion, he urged this court to dismiss the appeal.

In his brief rejoinder, the appellant's Advocate reiterated his submission in chief. He added that they have filed an appeal because they want to be heard and state their reasons why they did not appear before the District Land and Housing Tribunal.

Having summarized the facts of the case and submissions of the learned counsel for the appellant and the respondent, I now turn to confront the grounds of appeal in determination of the appeal before me. I shall consolidate the grounds of appeal.

On the first and second grounds, I proceeded to give my findings that there is no dispute that the appellant filed two applications No. 05 and 120B of 2020 before the District Land and Housing Tribunal. His main intention was to appeal before the tribunal out of time and to stay the execution. The record reveal that the appellant filed his applications before the District Land and Housing Tribunal on 07th January, 2020 and the execution was effected on 08th January, 2020.

I have revisited the original court proceedings and found that both parties appeared before the District Land and Housing Tribunal on 10th January, 2020 while at that time the record reveals that the respondent had filed an application for Execution No.120 of 2019 dated 3rd September, 2019, and on 08th January, 2020 the Judgment Debtor was ordered to vacate the Decree Holder's land with immediate effect. The Chairman also permanently restrained the appellant and his relatives,

agent, or any person working under his instruction from trespassing into the Decree Holder's land.

The learned counsel for the appellant in his submission referred this court to section 30 (1) of the Land and Disputes Court (District Land and Housing Tribunal) Regulations of 2003. For easy reference, I find it apt to reproduce the section hereunder. It reads:-

" 30 (1) The Chairman shall upon receipt of the report by a broker under regulation 29 proceed to see whether justice has been done in accord with the judgment.

(b) where he is not satisfied with the Broker's report make such order as may be appropriate."

Based on the above provision of law, in my view, the cited provision is not applicable. Had it been that an appeal was before the Chairman before granting the execution order then the Chairman could have been bound to examine if justice was done. However, that was not the case in this matter. In the present case, an application for execution was lodged at the tribunal and the statutory requirement of 14 days as provided for under section 23 (3) of the Land and Disputes Court (District Land and Housing Tribunal) Regulations of 2003 lapsed. For easy reference, I find

it apt to reproduce section 23 (3) of the Land and Disputes Court (District Land and Housing Tribunal) Regulations of 2003 as hereunder:-

"23 (3) The Chairman shall upon receipt of the application, make an order requiring a judgment debtor to comply with the decree or order to be executed within the period of 14 days."

In the instant case as alluded above the appellant did not file any objection as a result 14 days lapsed.

Without wasting much time of the court and for reasons canvassed above, I find the appeal before this court is demerit. Thus, I proceed to dismiss the Misc. Land Appeal No.33 of 2020. Each party to shoulder his/her own costs.

Order accordingly.

Dated at Mwanza this date 11th December, 2020.




A.Z.MGEYEKWA

JUDGE

11.12.2020

Judgment delivered on 11th December, 2020 in the presence of the appellant and the respondent.


A.Z.MGEYEKWA

JUDGE

11.12.2020

Right of Appeal fully explained.