

**IN THE HIGH COURT OF TANZANIA  
(MUSOMA DISTRICT REGISTRY)**

**AT MUSOMA**

**MISCL. LAND APPEAL NO. 22 OF 2020**

*(Arising from Misc. Application No. 440 of 2019 in the District  
Land and Housing Tribunal for Mara at Musoma)*

**FREDRIC BALISELA ..... APPELLANT**

**VERSUS**

**ABILA BENEDICTOR .....RESPONDENT**

**JUDGEMENT**

*5<sup>th</sup> March and 27<sup>th</sup> March, 2020*

**KISANYA, J.:**

In the District Land and Housing Tribunal for Mara at Musoma, the respondent, Abila Benedictor, filed an application for execution of decision/decreed of Majimoto Ward Tribunal (Application No 9/2016), the District Land and Housing Tribunal (Land Appeal No. 10/2017) and the High Court of Tanzania, Mwanza District Registry at Mwanza (Land Appeal No. 99/2017).

The District Land and Housing Tribunal granted the application. It ordered for execution of decision of Majimoto Ward Tribunal. Consequently, Ubapa Tribunal Broker was appointed to executed the

Court

Aggrieved by the said decision, the appellant has filed an appeal. He has advanced four grounds as follows, in verbatim:

1. ***That***, the trial tribunal erred in law and fact for failure to take into account that the Appellant is not the owner of the land in dispute, the land in dispute occupied by one Agineda Balisela.
2. ***That***, the trial tribunal erred in law and fact for disregard the proceedings of the application stay (sic) for execution Misc. Land Application No. 466 of 2019 lodged by the Agineda Balisela in DLHT and evidence of the Appellant.
3. ***That***, the tribunal erred in law and fact for combine two application for execution No. 440/2019 and application for stay of execution No. 466/2019 in a mono application number Misc. Land Application No. 440/2019.
4. ***That***, the tribunal erred in law and fact for issue the order of execution between the parties enhance (sic) there is a main suit relating to the land in dispute, Land Application No. 6 of 2019 between the Respondent and Agineda Balisela which is pending in the Tribunal and appeal of stay for execution between the Agineda Balisela against Appellant and the Respondent which is pending in this honorable court.

The brief facts of this matter is to the effect that, the appellant was sued before Majimoto Ward Tribunal in Application No. 9 of 2016. He was alleged to have encroached a piece of land owned by the

respondent. The trial Tribunal declared the respondent as the lawful owner of the said land. The appellant unsuccessfully appealed to the District Land and Housing Tribunal and the High Court of Tanzania, Mwanza District Registry at Mwanza. Thereafter, the respondent applied for execution of the said decision which led to the present appeal.

When this matter was called on for hearing, the appellant and respondent appeared in person, unrepresented.

The appellant submitted that the District Land and Housing Tribunal erred to grant the application for execution as the disputed land belongs to his mother one, Agneda Balisela. He contended further that there were pending cases between the respondent and the said Agneda Balisela. One case was dismissed by this Court on 18/2/2020 while another case (Application No. 6/2019) was pending in the District Land and Housing Tribunal. The appellant concluded his submission by requesting to adopt his petition of appeal and urge me to grant the appeal.

The respondent replied that it is the appellant who invaded the disputed land and not his mother. He submitted further that, the appellant's mother instituted the case upon realizing that the appellant had lost the case in the High Court of Tanzania, Mwanza Registry.

I have considered the record, petition of appeal and the submissions by both parties. It is trite law that, parties to an appeal are not

entitled to produce additional evidence, unless the Court so decides and the adverse party is given an opportunity to cross-examine on such evidence. This is provided for under O.XXXIX, r. 27 of the Civil Procedure Code [Cap. 33 R.E. 2002].

The appellant submitted before this Court that the evidence on grounds of appeal was given at the hearing of application. However, that fact is not reflected in the proceedings. According to record, when the application came up for hearing, the response by the appellant was as follows:

*"The suit land does not belong to me, it belongs Egneda Balisela, my biological mother"*

The appellant did not give evidence as to how the disputed land belongs to the said Agneda Balisela. Further, evidence on applications and cases referred to in the petition of appeal was not given at the hearing of the application before the District Land and Housing Tribunal. Therefore, it is my considered opinion that this Court cannot determine grounds of appeal based on evidence or facts which was not given during trial.

Even if I decide to consider the petition of appeal, the main ground is that the disputed land was not liable for execution because it belonged to the appellants Agneda Balisela. Pursuant to Order XXI, r. 57 of the Civil Procedure, when there is a claim or objection that the property attached is not liable for execution, the Court is empowered to make an investigation and examine the claimant or objector. The

said provisions reads:

*"Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other respects, as if he was a party to the suit"*

Upon filing the objection proceedings, the claimant or objector is duty bound to give evidence to prove that he had an interest on the property attached. This is provided under Order XXI, r. 58 of the Civil Procedure Code as reproduced hereunder:

*The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.*


I have shown herein that the respondent was declared by Majimoto Ward Tribunal as the lawful owner of the disputed land. The said decision was confirmed by the District Land and Housing Tribunal and the High Court of Tanzania. Therefore, the respondent was entitled to apply for execution of decree.

The appellant's mother or any person having an interest on the property attached by the District Land and Housing Tribunal was required to file an objection proceedings before the District Land and Housing Tribunal. It is during the objection proceedings where

evidence as to how the land belongs to Agneda Balisela and the alleged dispute between the said Agneda Balisela and the respondent could have been given.

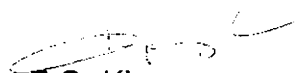
For the aforesaid reasons, I hold that this appeal has no merits. It is accordingly dismissed with cost.

DATED at MUSOMA this 27<sup>th</sup> day of March, 2020.

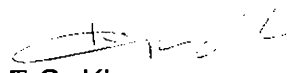
  
E.S. Kisanya  
**JUDGE**  
27/3/2020

**Court:** Judgement delivered in Chamber this 27<sup>th</sup> day of March, 2020 in the presence of the Appellant and the Respondent.



  
E.S. Kisanya  
**JUDGE**  
27/3/ 2020

**Court:** Right of further appeal is explained to the parties.

  
E.S. Kisanya  
**JUDGE**  
27/3/ 2020