

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF TANGA  
AT TANGA**

**MISCELLANEOUS LAND CASE APPEAL NO 55 OF 2018**

*(From the Land Appeal No 03 OF 2018 the District Land and Housing Tribunal of  
Korogwe at Korogwe originating from Mabanda Ward Tribunal in Handeni)*

**ZUBEDA MOHAMED MARAMBO.....APPELLANT**

**VERSUS**

**SAID YAHAYA MWEDI.....RESPONDENT**

**RULING**

**MRUMA J,**

The present appeal is a result of an execution order which directed the demolishing and handing over all structures which were in a piece of land measuring 1.5 acres situated at Mabanda Ward in Handeni District to the Respondent Saidi Yahaya Mwedi. The order was issued by the Land and Housing Tribunal of Korogwe at Korogwe on 18<sup>th</sup> April 2018 in an application for Execution no 3 of 2018.

It was the Respondent, SAID YAHAYA MWEDI who initiated a complaint (Application No. 04 of 2016) against the present Appellant ZUBEDA MOHAMED MARAMBO before the Ward Tribunal of Mabanda in Handeni District. From the records it is apparent that the suit land originally belonged to the parties' deceased

parents. After having heard both parties and their witnesses and also after the tribunal visited the locus quo it decided in favour of the Respondent. The decision was pronounced on the 17<sup>th</sup> day of November 2016 and any aggrieved party was advised to challenge the decision within 45 days which was to lapse by 01/01/2017. No party challenged the decision.

On 04/01/2018, the Respondent filed an application for execution at the District Land and Housing Tribunal of Korogwe in Miscellaneous Application No 03 of 2018. Notice to appear before the tribunal so as to show cause on why execution should not be implemented was issued to the appellant on 05/01/2018. Records show that when the matter was called for mention, Mr. J.R Kidungwea Ward Executive Officer of Mabanda, certified that the appellant refused to sign the summons.

The application was therefore heard *ex parte* leading to an order dated 18<sup>th</sup> April 2018 which the appellant now seeks to defy on nine avenues as below;-

- 1. That the District Land and Housing Tribunal for Korogwe fatally erred in law to allowing the application for execution no 03 of 2018 arising from the Land Dispute No.....and hereunder issuing an eviction order against the appellant on 18/04/2018 compelling the appellant to vacate from the suit land whilst the appellant has neither being (sic) with the*

*knowledge of existence of the foregoing application for execution No 03 of 2018 nor the determination of the Land dispute No.....which was filed,heard,and founded against the appellant by the Mabanda Ward Tribunal as well as the District Land and Housing Tribunal for Korogwe respectively;*

*2. That the District Land and Housing Tribunal for Korogwe fatally erred in law to allowing the application for execution no 03 of 2018 arising from the Land Dispute No.....and there under issuing an eviction order against the appellant on 18/04/2018 compelling the appellant to vacate from the suit land without summoning the appellant to show cause why the eviction order should be issued for the decree holder and as against judgment debtor(hereinafter the appellant);*

*3. That the District Land and Housing Tribunal for Korogwe erroneously and fatally erred in law to allowing the application for execution no 03 of 2018 arising from the Land Dispute No.....by Mabanda Ward Tribunal and thereafter through Fax Auction Mart issuing the 14 days' eviction order against the appellant on 18/06/2018(sic) compelling the appellant to vacate the suit land, however not in the knowledge of the appellant,the foregoing application*

*for execution was filed, proceeded exparte, and ultimately founded under the auspice of exparte orders;*

*4. That the District Land and Housing Tribunal for Korogwe erroneously and fatally erred in law to allowing the application for execution no 03 of 2018 arising from the Land Dispute No.....by Mabanda Ward Tribunal and thereafter through Fax Auction Mart issuing the 14 days' eviction order against the appellant on 18/06/2018(sic) compelling the appellant to vacate the suit land, without taking into consideration that the respondent sued the foregoing appellant personally over the family property and not on the capacity of the administratrix of estates;*

*5. That the District Land and Housing Tribunal for Korogwe erroneously and fatally erred in law to allowing the application for execution no 03 of 2018 arising from the Land Dispute No.....by Mabanda Ward Tribunal and thereafter through Fax Auction Mart issuing the 14 days' eviction order against the appellant on 18/06/2018(sic) compelling the appellant to vacate the suit land, without taking into consideration that the respondent sued the foregoing appellant personally over the family property, which family property has been disposed of by way of sale to third parties some years back;*

6. *That the District Land and Housing Tribunal for Korogwe erroneously and fatally erred in law to allowing the application for execution no 03 of 2018 arising from the Land Dispute No.....by Mabanda Ward Tribunal and thereafter through Fax Auction Mart issuing the 14 days' eviction order against the appellant on 18/06/2018(sic) compelling the appellant to vacate the suit land, without taking into consideration that the suit land which is litigated is unknown to the appellant and the entire family;*
7. *That the District Land and Housing Tribunal for Korogwe erroneously and fatally erred in law to allowing the application for execution no 03 of 2018 arising from the Land Dispute No.....by Mabanda Ward Tribunal and thereafter through Fax Auction Mart issuing the 14 days' eviction order against the appellant on 18/06/2018(sic) compelling the appellant to vacate the suit land, without taking into consideration that the respondent sued the foregoing appellant on unknown suit land and through enforcement of the execution order the respondent claims the suit property which was typically a family property before to being finally disposed to bonafide purchaser;*
8. *That the District Land and Housing Tribunal for Korogwe erroneously and fatally erred in law to allowing the*

*application for execution no 03 of 2018 arising from the Land Dispute No.....by Mabanda Ward Tribunal and thereafter through Fax Auction Mart issuing the 14 days' eviction order against the appellant on 18/06/2018(sic) compelling the appellant to vacate the suit land, without taking into consideration that the respondent who is a decree holder through the issued eviction order cannot evict the right and legal occupiers from the suit property containing one half(1.5) acres which does not situate at the land the enforcement is purported to be carried;*

- 9. That the District Land and Housing Tribunal for Korogwe erroneously and fatally erred in law to allowing the application for execution no 03 of 2018 arising from the Land Dispute No.....by Mabanda Ward Tribunal and thereafter through Fax Auction Mart issuing the 14 days' eviction order against the appellant on 18/06/2018(sic) compelling the appellant to vacate the suit land, without taking into consideration that the respondent who is a decree holder through the issued eviction order cannot evict the right and legal occupiers from the suit property containing one half(1.5) acres which does not situate at the land west point of the compass from the centre point of the Misima Primary School instead of the suit property presided over by the bonafide purchasers of the suit property.*

Upon being served with the petition of appeal, the respondent filed a notice of preliminary objections that;-

*i. The appeal is hopelessly time barred;*

*ii. The appeal is vague and incompetent because the order is not appealable.*

Both parties were unrepresented so hearing of the preliminary objections was ordered to proceed by way of written submissions. As it is the law that the one who alleges must prove, the Respondent who raised the objection submitted first.

In his written submission in support of the first ground of objection the Respondent submitted that the order for execution of the Miscellaneous Application no 03/2018 was delivered on 18<sup>th</sup> day of April 2018, and the present petition of appeal was presented for filing at the District and Land Housing Tribunal on 5<sup>th</sup> July 2018 which is 79 days after the order was given. According to Respondent that was way beyond time. He cited the case of **CRDB (1996) LTD VS BONIFACE CHIMYA (2003) TLR 413** inviting this court to dismiss this appeal as it was in the cases of **HARUNA OMARI LWENO VS SOCIETE INTERNATIONALE DE TELECOMMUNICATIONS ARZONAUTIQUES Civil Case no 305 of 1991**(unreported) at page 3 and **SHUMBI LYANGA VS MALAJA VILLAGE COUNCIL MISC LAND CASE APPEAL NO 35 OF 2007** (Unreported). In

both cases it was held that once an application has been lodged out of the prescribed time limited by any written law, it shall be dismissed.

On the second ground the Respondent submitted that the order by the District Land and Housing Tribunal is not appealable as it does not fall under the umbrella of Section 74 and Order XL of the Civil Procedure Code, Cap 33 R.E 2002. In that premises therefore, the appellant ought to have applied for Revision under section 79 of the CPC.

Retorting, the appellant maintained that the first point of preliminary objection is not a pure point of law as required in the case of **MUKISA BISCUIT MANUFACTURING CO. LTD. v WEST END DISTRIBUTORS LTD [1969] E.A. 696**. On the second point of objection, the appellant was of the view that the order is appealable. He defined the term appeal according to Wex Legal Dictionary (2008) and English Black Law Dictionary (1976) that appeal is a legal process established to cure the defects resulting into grievances by the appealing party to a higher court from the trial lower court. He also added that since the order in Miscellaneous Application No 03/2018 determined the matter to its finality then the order is appealable.

Putting all arguments and the circumstances of the case on the table I think the gist of the preliminary objection revolves around two issues.



1. Whether the DLHT execution order is appealable to this court
2. Whether this appeal was timely filed

I have explored enough on these two questions and also taken note of arguments raised by both parties to this case. There is no provision of law that confers direct mandate to appeal against an order for execution. However the Law of Limitation Act, Cap 89 R.E 2002 as well as the Civil Procedure Code, Cap 33 R.E 2002 may have the answer to this situation.

Addressing the first issue it will suffice to quote section 74 of the CPC;-

*74.-(1) An appeal shall lie to the High court from the following orders of the District Courts, Resident Magistrate's Courts **and any other tribunal**, the decisions of which are appealable to the High Court, and save as otherwise expressly provided in this code or by any law for the time being in force from no other order*

- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the court;*
- (b) an order on an award stated in the form of a special case;*
- (c) an order modifying or correcting an award;*
- (d) an order filing or refusing to file an agreement to refer to arbitration;*
- (e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;*

*(f) an order filing or refusing to file an award in an arbitration without the intervention of the court;*

*(g) an order under section 69;*

*(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention as a civil prisoner of any person except where such arrest or detention is in execution of a decree; or*

*(i) any order made under rules from which an appeal is expressly allowed by rules.*

*(2) Notwithstanding the provisions of subsection (1), no appeal shall lie against or be made in respect of any preliminary or interlocutory decision or order of the District Court, Resident Magistrate's Court **or any other tribunal, unless such decision or order has effect of finally determining the suit.***

The crucial question to deliberate is whether the execution order by the DLHT had the effect of finally determining the matter. The answer is in affirmative, an execution order is not interlocutory and it could finally determine the matter. In that sense this order falls under appealable matters.

Navigating to the second issue, on whether the appeal was timely filed

Under The Law of Limitation Act Cap 89 R.E 2010 , appeals are governed under part II of the Act and it is stated therein that

*(2)An appeal for which no period of*

*limitation is prescribed by this Act or any other written law  
.....forty-five days.*

Since there is no law which provides for limitation of time to appeal against an execution order, the above quoted provision will apply, that the appeal ought to have been preferred within forty five days after the decision was rendered. The DLHT decision was delivered on 18/04/2018 and this appeal was filed on 05<sup>th</sup> July 2018, 78 days after. This only means that the appeal was brought out of time and hence contrary to the law.

In fine, the preliminary objection is upheld so the appeal is hereby struck out. The Respondent shall have his costs in this matter.

  
A.R. Mruma,

Judge

Dated at Tanga this 9<sup>th</sup> Day of March 2020.