

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**IN THE DISTRICT REGISTRY OF TANGA**

**AT TANGA**

**MISC. LAND CASE APPEAL NO 18 OF 2020**

*(Originating from the District Land and Housing Tribunal of Tanga at Tanga in Land Application No. 110 of 2019  
and Land Complaint of Nguvumali Ward Tribunal)*

**MKOZI O. MKOZI.....APPELLANT**

***VERSUS***

**DAVIS C. MNKANDE**

**(As administrator of estates of Charles**

**Mnkande).....RESPONDENT**

**JUDGMENT**

**MRUMA,J.**

The present appeal is a result of an execution order which was issued by the District Land and Housing Tribunal of Tanga on 16/06/2021 in an application for execution No. 110 of 2019. The Execution originates from the Ward tribunal of Nguvumali where the Respondent herein lodged a complaint claiming land rent arrears which were unpaid by the Appellant who was residing in the disputed house.

The trial tribunal decided in favour of the Respondent Davis Mnkande and ordered the Appellant to vacate from the suit house. It further ordered the Appellant to pay the land rent which were due.

The Appellant neither challenged nor honoured the tribunal's decision, and as a result the Respondent filed an application for execution in the District Land and Housing tribunal vide Application No. 110 of 2019 and on 16/06/2021 after having heard both sides, the tribunal allowed the application thus upheld orders of the ward tribunal also appointed Majembe Auction Mart to execute the decree in case of default of compliance by the judgment debtor i.e the appellant herein.

This decision irritated the Appellant and hence approached this court by way of an appeal with 5 grounds as jotted down in his petition of appeal.

In arguing this appeal both parties were unrepresented and they argued orally. The Appellant Mkozi O Mkozi stated that he is entitled to the house in dispute because his mother Mariam Jiriwa and the late Fatuma Jiriwa who is Amina Salim's mother were sisters from the same mother.

On his side the Respondent Davis Mnkande argued that originally the house was owned by Fatuma Jiriwa. Fatuma had only one child Amina Salim. The Appellant was a mere tenant in the house and was paying rent and they used to give him some money so that he could keep paying land rent.

In brief rejoinder, the appellant reiterated that he is not a tenant.

Before me is an appeal against an execution order or ruling by the District Land and Housing Tribunal. I think the first matter to be determined is competency of this appeal before I decide it on merit if need be. Before I go further in discussing each of the grounds of this appeal, I have asked myself whether this matter is properly before this court?

The orders subject to appeal are listed under Section 74 and Order XL of the Civil Procedure Code, Cap. 33, R.E. [Cap. 33, R.E. 2019]. An order arising from the execution proceedings is not listed as one of the matters. It is therefore not appealable. This has been repeatedly held in numerous cases of this court such as in recent decisions in **Kelvin Rodney Zambo vs UAP Tanzania Insurance Co. Limited**, Civil Revision No. 39 of 2019, High Court Dar es Salaam and **Manraj Singh Bharya and Another vs Rev. Godfrey Walalaze**, Civil Appeal No 05 of 2019, High Court Tanga Registry and also the case of **General Tyre**

**(E.A.) Ltd vs Amenyisa Macha and Others;** Civil appeal No. 21 of 2003 High Court at Arusha to mention but just a few.

Since no appeal arises from an execution order, it follows that this appeal is improperly before this court therefore it stands to be struck out with no orders as to costs as the one who instituted it was a lay person with no knowledge of law and procedures.



  
A. R. Mruma

**Judge**

**30/11/2021**