

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISC. LAND APPEAL NO. 145 OF 2020**

**CHACHA NYIKONGORO ..... APPELLANT**

***VERSUS***

**NDEGE KISEKE ..... RESPONDENT**

***(Appeal from ruling of the District Land and Housing Tribunal  
for Mara at Musoma in Misc. Application No. 944 of 2019)***

**RULING**

27<sup>th</sup> and 27<sup>th</sup> April, 2021

**KISANYA, J.:**

At the District Land and Housing Tribunal for Mara at Musoma (the DLHT), the respondent, Ndege Kiseke applied for execution of the judgment of the decree of the Mugeta Ward Tribunal, in which he was declared lawful owner of the disputed land. The appellant, Chacha Nyikongoro defaulted to appear before the DLHT. The respondent's application was granted. The DLHT went on to order the appellant to vacate the disputed land within 14 days from 30.07.2020 and if he defaulted he was to be evicted by the Tribunal broker.

The said ruling prompted the appellant to lodge the present appeal. He advanced three grounds which can be merged into one ground that; the DLHT proceeded to determine and allow the execution proceedings while Land Appeal No. 123 of 2016 in respect of the land in dispute was pending before it.

When this matter was called on for hearing today, both parties appeared in person.

At the very outset, I called upon the parties to address the Court whether an execution order is appealable. In other words, parties were required to address on the competence of appeal arising from the execution proceedings.

This being a legal issue it was not well addressed by the appellant and respondent who are lay persons. Chacha Nyikongoro was of the view that the appeal is competent before the Court and that execution order is appealable. On the other part, Ndege Kiseke informed the Court that he was ready for hearing.

On my part, the issue raised by the Court is based on the provision of section 74 and Order XL of the Civil Procedure Code [Cap.

33, R.E. 2019] (the CPC) which specify appealable orders. As far as an order arising from the execution proceedings is concerned, it is not listed in the said provisions. This implies that an execution order is not appealable.

The proper recourse to a person aggrieved by the execution order/ruling is to file an application for revision of the execution proceedings, litigate the questions relating to execution under section 38 of the CPC or filing reference to this Court under Order XLI, Rule 1 of the CPC. See also **Kalebu Kuboja Mjinja vs Shadrack Daniel Tembe**, HCT at Musoma, Civil Appeal No. 24 of 2020 (unreported).

It is common ground that the ruling subject to this appeal is an execution order. This is reflected in the following passage of the ruling of the DLHT:

*"Consequently, the judgment debtor is hereby ordered to surrender vacant possession of the disputed land effective within fourteen days from the date of delivery of this judgment, failure of which the Tribunal broker to execute this order by evicting the judgment debtor from*

*the suit premises. The report of the execution be brought after the execution."*

In the premises, the present appeal is incompetent because it has been preferred against execution order which is not specified in section 74 and Order XL of the CPC as appealable order.

That said and done, I have no option but to strike out this appeal for being incompetent. I make no order as to costs because the appeal has been disposed basing on the issue raised by the Court, *suo motu*.



DATED at MUSOMA this 27<sup>th</sup> day of April, 2021.

  
E. S. Kisanya  
JUDGE

Court: Ruling delivered on the 27<sup>th</sup> day of April, 2021 in the presence of the appellant and the respondent.



  
E.S. Kisanya  
JUDGE  
27/04/2021