

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. LAND APPEAL NO.10 OF 2019

MASHANA BUNDALA.....APPELLANT

VERSUS

1.LEA NYEMBE

2.LIMI NYEMBE

3.SOPHIA NYEMBE.....RESPONDENTS

(Appeal from the Order of the District Land and Housing Tribunal of
Kahama)

(Paulos L.S Lekamoi, Chairman)

Dated 30th day of September, 2019

In

Misc. Application No.221 of 2019

.....

JUDGEMENT

4th March & 1st April, 2021

MDEMU,J.:

In this appeal, the Appellant herein was aggrieved by the decision of the Ward Tribunal in Miscellaneous Application No.01 of 2018 dated 9th day of November, 2021. He appealed to the District Land and Housing Tribunal in Land Appeal No.47 of 2018 and on 10th day of May, 2019, the appeal was dismissed for non-appearance. He also filed an application for extension of time to lodge an application for setting aside dismissal order

in Misc. Land Application No. 450 of 2019 of which, on 2nd day of September, 2019 the application was dismissed for failure to show good cause for delay. Due to that order, the Respondents filed an application for execution in Misc. Land Application No. 221 of 2019. On 30th day of September, 2019, the trial tribunal ordered the Appellant as a judgement debtor to be evicted from the disputed land and hand it to the decree holders. The Appellant being aggrieved by such an order, lodged three grounds of appeal that:

- 1. The honourable Chairman of the District Land and Housing Tribunal erred in law to order execution of the decision of the Ward Tribunal for Chela Ward which was not signed by each of the members who were present at the sitting of such trial tribunal.*
- 2. The honourable Chairman of the District Land and Housing Tribunal erred in law to order execution of the Ward Tribunal for Chela Ward while particulars of the suit land claimed by the Appellants in such trial Tribunal were not disclosed.*
- 3. The honourable Chairman of the District Land and Housing Tribunal erred in law to order the Executive Officer for*

*Chela Ward to execute the decision of the trial Tribunal
while such Ward Executive Officer is not a tribunal broker.*

When the appeal was called for hearing on 4th day of March,2021, the Appellant was represented by Mr. Audax Constantine, learned Advocate whereas the Respondents appeared in persons.

Regarding to the grounds of appeal, Mr. Audax Constantine, Learned Advocate, in the first place, prayed to abandon the first ground of appeal. He then argued on the second ground of appeal that, the decision of Chela Ward Tribunal dated 28th day of November,2018 does not indicate boundaries, that is, particulars of the disputed land was not disclosed, so do the size which is unknown. He added that, the District Land and Housing Tribunal was not correct to execute the decree whose decision the boundaries are unknown. He cited the case of **the Bord of Trustees of F.P.T.C Church v. the Board of Trustees of Pentecostal Church, Misc. Land Appeal No.3 of 2016**, at page 10, to support his point.

In the third ground of appeal, he submitted that, the Chairman of the DLHT directed the WEO of Chela to be a broker. To him, in terms of G.N.No.174 of 2003, the chairman is supposed to appoint a court broker for execution. Specific in Regulation 2 of G.N.No. 174 of 2003, a broker

is a person appointed by the Registrar of the Tribunal under Regulation 26 of G.N.No.174 of 2003. He must be among court brokers or licensed auctioneers. His view on this was that, the WEO is not among them. Therefore, he prayed this court to nullify the decision of the District Land and Housing Tribunal through revision powers and order the matter to start afresh. He also prayed costs be provided for.

In reply, the First Respondent submitted that, it is not true that the boundaries were not known. To her, the decision of Ward Tribunal was correct. The second Respondent also replied that, the boundaries were known and the Ward Tribunal visited the area for demarcation. The third Respondent has nothing useful to submit rather than associating himself to the position of the first and the second Respondents.

I have duly considered submissions of the Learned Advocate on the two grounds of appeal, the Respondents' submissions together with the entire evidence on record. The issue here for determination is whether the process of execution in the District Land and Housing Tribunal was proper. The available record at page 16 of the Chela Ward Tribunal proceedings, it reads as follows;

MAAMUZI YA BARAZA:

- (i) *Baraza linakubalina na maelezo ya walalamikaji na maelezo ya mashahidi wa walalamikaji.*
- (ii) *Baraza linaamua kuwa, ardhi/eneo hili ni haki na urithi wa walalamikaji (yaani Watoto wa NYEMBE MHOLU)*
- (iii) *Baraza limetoa uamuzi kuwa, mlalamikaji ndg. MASHANA BUNDALA hana haki katika eneo hili, hivyo akabidhi eneo hili kwa wanaukoo/Watoto wa NYEMBE MHOLU."*

From the quoted part of the proceedings above, it is clear that, the Ward Tribunal's decision does not indicate the boundaries or simply to say, particulars of the disputed land was not disclosed including the size which is unknown. But in my view, a question of boundaries or demarcations of the suit property cannot be dealt with in the appeal which arises from execution proceedings. That question ought to have been dealt with by the District Land and Housing Tribunal if the Appellant would have appealed against the said decision of the Ward Tribunal.


Actually, what the learned counsel submitted by requiring this court to nullify the Ward Tribunal's decision in a way, is trying to challenge that decision on merits. What comes out of it is making this

court a first appellate tribunal from decisions of the ward tribunal. This is unprocedural. I am aware of the position in case of **The Board of Trustees of Pentacostal church** (supra), but I am not bound by that decision.

Regarding the ground that, the Chairman of the District Land and Housing Tribunal erred to direct the Ward Executive Officer of Chela to execute the decision of the Ward Tribunal while is not a tribunal broker, I agree with Mr. Audax that it was improper for the chairman of District Land and Housing Tribunal to appoint the WEO to be a broker. In the first place, him (WEO) being a Secretary to the ward tribunal, cannot be at the same time, the tribunal broker. Him being a government official, can only assist in execution, but not as a tribunal broker.

Having observed so, I find that, the appeal has no merits and I here by dismiss it. No order as to costs.

It is so ordered


Gerson J. Mdemu
JUDGE
1/4/2021

DATED at SHINYANGA this 1st day of April, 2021.


Gerson J. Mdemu
JUDGE
1/4/2021