



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

MISC. LAND CASE APPEAL NO. 32 OF 2019

(Arising from Karagwe district Land and Housing tribunal in Misc. Application No. 77 of 2018, originating from Isingiro Ward Tribunal in civil Case No. 45 of 2010)

JOHN BISILINGI-----APPELLANT

VERSUS

JUSTINIAN ELIZEUS-----RESPONDENT

JUDGMENT

22/2/2021 & 21/5/2021

KAIRO, J.

Having been aggrieved by the decision of the District Land and Housing Tribunal (to be referred to as the DLHT) for Karagwe at Kayanga in Misc. Application No. 77 of 2018, the Appellant decided to institute this appeal to challenge it raising five grounds of appeal as follows: -

1. That, the chairman of the District Tribunal erred in law and in fact to grant execution to the judgment debtor in Civil Case No. 45/2010 of Isingiro Ward Tribunal in which the appellant was a decree holder in the same case which is found at Bukoba DLHT for execution.

2. That, the Chairman of the district tribunal erred in law and in facts to grant application for execution without any original file records in the Tribunal while the original file of the records is still in Bukoba DLHT for execution of the same Civil Case No. 45/2010 in which the respondent wants to infringe the legal rights of the appellant. The copy of ruling is hereby attached to form part of this appeal.
3. That, the District Tribunal erred in law and in facts to allow the judgment debtor to redeem the shamba of the Appellant in which the Appellant had already filed the application for execution No. 122/2018 at Bukoba DLHT against the Respondent (judgment debtor) in the same Civil Case No. 45/2010 of Isingiro ward Tribunal and thus the respondent has no legal title to redeem shamba from the decree holder (appellant).
4. That, the District Tribunal erred in law and in facts for failure to know; that the decision of High Court of Bukoba allowed the Appellant to execute the Civil Case No. 45/2010 in which the respondent was a judgment debtor since from the beginning of the case. The copy of judgment from High Court of Bukoba is hereby attached to form part of this appeal.
5. That, District tribunal erred in law and in facts to decide the case which was res subjudice to another competent court of

Bukoba DLHT pending the hearing of application for execution No. 122/2018 from the same Civil Case No. 45/2010.

WHEREFORE, the Appellant prays this Hon. High Court for the following orders;

- (i) Quash the proceedings, decision and orders made therein by the district Land and Housing Tribunal of Karagwe.
- (ii) Declaration that the appellant is a lawful owner of the suit shamba.
- (iii) Vacant possession for the respondent from the suit shamba.
- (iv) Any other orders and relief(s) as this Honorable Tribunal may deem fit and just to grant.

To appreciate the orders to follow, I find it pertinent to give the back ground of this dispute at lengthy as it is a weird case wherein each party considers himself a decree holder and each has filed execution proceedings. The Appellant has filed execution proceedings No. 122/2018 which seems to be pending at Bukoba DLHT while the Respondent had filed Execution proceedings No 77/2018 at Karagwe DLHT, the subject of this appeal.

The record has it that, the Respondent had sued the Appellant at Isingiro Ward Tribunal claiming that he had trespassed into the clan farm which he was given by his father and damaged some properties therein. The claims were denied by the Respondent alleging that he had purchased the land in dispute from one Elizeus Antony (the father of the Respondent) and

tendered the sale agreement to that effect. Upon adduce of evidence by both parties, the trial Tribunal decided in favor of the Appellant, whereby he was declared the owner of the land in dispute but gave the right of redemption to the Respondent if he wished after it made a finding that the land in dispute was a clan land.

Following that decision one Princhipius Mshemba; alleged to be a clan head was aggrieved and filed revision proceedings against the Appellant at the DLHT whereby the DLHT reversed the trial Tribunal decision.

The Appellant was not amused thus successfully filed an appeal at the High Court in Misc. Land Case Appeal No. 37 of 2006. The High Court quashed and set aside the orders of the DLHT. The High Court reasoned that the Applicant (Princhipius Mshemba) wasn't a party at the trial Tribunal's decision thus had no *locus* to institute the revision proceedings, further that the land in dispute was not a clan land as such, the Vendor had right to dispose it as he did. The High Court concluded by upholding the decision of the trial court (Ward Tribunal) as a whole while it has made a finding that the land in dispute wasn't a clan one.

Following the said High court decision, Appellant filed application for execution at the DLHT for Bukoba and the Respondent filed execution proceedings at the DLHT at Karagwe which was allowed. This is the decision aggrieved the Appellant herein, hence this appeal.

The Appellant is self-represented while the Respondent is represented by Advocate Lameck Erasto.

Before determining whether this appeal is meritorious or not, I find it imperative to ascertain the propriety of this appeal before me. In other words, whether this appeal is properly before the High Court having in mind that the same seeks to challenge the execution order of the DLHT.

The position of the law is to the effect that no appeal lies from an execution order. I got fortification in this stance in the case of **General Tyre (E.A.) Ltd vrs Amenyisa Macha and Others**; Civil appeal No. 21 of 2003 HC. AR (unreported). In the above cited case, the appellant had appealed against the execution order and at Pg. 4, the court stated as follows;

" In the light of the afore said, apparently, no appeal lies from an Execution Order...."

In the cited case the court went further :

"Any person aggrieved by a decision on execution, may challenge the same by way of a revision in the court higher in the Judicial Hierarchy".

But I hasten to add that depending on the nature of the error to be corrected, review can also be preferred/invoked.

As earlier stated, the Appellant in this appeal seeks to challenge the execution order of the DLHT of Karagwe. Applying the decision of the cited case to the facts at hand, it goes that this appeal is improperly before this court with much respect and it ought to be struck out. However, I would order no cost. This is because, thorough perusal of the court record, I have noted that the findings of the High Court didn't tally with its conclusion

which resulted to the confusion to parties as to who is a decree holder. As such it is unfair in my view to condemn anyone to cost.

Appeal struck out with no order to cost.

It is so ordered.




L.G. Kairo
Judge
21/05/2021

Date: 21/5/2021

Coram: Hon. J. Massesa, Ag DR

Appellant: Present

Respondent: Present

B/Clerk: Gosbert Rugaika

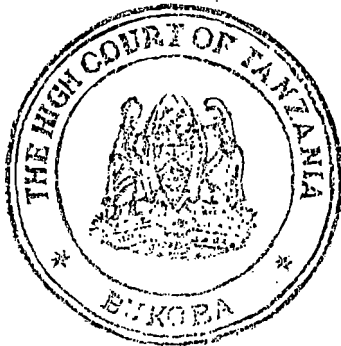
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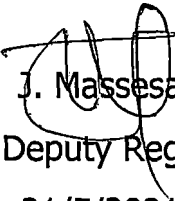
Judgment delivered today on 21st day of May, 2021 in the presence of both parties.



J. Massesa
Ag, Deputy Registrar
21/5/2021

Court: Right of Appeal fully explained.




J. Massesa
Ag, Deputy Registrar
21/5/2021