

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

REFERENCE APPLICATION NO. 1 OF 2020

(Emanating from Execution Land Application No.1 of 2020 which same origination from the decision of the High Court of the United Republic of Tanzania in District Registry of Shinyanga in Land Revision No. 01 of 2020 dated 14th April, 2020)

ADRIANO OMARY KIMBULU.....APPLICANT

VERSUS

TATU JUMA MZEE (Administratrix of the

Estate of the late Almas Mwinyinvua.....1st RESPONDENT

MWINYINVUA ALMAS HEGA.....2nd RESPONDENT

RULING

13th April & 28th May, 2021

MKWIZU J:

This is a ruling in respect to an application for reference filed by the applicant. The facts leading to the application at hand has a chequed history. Following the demise of one Almas Mwinyimvua Hega, 2nd respondent was appointed the administratrix. In her capacity, she sold one of the estate's property that is Plot No 216 Bloc 'A' at Majengo area within kahama Township to the applicant, Adriano Omary Kimbulu at a purchase price of 26, 250,000/= .The 2nd respondent being a heir , did not consent to the said sale and therefore filed a suit at the DLHT for Shinyanga

registered as Land application No 144 of 2015. The trial tribunal found for the applicant. It held the sale transaction valid and declared the buyer, Adriano Omary Kimbulu lawful owner.

2nd respondent wasn't happy with that decision, she successfully filed review proceedings vide Misc. Land Application No 177 of 2015, again before the trial tribunal. The Tribunal on 12th July, 2016 nullified the purported sale, and ordered the 1st respondent Tatu Juma Mzee to refund the purchase price to the applicant. Applicant applied for execution of the above order and through its order dated 3rd January, 2020, the tribunal directed the court broker, Nyange Auction Mart Co Limited to evict the respondents and handover the house to the applicant. The order was executed.

Respondents were aggrieved. They filed revision No 1 of 2020 in this court. Mkeha J faulted the tribunal for inter alia executing a non-existing decree for the decree giving right of the house to the applicant was overturned by the decision in Application No 177 of 2015. The revision was in simple words, allowed. This court went ahead to quashing the tribunals order dated 3rd January, 2020 it then clothed the parties with their status acquired in the decision in Land application No 177 of 2015.

On 27/4/2020, 1st and 2nd respondents assisted by advocate Siraji Musa Kwikima filed execution proceedings before this court vide Land Execution No. 1 of 2020. The prayers in that application were for this court to execute the Land Revision No. 1 of 2020 on the following orders that;

- i. Appointment of the Court Blocker*
- ii. An order for eviction of the applicant from the suit premises, Plot No. 216 Block "A" Majengo- Kahama by the Court Broker*
- iii. Delivery of vacant possession and handing over the suit premise, Plot 216 Block "A" to the Respondents by the Court Blocker.*

E G. Rujwahuka, Deputy Registrar granted the execution application and went on to give the following orders:

- 1. "The appointed Court Broker is Abajaja Court Broker*
- 2. The Court Broker to use forcible orders as the respondent did to evicting the applicants on 17/01/202, by assistance of the police force, respondent together with his tenants or occupation to the disputed house to be evicted immediately.*
- 3. The Court Broker with police force assistance to make sure that the applicants together with their family stay remaining at their*

disputed house situated on Plot No. 216 Block "A" at Majengo within Kahama Township.

4. This application is granted with costs."

Applicant, **ADRIANO OMARY KIMBULU**, feels that the above order is not proper, he has come with this reference for setting aside the proceedings in Execution Application No. 1 of 2020 dated 05/05/2020 inviting this court decide whether it was proper for the Deputy Registrar to execute the drawn order by Hon C.P. Mkeha Judge dated on 6/4/2020. The application was made by a chamber summons under Order XLI Rule 1,3 and 5 of the Civil Procedure Code, [Cap 33 RE 2019] supported by the grounds set forth in the affidavit sworn by the Applicant.

At the hearing, applicant was represented by Mr. Martine Masanja learned Advocate and the respondents had the services of Mr. Majura Magembe who hold the brief for Mr. Silaji Kwikima with instruction to proceed.

Mr. Masanja first adopted the grounds for reference as indicated in the affidavit in support of the application to form part of his submissions and in addition he submitted that, the decision in Revision No. 1 of 2020 maintained status quo in Miscellaneous Application No. 177 of 2015.

Respondents filed an Application for execution No 1 of 2020 executing the drawn order in Revision No. 1 of 2020 which Hon. Rujwahuka ordered the Applicant to hand over the suit property to the respondents without saying a word on the refund of the purchased price.

In reply, Mr. Majura for the Respondents prayed to adopt the counter affidavit. He submitted that, the execution application made against the decision in revision No 1 of 2020 was proper. He argued that in his decision Mkeha J maintained the parties status as it were in Miscellaneous Land Application No. 177 of 2015 and therefore this court had powers to execute the said decree issued in Revision. He finally prayed for the dismissal of the reference with costs.

In rejoinder, Mr. Masanja insisted that the High Court had power to execute its decision but, because the decision for execution in this matter was delivered by the shinyanga DLHT then the proper executing court was the District Tribunal and not the high Court.

Having examined the lower court's records together with the affidavit and counter affidavit and submissions made by the counsel for the parties, the court is satisfied that the Land execution No 1 of 2020 to execute the Land Revision No. 1 of 2020 was not properly filed in this court. Principally,

execution of a decree is done before the court that issued the decree. This is the legal position as provided for under Order **XXI Rule 9 of the Civil Procedure Code (Cap 33 R:E 2019)** that:-

*9. -When the holder of a decree desires to execute it, **he shall apply to the court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions herein before contained to another court then to such court or to the proper officer thereof (Emphasis added).***

The above provision are coached in a mandatory form that a decree is executed by the court or tribunal that passed the decree. It is evident from the records that, Mkeha J, in Revision No 1 of 2020 did not come with a new decree. He just reminded the parties that their status is as they were at the delivery of the decision in Miscellaneous Land Application No 177 of 2015 by the Shinyanga District Land and Housing Tribunal. In other words, the decision in Revision No 1 of 2020 had directed the parties as to the valid decree available for execution. **Section 33 (3) of the Land Disputes Court Act Cap 216** vests the DLHT with powers to execute its own decree. The section says:

The District Land and Housing Tribunal shall have powers to execute its own orders and decrees.

The above being the position of the law, and having concluded that the decree in question was issued by the trial Shinyanga DLHT, then it goes without saying that the executing tribunal should have been the shinyanga District Land and Housing tribunal and not the High Court.

That said, I allow the reference, the proceedings in execution application No 1 of 2020 are nullified and its resultant ruling and orders quashed and set aside. An interested party should file execution proceedings of the decree in Miscellaneous Land application No 177 of 2015 before the trial tribunal and not otherwise. Applicant is awarded costs of this application. It is so ordered.

Order accordingly.

DATED at SHINYANGA this 28th day of May, 2021



E. Y. Mkwizu
E. Y. MKWIZU
JUDGE
28/05/2021