

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND APPEAL NO. 28 OF 2019**

*(C/F District Land and Housing Tribunal for Arusha in Misc.*

*Application No. 138 of 2018)*

**JOHN MAROMBOSO..... APPELLANT**

**VERSUS**

**JOHN MKINDA ..... RESPONDENT**

**JUDGMENT**

13/4/2021 & 4/06/2021

MZUNA, J.:

**JOHN MAROMBOSO**, judgment debtor in Sokon I Ward Tribunal vide Land Case No. 9 of 2007 has lodged this appeal against the execution by the District Land and Housing Tribunal of Arusha at Arusha in favour of **JOHN MKINDA**, the decree holder.

Briefly stated, the respondent was declared a lawful owner of the suit land measured 42x 24ft as per the Ward Tribunal Judgment. Since there was no any application by the judgment debtor to stay execution of the said decree, the District Tribunal on 16/8/2019 granted this application for execution. The appellant complains that the Chairman in allowing execution based his decision on a forgery map which was not part of the record in the Ward Tribunal.

During hearing which proceeded by way of written submissions, the appellant was represented by Ms. Edna Mndeme, learned counsel whereas the respondent appeared in person, unrepresented. The appeal is founded on one ground, which reads:-

- 1. The Honourable Chairman erred in law and in fact by allowing execution based on a forgery map which were not part of the record in the Ward Tribunal.*

The argument of the learned counsel for the appellant is that the appellant does not dispute the handing over of land described in the judgment of the trial Tribunal. What is being disputed is that the respondent forged a map which has wide roads in all sides to increase the land to be handed to him contrary to what they agreed in sale agreement. They prayed for this appeal to be allowed and Misc. Application No. 138 of 2018 to be quashed and set aside.

Objecting this appeal, the respondent contended that, the ground raised by the appellant is a misconception and insult to Hon. Chairperson. Hon. Chairperson determined the application based on the Ward Tribunal application No. 9 of 2007 and contract of sell which included the road to be part of the purchased land. That, since the appellant did not appeal against the judgment of the trial tribunal it implies that he was quite satisfied with the judgment and orders.

He added that, the appellant failed to indicate at which page and paragraph the Chairman used the alleged map. That the map was tendered at the trial tribunal by Muuzaji wa 1 not the respondent or that it was tendered at the execution proceedings. That since the the appellant did not produce what he says is a correct map to prove that the map which was tendered at the Trial Tribunal was forged, then the appeal should be dismissed with costs.

*The question for determination is whether the execution order was in conformity with the judgement delivered at the Ward Tribunal?*

I have taken time to peruse the records of the tribunal and found at the hearing of the application for execution the respondent said that and I will quote for ease of reference; -

*"The suit land to be handed to over to me is measured 24 x42 ft together with a path which is measured 11 ½ ft (North and South), 15 ft on the west and East..."*

And at page 2, second paragraph of the tribunal's ruling reads as follow; -

*"Having heard and considered the parties submission in regard to this application and having carefully gone through the lower tribunal's record, it is not in dispute that the land that was in dispute at the lower tribunal is measured 42 x24 ft together with a road measured 11 ½ x 15 ft as shown in the trial tribunal's record."*

However, at the Ward Tribunal after visiting the suit plot, it was decided that;

***"Baraza linampa haki Mlalamikiwa eneo hilo ni lake kisheria."***

Though the respondent alleged that Hon. Chairperson never used the alleged map to arrive at her decision but the record reveals to the contrary. The Ward Tribunal's judgment did not specify the measurement of the suit land but they relied on the sale contract tendered at the Ward Tribunal. It reads as follows:-

***"Eneo la shamba lenye hali nzuri, lenye urefu wa futi arobaini na mbili (42) na upana wa futi ishirini na nne (24), lilitoko sokoni I, Manispaa ya Arusha, pamoja na barabara."***

(Emphasis mine).

There was also a map which was tendered and admitted as an exhibits at the ~~Ward Tribunal which shows the suit land measured 42 x 24 ft together with a road measured 10 ft.~~

It was therefore wrong for the District Land and Housing Tribunal to say the road measured  $11 \frac{1}{2} \times 15$  ft contrary to the judgment of the Ward Tribunal. The execution order ought to have been in conformity with the judgment of the Ward Tribunal and the map which was tendered not a new map which the appellant has correctly referred it as a forged one. It is worth noting that earlier the respondent filed application for execution No. 116 of 2017 using the same map and the application was struck out by Hon Kagaruki Chairperson based on the reason that he cannot be handled a big area than that which was disputed at the Ward Tribunal. Surprising enough, the same court under the same Chairperson allowed the execution under application No. 138 of 2018 using the

same map. No court worth such a name can allow such illegal order to go unchallenged.

For the above stated reasons, the decision and orders made by the Hon. Chairman in the Application for execution are hereby set aside. The execution should be for the suit land measuring 42 x 24 ft together with a road measuring 10 ft only not otherwise.

Appeal allowed with costs.

