

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)
AT KIGOMA
(LAND DIVISION)
APPELLATE JURISDICTION

MISC. LAND APPEAL NO. 30 OF 2021

(Arising from Land Application No. 20/2018 of the District Land and Housing Tribunal – Kigoma
before F. Chinuku, Original Land Dispute No. 2/2011 from Buhanda Ward Tribunal)

YUSUPH KALABWE APPELLANT

VERSUS

BARAHUNGA ATHUMANI RESPONDENT

JUDGMENT

27/7/2021 & 20/8/2021

L.M. Mlacha, J.

The appellant, Yusuphu Kalabwe and the respondent, Barahunga Athumani have a long history of litigation. The records show that the respondent sued the appellant successfully at Buhanda Businde Ward Tribunal for recovery of a piece of land. The appellant was aggrieved and appealed to the District Land and Housing Tribunal for Kigoma but his appeal was dismissed. His further appeal to this court at Tabora could not succeed as well. In dismissing the appeal, the judge (Ndika J., as he then was) used the following words:

*"I therefore, dismiss it in its entirety with the usual consequence that the appellant is condemned to **shoulder burden of costs** in this court and the tribunal below."*

No further appeal was preferred.

The respondent being the decree holder, filed an application for taxation of the bill of costs at the District Land and Housing Tribunal in Miscellaneous Land Application No. 25/2015 claiming 2,210,400/=. The appellant could not file reply to oppose the application. Neither did he enter an appearance on the date of hearing. The tribunal heard the respondent ex parte and taxed the bill at tshs 1,500,000/=.

With the order on his hand, the respondent filed Miscellaneous Land Application No. 20 of 2018 at the District Land and Housing tribunal seeking to execute the order by attaching the appellant's house. It was scheduled for hearing on 28/6/2018. Side with it, there was Miscellaneous Application No.89 of 2018 filled by the appellant, seeking extension of time within which to file an application to set aside the exparte ruling. The tribunal heard both of them at different times but decided them on the same day. It dismissed Miscellaneous Application No. 89 of 2018 and granted Miscellaneous Application No. 20 of 2018. The appellant was ordered to pay Tshs. 1,500,000/= within 14 days short of which execution to follow. He could not see justice in the way the two applications were heard and decided, hence this appeal.

The grounds upon which this appeal is based reads:

- 1. That the 1st appellate District Tribunal grossly erred on point of law in presiding upon and determining an application for execution of a decree in appeal notwithstanding the pendency of an application for the setting aside of ex-parte ruling in Miscellaneous Land Application No. 25/2015 registered as Miscellaneous Land Application No. 89/2018.*
- 2. That the 1st appellate District Tribunal erred on point of law in violating the most binding decision by the Court of Appeal of Tanzania, at Dar. Es Salaam in the case of **AHAMED MBARAKA Versus MWANANCHI ENGINEERING AND CONTRACTING CO. LTD** – Civil Application No. 229 of 2014 (un reported).*

During the hearing, both parties appeared unrepresented. Hearing was done by oral submissions. The parties being laymen could not address any of the grounds of appeal specifically. They just made general submissions in the form of laymen complaints.

In his submission, the appellant lamented on the amount taxed on him to be not clear, due to multiple orders to pay Tsh. 150,000,000/=, later on changed to Tsh. 2,500,000/= and finally Tsh. 1,500,000/=. He finally submitted that the claim is baseless and he is not ready to pay. In reply, respondent submitted that the appellant being the one who instituted the

case which started from the ward tribunal up to the High Court and in view of the order for costs, he must pay the costs which is Tsh. 1,500,000/=

In rejoinder, the appellant did not have anything to add. He joined issues with the respondent.

Reading through the grounds of appeal and the submissions, I think the issue to be determined in ground one are two. One, whether the application for execution was legally determined and two, whether it was decided against the application to set aside the exparte ruling. I can hasten to say that there is a confusion the part of the applicant because there was no application to set aside the exparte ruling in this case.

The records of the District Land and Housing Tribunal reveals that there was Misc. Land Application No.20/2018 which was for execution of the drawn order. It was filed on 30/1/2018, mentioned on 27/2/2018, heard on 28/6/2018 and decided on 13/11/2018. Later on, the tribunal received Misc. Land Application No. 89 of 2018 which was for extension of time within which to apply to set aside the ruling. It was filed on 28/6/2018 and heard conclusively on 16/7/2018. It was decided on 13/11/2018. The two applications were therefore decided on the same day. There was no Application seeking to set aside the ex parte ruling for it could not exist

without orders from Misc. Land Application No. 89 of 2018.

It is therefore not true that the tribunal granted the application for execution while there was a pending application seeking to set aside the exparte ruling.

Further, it is a fact and I need not cite any authority that, an application to set aside an exparte ruling or an application for extension of time within which to file an application to set aside an ex parte ruling does not have the effect of staying an application for execution. The application for execution is independent and can proceed despite the filing of any of the two applications. That is the reason why I said that, ground one is misconceived which is dismissed.

In ground two, the applicant has asked the court to have a look at the case of **AHAMED MBARAKA Versus MWANANCHI ENGINEERING AND CONTRACTING CO. LTD** – Civil Application No. 229 of 2014 (un reported) and see if it has something in his favour. I have tried to have a look into the case. I could not see any relevance to the subject matter under discussion. The case is about the right to be heard which is a constitutional right of every litigant. Looking at the record, I could not see any indication that the appellant was denied the right to be heard in the application for execution which is under discussion. He was heard fully in this application which was

granted. He was also heard in his application for extension of time which was dismissed.

That said, the appeal is found to be devoid of merits and dismissed. Costs to follow the events.



L.M. Mlacha

Judge

20/8/2021

Court: Judgement delivered in the presence of the parties. Right of appeal explained.



L.M. Mlacha

Judge

20/8/2021