

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

MISC. LAND APPEAL NO. 10 OF 2021

(From the decision of the District Land and Housing Tribunal of Mwanza District at Mwanza in Land Case Appeal No. 19 of 2021 originating from Ward Tribunal of Malya in Application No. 38 of 2008)

MARIAM JOHNAPPELLANT

versus

SAADA JUMANNE1ST RESPONDENT

HAMIS JUMANNE 2ND RESPONDENT

JUDGMENT

9th & 30th September, 2021

RUMANYIKA, J.:

The appeal is with respect to application for execution of a decree, therefore decision and orders of the District land and Housing Tribunal for Mwanza at Mwanza (the DLHT) dated 30/4/2021.

Mariam John (the appellant) had two (2) grounds of appeal;

- 1) That the DLHT chair erred in law and fact not holding that the application for execution was time barred.

2) That the DLHT chair erred in law and fact having had relied on a purported judgment and decree.

Messrs Mahuma and J. Mange learned counsel appeared for the appellant and Saada Jumanne and Hamisi Jumanne (the respondents). By way of audio teleconference, I heard them through mobile numbers 0765 485 262 and 0753 522479 respectively.

When the appeal was called on 8/9/2021 for hearing, I had to hear the parties on two limbs preliminary point of objection (the p.o) formally raised by the respondents on 16/8/2021 and now taken by Mr. J. Mange learned counsel; that execution having had been done long ago, the appeal was overtaken by events therefore not tenable.

That as the execution was fully done on 30/4/2021 as per court broker's final report dated 14/7/2021, the parties now done as one had taken possession of the disputed land, the appeal was not tenable (case of **Juto Ally v. Lucas & Another**, Civil application No. 84 of 2017 (CA) unreported. That the courts were *functus officio* much as litigation must get to end.

issue would be whether, in terms of timing there was a decree worth the name one to execute. At least looking at the title suggestively the judgment was dated 11th October, 2008. The date may either tell when the judgment was composed or delivered yes, but Mr. J. Mange learned counsel did not, in his submissions sufficiently tell the court why shouldn't 11/10/2008 be taken as the date of delivery of the judgement. I think where, like it is the case here, the dates of judgment or any order of the court was composed and or delivered was not clear, whichever date appeared on the judgment, decision, order or findings as the case may be, in this case 11/10/2008 it shall cut the long story short much as, as speak I know no law book in our jurisdiction which prohibited courts to pronounce a judgment on the date it was composed the earlier the better. It means therefore, by simple calculations the execution was carried out 13 years later that is one year far beyond the proscribed twelve (12) years limitation without extension of time being sought and granted. Therefore, in terms of timing there was no decree to be executed just as the issue of appeal being overtaken by events it should not have been raised it is for this reason that I overruled the p.o.

Now on the merit part of the appeal;

That the appeal was improperly before the court therefore not tenable because if anything, one should have objected within the first fourteen (14) days as Regulation 23 (4) of GN No. 174 of 2003). That it seems the appellant was satisfied and the execution was correctly carried out (case of **Andrea Ndewario vs The Registered Trustees of Apostles of Jesus**, Misc. Civil Application No. 46 of 2020 (HC) at Arusha (unreported). That if anything, the appellant should have had applied for review or revision.

Mr. Mahuma learned counsel submitted that as for the impugned decision right of appeal was explained and actually execution had not been done much as an appeal barred no execution. That the case of **Juto Ally** (supra) was distinguishable because the one at hand was not application for stay of execution with regard to the case of **Andrea Ndewario** (supra) the 14 day's rule notwithstanding.

For the reasons that I reserved and promised to incorporate in this judgment, I overruled the p.o on 9/9/2021. Here are the reasons;

Having had looked at the judgment and decree sought to be executed (copy attached), without pre-empting the pending appeal the

Mr. Mahuma learned counsel submitted that in fact the application for execution was time barred and it should have been dismissed under S. 3 of Item 20 Part III of the Law of Limitation Act Cap 89 RE. 2019 meaning that one should have applied for execution on 11/10/2020 latest (case of **General Marketing Company Limited v. A. Sharrif** (1980) TLR 61 (CA) whereby, in effect the highest fountain of justice held that the court cannot conduct its business without the rule of procedure in place otherwise the rationale of having the procedure would have been meaningless.

Two; that the judgment relied upon by the DLHT it was a purported one because boundaries of the disputed land were not even established.

In reply, Mr. J. Mange learned counsel submitted that the judgment was not pronounced on 11/10/2008 if anything it was only the date it was composed and one collected the copy in December, 2008. That is all.

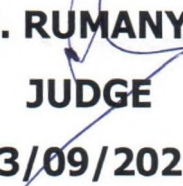
As said before, now that, for the reasons herein above given execution was done one year far beyond the prescribed limitation of 12 years, the time barred application was worth the name no application. Like Mr. Mahuma learned counsel submitted, not only the matter was liable to

be dismissed with costs, but also I would increasingly hold that all the sub sequential findings and orders were a nullity.

Moreover, in passing I would hold that without any explanation made by the two judgment debtors, the DLHT chair should not have granted the application of execution namely compensation of payment of shs. 135,000/= only thirteen good years later without interest or something. I am also aware that impliedly the trial Malya ward tribunal it ordered no interest yes, but with all intents and purposes, more so the principles of equity, courts of law do not, just for the sake of it issue judgments and decrees but for timely execution 12 years limit for that time. I think in the strict sense of it the court's mission of timely justice for all was intended not only to observe dates of judgments and decrees but when decree holders enjoyed the resultant fruits. It follows therefore in order to make it more meaningful a decree holder who, without reasons slept over his decree over and above the prescribed time, in this case 12 years he had no right other than an interests on endless litigation.

The appeal is allowed with costs. Decision and orders of the DLHT are quashed/set aside. It is so ordered.

Right of appeal explained.


S.M. RUMANYIKA
JUDGE
23/09/2021

The judgment delivered under my hand and seal of the court in chambers this 30/09/2021 in the absence of the parties.


S.M. RUMANYIKA
JUDGE
30/09/2021

