

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

MISC. LAND CASE APPEAL NO. 07 OF 2020

(Arising from Misc. Application No. 220 of 2018 and Originating from Civil Case No. 25 of 2018 of Ijumbi Ward Tribunal)

FELICIAN ANDREA.....1ST APPELLANT
REMIGIUS FELISIAN.....2ND APPELLANT

VERSUS

PRAXEDA COSMA.....RESPONDENT

JUDGMENT

26th October & 29th October 2021

Kilekamajenga, J.

In 2018, the respondent, Praxeda Cosma, sued the appellants at Ijumbi Ward tribunal through civil case No. 25 of 2018 alleging that they (appellants) encroached into her land; they dig his land and made bricks. The respondent claimed Tshs. 2,500,000/= as compensation for the damages and won the case. The Ward Tribunal ordered the appellants to pay the respondent the amount claimed and costs of the case. Thereafter, the appellants did not challenge the decision of the Ward Tribunal. Later, the respondent applied for execution of the decision of the Ward Tribunal at the District Land and Housing Tribunal of Muleab vide Misc. Application No. 220 of 2018. In deciding the application, the chairman allowed the respondent to execute the decision of the Ward Tribunal. For clarity, the chairman stated that:



'Since there is no any pending appeal against the said decision delivered on 21st June 2018, I hereby allow the application for execution, the suit land be handed over to the decree holder by WEO Ijumbi, the judgment debtors to pay the decree holder a sum of Tshs. 2,500,000/= within one month from the date of this order.

After the decision of the District Land and Housing Tribunal, the appellants rose up and lodged the instant appeal challenging the decision of the District Land and Housing Tribunal. Before this Court, the appellants, through the legal services of the learned advocate, Mr. Eliphaz Bengesi filed a petition of appeal containing three grounds of appeal thus:

- 1. That, the 1st appellate tribunal misdirected itself in law. It had no jurisdiction in this matter regarding trespass. This appeal is ESTOPEL PER RES JUDICUTUM to Criminal Case No. 53/2009 at Kashasha primary Court. The 1st appellant won the case while the respondent lost it.*
- 2. That, the 1st appellate tribunal misdirected itself in law. That this execution order based on a wrong trial tribunal proceedings, decree and orders. The trial tribunal sued the wrong parties. The parties were condemned unheard. The suit land belongs to SPECISOZA FELICIAN. The latter having been divorced by 1st respondent the Kashasha Primary Court assigned these premises to SPECISOZA FELICIAN in Civil Case No. 24/2016. Execution of the decree was done in March, 2018 unencumbered. The respondent never raised any CAVEAT nor did she protest.*
- 3. That, the 1st appellate tribunal made a non-direction in law. It wrongly supported and ordered the execution arising from extraneous matters.*



On the date of hearing the appeal, the appellants were all present and enjoyed the legal services of the learned advocate, Mr. Eliphaz Bengesi whereas the respondent was present and represented by the learned advocate, Mr. Derick Zephrine. The counsel for the appellant commenced the submission with the 3rd ground of appeal alleging that the District Land and Housing Tribunal was supposed to know that, the case was not determined on merit by the Ward Tribunal. He cemented his argument with the case of **Godwin Gregory Mushaijaki, Kenedy Bakebula and Reverian Bikweteki, PC Civil Appeal No. 8 of 2017**. Mr. Bengesi insisted that the decision of the Ward Tribunal was not executable and he invited this Court to step into the role of the first appellate court and rectify the anomaly. In highlighting the errors in the decision of the Ward Tribunal, he argued that the decision was made by five members including the secretary of the tribunal. This anomaly was supposed to be observed by the District Land and Housing Tribunal. He further argued that the location of the disputed land was not known. On this point, he invited the court to consider the case of **Daniel Dagala Kanuda v. Masaka Ibeho and four others, Land Appeal No. 26 of 2015**. Mr. Bengesi was content that the proceedings of the Ward Tribunal ended at the pleadings stage and the parties were not given the right to be heard. He referred the court to the case of **Henry Mtei and others v. Waziri Maneno Choka, PC Civil Appeal No. 86 of 2018**. The counsel raised another issue concerning the proceedings of the District Land and Housing



Tribunal that assessors' opinions were not solicited before the chairman composed the ruling. He invited the court to the principle of law stated in the case of **Zubeda Hussein Kayagali v. Oliva Gaston Luvakule and Tanu James Gwoma, Civil Appeal No. 312 of 2017**, CAT at Tabora (unreported).

When addressing the court on the second ground of appeal, Mr. Bengesi argued that the appellants are not part of this dispute as they never owned the disputed land.

In response, the counsel for the respondent argued that the court has nothing to rectify at this stage because the instant appeal cannot determine the rights of the appeal. If the appellants were aggrieved with the decision of the Ward Tribunal, they were supposed to challenge it before the execution process. In this case, there was no pending appeal when the District Land and Housing Tribunal determined the execution proceedings. Therefore, it is not proper for the counsel for the appellants to bring issues of determination of rights at this stage.

On the issue of assessors, Mr. Zephryne argued that, the chairman is not obliged to sit with assessors when determining application for execution as provided under **Regulation 23(4) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations of 2003**. Generally, the appellants failed to



exercise their rights. The cases submitted by the counsel for the appellant are distinguishable from the instant case. Mr. Zephryne urged the court to dismiss the appeal and uphold the decision of the District Land and Housing Tribunal.

In this case, I have already indicated the background of the dispute which is very pertinent in the determination. At this stage, I could dismiss the appeal but I am obliged to state the reasons for the decision. In this case, the appellants, who lost the case at the Ward Tribunal, had the right to appeal to the District Land and Housing Tribunal. It is very unfortunate that, the appellants, having appeared before the Ward Tribunal, simply denied ownership over the disputed land. In other words, they gave rights to the respondent. The Ward Tribunal had no hesitation, whatsoever, to declare the respondent as the owner of the land. Furthermore, despite being ordered to pay compensation to the respondent (Tshs. 2,500,000/=), the appellants never bothered to appeal. The appellants slept on their right of appeal until the respondent applied for execution at the District Land and Housing Tribunal.

When the matter was at the District Land and Housing Tribunal, the appellant did not raise any objection nor inform the tribunal on the errors of the decision of the Ward Tribunal. At that stage, the appellants had several options including applying for extension of time at the District Land and Housing Tribunal in order



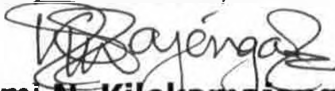
to challenge the decision of the Ward Tribunal. The appellants could thereafter apply for stay of execution pending the determination of the application for extension of time. All these options were never utilised by the appellants until the District Land and Housing Tribunal determined the application for execution. In my view, there was no any error committed by the District Land and Housing Tribunal in allowing the application for execution because the respondent had the right to execute the decision of the Ward Tribunal.

Furthermore, before this Court, the counsel for the appellant tried to indicate some issues in the decision of the Ward Tribunal. However, the instant appeal does not challenge the Ward Tribunal's decision but challenges the decision of the District Land and Housing Tribunal on execution proceedings. With respect, the counsel for the appellants should bear the blame of failing to properly guide the appellants in search for their rights. Even the allegation that the District Land and Housing Tribunal did not solicit assessors' opinion before composing the ruling is a completely misplaced argument. I am not sure whether the learned advocate for the appellant ever read **Regulation 22 of the Land Disputes Courts (District Land and Housing Tribunal) Regulation of 2003**. He could not have advanced such an argument if he was aware of the above provision of the law. I find the precious time of this court being wasted to deal with a hopeless appeal as this. There is no recourse on this case at this stage. I




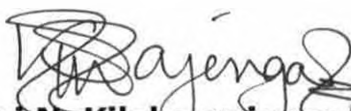
hereby dismiss the appeal with costs. The respondent should proceed with the execution processes. Order accordingly.

DATED at **BUKOBA** this 29th day of October, 2021.


Ntemi N. Kilekamajenga.
JUDGE
29/10/2021

Court:

Judgment delivered this 29th October 2021 in the presence of the respondent present in person and Ms. Pacioza Felician who brought information on the absence of the appellants. Right of appeal explained.



Ntemi N. Kilekamajenga.
JUDGE
29/10/2021

