

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SONGEA

AT SONGEA

REVISION APPLICATION NO.1 OF 2020

(Originating from the decision of the District Land and Housing Tribunal of Songea District at Songea in Land case No. 6 and Miscellaneous Application No. 217 of 2018)

ZEME INEGA KUZWA APPLICANT

Versus

EDITHA HAULE..... RESPONDENT

RULING

Date of Last Order: 04/11/2021.

Date of Judgment: 30/11/2021.

BEFORE: S.C. MOSHI, J.

The applicant has filed this application under section 43 (1)(b) of the Land Disputes Courts Act, Cap. 216 R.E 2019 that, this court be pleased to revise the execution proceedings of the Ruvuma District Land and Housing Tribunal No. 6 of 2017, costs of the application and any other reliefs the court deem fit to grant. The application is supported by an affidavit sworn by Zemme Inega Kuzwa. Opposing, the respondent filed a counter affidavit.

Brief facts which culminates to this application were as follows, the respondent instituted land application number 06 of 2017 at the District Land and Housing Tribunal of Ruvuma at Songea against the applicant and two others namely James Mbeya and Imelda Mbawala claiming among other orders; a declaration that the act of the applicant of selling the disputed house and land to James Mbeya and Imelda Mbawala is illegal, the applicant, James Mbeya and Imelda Mbawala and/ or any person under their names or capacity be ordered to vacate immediately from the suit land and permanently prohibited from trespassing and using respondent's land, the applicant be ordered to pay the respondent special damages of Tshs. 6,000,000/= for trespass and causing economic loss to the applicant and her family for their act of retaining the applicant suit land/premise, the applicants be ordered to pay Tshs. 10,000,000 as general damages, costs of the suit and any other relief (s) that the tribunal deem fit and just to grant for the respondent.

The trial Tribunal decided in favour of the respondent, and it declared the sale of the property, plot No. 474 BLOCK LL at Mateka to James Mbeya who was the second respondent null and void, the applicant was ordered to refund Tshs. 4,000,000/= to the buyer James Mbeya, and the respondent was entitled to 1/3 of the suit land on the footing of concubinage association she had with the applicant.

Thereafter the respondent applied for execution of the decree to the effect that that the trial Tribunal make a declaration that the suit land be ordered as the decree holder's property, declaration of the vacant possession of the suit land against judgement debtor, costs of the suit and any other reliefs the tribunal deems fit and just to grant. After hearing the application, the District Land and Housing Tribunal allowed the application and made an order that second judgement debtor James Mbeya be evicted from the suit land and give vacant possession to the respondent, the order which

was complied with by the Tribunal's broker who forcefully evicted the second judgement debtor on 9th January 2020.

Therefore, the applicant seeks this court to revise the said execution proceedings, as there is nowhere in the decree declaring that the respondent is the lawful owner of the house on plot no. 474 Block, LL Mateka area and hence the same be handled over to her. Rather what the decree decreed was that, the sale of the house by the applicant to the then second respondent was null and void, the second respondent be refunded Tshs. 4,000,000 by the applicant and the respondent is entitled to 1/3 of the suit lands.

By leave of the court, this application was argued by way of written submissions. The applicant was represented by Mr. Mbogoro, advocate whereas the respondent was represented by Mr. Augustino Mahenge, advocate.

In his submission Mr. Mbogoro stated that the application is for the revision of execution proceedings generally and not for the

eviction order specifically. He said the errors and irregularities in the execution proceedings have adversely affected the applicant more than the two other judgement debtors in that according to the decree the applicant and his lawful wife were entitled to 2/3 of the suit land whereas the same has been exclusively handed over to the respondent, that the decree ordered the applicant to refund the second judgement debtor Tshs. 4,000,000/= for a house which has been exclusively handed over to the respondent. He argued that the respondent on paragraph 10 of the counter affidavit justified the errors and irregularities in the execution proceedings by relying on the relief prayed for in the application in that the last relief prayed was worded"any other relief(s) this honorable court may deem fit and just to grant for the appellant...".

He said that, the respondent cannot rely on such prayers as execution must tally with the orders in the decree and no relief can be added at execution stage which was not ordered in the decree.

It was his submission that even if this court will not be persuaded that sufficient cause exists for granting the application, he said that this is the fit case for this court to exercise its revisionary powers suo motto under section 43(1) (a) of the Land Disputes Court Act [Cap. 216 R.E 2019], since the trial tribunal record is tainted with patent illegalities for instance the question of District Tribunal assuming matrimonial jurisdiction. He also prayed that the application be granted as prayed and the court be pleased to give any other order it deems fit and just for the ends of justice.

In reply, Mr. Mahenge submitted that, the trial tribunal in its judgment and decree in Land application No. 6 of 2017 declared the sale in favor of the then second respondent as regards to Plot No. 474, Block LL located at Mateka null and void. That being the case on the same time the second respondent resides there. He said that, under the circumstances the eviction order against the second respondent was proper and was inevitable, so that the

respondent and applicant may exercise their rights over the property in dispute as it was ordered in the decree.

He said that, eviction order emanated from the main application whereby the order granted by the trial tribunal was against the then second respondent James Mbeya and not against the applicant herein who was the first respondent in Land Application No. 6 of 2017. The tribunal's eviction order was subject to the prayers following illegal act of the sale of the property in dispute between the first and second respondent being declared a nullity. Furthermore, he said that the respondent still insisted in her application for execution she prayed apart from the aforementioned prayers still in paragraph (f) of her application she prayed any other reliefs as the tribunal deem fit and just to grant and not otherwise what was ordered in the decree to be properly executed, the eviction order against second respondent in the main application was inevitable.

It was his contention that, from the execution proceedings there is no kind of irregularity which could attract the attention of this court to revise the same since there are no material errors to correct, no injustice was done on the side of the applicant.

He added that since there is cross claim by the applicant under the same decree, the proper procedure for the applicant to enforce his right was to cross claim at the trial tribunal and not to file for revision in this court. He prayed that the application be dismissed with costs as it has no merits.

Having gone through the parties' affidavit and counter affidavit, submissions from both parties and the trial tribunal records, the main issue for determination is whether the application for revision has merits.

The gist of the application as argued by the counsel for the applicant is that execution must tally with the orders in the decree and no relief can be added at execution stage which was not

ordered in the decree. It is apparent in trial tribunal decree which contains main four orders, one order is the eviction of the second respondent (the judgment debtor) which in the application for execution by the respondent was not granted neither in the judgment of the trial tribunal nor in the decree, but the learned chairperson granted the same in an application for execution, this again was contrary to law and practice. It is trite law that the decree is an extract of judgment which bears what the tribunal/court has decided on a particular matter in a brief, simple and comprehensive language. The execution of the decree laterally connotes the enforcement of what the court decided in its judgment and decree thereto, as it is a principle that decree must match with the judgment, likewise execution of decree must conform with the decree itself. Furthermore, the prayers in the application for execution of decree must be made pursuant to orders in the decree, no new prayers which the court has not decreed can be entertained in an application for execution of

decree, because doing that would be tantamount to entertaining a fresh issue, which ought to be entertained in the main suit, and not in the application for execution of a decree.

Thus, in the light of the above reasoning, I find that the learned trial tribunal chairperson erred in law to issue an eviction order against the judgment debtors, in an application for execution as the same was neither expressly made in the tribunal judgment nor in the decree.

Consequently, basing on the afore stated irregularities, I find that the execution proceedings of the trial tribunal is tainted with material errors which renders injustice.

That said and done, the application is allowed, the decision of the trial court issuing execution order is revised. The file is remitted back to the tribunal for determination of execution application. It is so ordered.

Right of appeal explained.



S.C. Moshi
S.C. MOSHI

JUDGE

30/11/2021.