

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

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**MISC. LAND APPEAL NO. 14 OF 2019**

(C/F in the District Land and Housing Tribunal of Arusha, Execution No. 293/2016  
arising from Mateves Ward Complainant No. 1 of 2015)

**HAMZA SAID.....APPELLANT**

**VERSUS**

**LONG'IDU KAMANDE..... RESPONDENT**

**JUDGMENT**

15/6/2021 & 13/8/2021

**ROBERT, J:-**

This is an appeal against the decision of the District Land and Housing Tribunal (DLHT) of Arusha in Application for Execution No. 293 of 2016 where the appellant herein sought to enforce the decision of the Ward Tribunal of Mateves in Land Complaint Number 1 of 2015.

When the matter was tabled before the DLHT for enforcement, the Chairman of the DLHT invoked the revisional powers of the Tribunal under section 36 (1)(b) of the Land Disputes Courts Act and quashed the entire proceedings of the lower tribunal and set aside the decision given

therefrom and proceeded to dismiss the application. The Chairman noted that the decree holder (appellant herein) lacked locus standi to claim for a piece of land which is for public use. He decided that, the lower tribunal did not have jurisdiction to entertain the appellant's claim. Aggrieved, the appellant preferred the present appeal on the following grounds;

- 1. That, the Honourable Chairman for the District Land and Housing Tribunal of Arusha erred in law when he dismissed and quashed the entire proceedings of the lower tribunal (Mateves Ward) while matter was before him for execution.*
- 2. In the alternative, to ground No. 1 above, the District of Arusha Land and Housing Tribunal erred in law when he presided over the Application for Execution as an Appeal and hence reached to an erroneous decision.*
- 3. That, the Chairman of the Tribunal erred for not granting the Application for execution.*

At the hearing of this appeal Mr. Duncan Oola and Mr. John Mirumbe, represented the appellant and the respondent respectively. Hearing proceeded orally.

Submitting in support of the appeal, Mr. Oola argued the 1st and the 2<sup>nd</sup> grounds of appeal together. Highlighting on the two grounds, he submitted that, the DLHT had one role only before it which was to enforce the award of the Ward Tribunal under section 16(3) of the Land Disputes Courts Act, Cap. 216 (R.E. 2002) so long as there was no appeal by the respondent herein against the decision of the Ward Tribunal. Instead, the DLHT decided to revise the matter as if there was an application for revision before it, then it went further to dismiss the matter as if there was an appeal before it. The DLHT did all this without affording parties the right to be heard. On the basis of the noted anomalies, he submitted that the Hon. Chairman was misdirected in his decision because he had no power of impeaching the decision of the Ward Tribunal which was not appealed against.

He cited the case of **Onesmo Soine vs meitili Mindeu**, Land Case Revision No. 15 of 2011 (unreported) at Arusha where the court faced the same situation and decided that the DLHT cannot impeach the decision of the Ward Tribunal when the decision before it was for execution.

Coming to the 3<sup>rd</sup> ground, he maintained that, the DLHT was supposed to grant the application for execution instead of taking the responsibility of the respondent and starting to evaluate the evidence before the Ward

Tribunal. He argued that, this Court has power under section 43(1) (a) of Cap. 216, to interfere in the said decision and allow the execution to proceed. Thus, he prayed for this appeal to be allowed with costs.

Opposing this appeal, Mr. Lairumbe submitting in respect of the 1<sup>st</sup> and the 2<sup>nd</sup> grounds argued that, the Hon. Chairman of the DLHT discovered illegality in the proceedings and decision of the Ward Tribunal that's why he invoked powers under section 36 of Cap. 216 (R.E 2002) and nullified as well as quashing the orders given by the trial tribunal. He clarified that, the proceedings of the Ward Tribunal reveals that the disputed land was for public use, therefore, the appellant had no legal tittle to it. He referred the Court to the case of **Diamond Trust Bank Tanzania Ltd vs Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 in support of his argument.

Submitting in respect of the third ground, he argued that, the DLHT did not grant application for execution filed before it due to the shortcomings noted in the application form as well as the proceedings and Judgment of the Ward Tribunal. Application form for execution was filled by the Advocate contrary to the Regulation 23 (1), (2) of the Land Disputes (District land and Housing Tribunal) Regulation, G.N. No. 154 of 2003 which requires the application for execution to be filled by the decree

holder himself. In the said application the applicant prayed to be declared the owner of the disputed land including the public land that was an irregularity which moved the DLHT to revise the entire decision of the Ward Tribunal.

On the basis of the submissions made, the learned counsel prayed for the appeal to be dismissed with costs.

In his brief rejoinder, Mr. Oola maintained that, the respondent's counsel did not say anything with regards to the issue of the Chairman turning himself into appellant and turning the DLHT to be an appellate tribunal. He denied parties their right to be heard contrary to Article 13 of the Constitution of the United Republic of Tanzania, 1977 (as amended from time to time). He argued further that, the act of the Ward Tribunal declaring the disputed land to belong to the appellant did not prohibit the public from using that land.

Submitting further, he maintained that, the shortcomings on the application form could not justify the dismissal of the application at the DLHT as the Chairman could direct the parties to fill the forms properly instead of dismissing it.

Having considered the rival submissions of both parties, I will now consider whether this appeal has merit or not.

It is apparent that the Chairman of the DLHT did not enforce the orders of the Ward Tribunal as applied by the appellant herein under section 16 (3) of Cap. 216 instead he invoked revisional powers vested to the DLHT under section 36 (1) (b) of the same Act and quashed the entire proceedings of the Ward Tribunal for being a nullity and set aside the decision given therefrom and proceeded to dismiss the application.

In a persuasive case of **Onesmo Soine** (supra) my Learned Brother Sambo, J (as he then was), held that;

*"It's very clear, as the broad day light, that in the said ruling, the learned Honourable chairman acted as an appellate one. The decision is given in such a way that he was hearing an appeal against the decision of the ward Tribunal. As there was no appeal against the decision of the ward Tribunal sought to be executed, the honourable chairman had no colour of right to impeach the said decision and the whole proceedings.*

In the present matter, the Hon. Chairman of the DLHT, when declining to grant the orders sought by the appellant herein, stated at page 2 of the impugned judgment that, the tribunal is not there to enforce every decision of the Ward Tribunal except the ones which do not contravene the law. While the Hon. Chairman may be correct that the DLHT can enforce orders referred to it by the Ward Tribunal under section 16(3) of the Act only when the said orders are lawful, the question for determination is whether parties were given an opportunity to address

the DLHT on the lawfulness of the orders sought to be enforced before the Hon. Chairman had established illegality in the decision of the Ward Tribunal and quashed the decision and proceedings thereof.

Records suggest that the Hon. Chairman formed the opinion at the time of composing his ruling that the appellant herein had no locus standi to claim the disputed land as it was for public use and proceeded to determine the matter on that basis without being addressed by parties. The Tribunal ought to have accorded parties in this matter the right to be heard on that point.

Corresponding remarks were made by the Court in **John Morris Mpaki v. NBC Ltd and Ngalagila Ngonyani**, Civil Appeal No. 95 of 2013 (unreported). In that case, the Court made reference to its previous decision in **Deo Shirima and Two Others v. Scandinavian Express Services Limited**, Civil Application No. 34 of 2008 (unreported) and observed:

*"The law that no person shall be condemned unheard is now legendary. It is trite law that any decision affecting the rights or interests of any person arrived at without hearing the affected party is a nullity, even if the same decision would have been arrived at had the affected party been heard. This principle of law of respectable antiquity needs no authority to prop it up. It is common knowledge."*

The Court went on to reproduce the following excerpt from **Deo Shirima and Two Others** (supra) that;


*"It is established law that any judicial order made in violation of any of the two cardinal rules of natural justice is void from the beginning and must always be quashed, even if it is made in good faith."*

Guided by the cited decisions, it is clear that any decision affecting the rights or interests of a party is a nullity if the parties were not accorded the right to be heard even if the same decision would have been arrived at had the affected parties been heard.

On the basis of the foregoing, this appeal is hereby allowed. The proceedings and the ruling of the DLHT are quashed and set aside. I hereby order that the matter be remitted back to the District Land and Housing Tribunal to be heard afresh before another Chairman.

It is ordered.



  
K.N. ROBERT  
JUDGE  
13/8/2021