

IN THE HIGH COURT OF TANZANIA

AT TABORA

LAND APPEAL NO. 12 OF 2020

[Arising from the District Land and Housing Tribunal of Tabora in

Misc. Land Application No. 175 of 2019]

HAMISI NDIGIZE 1ST APPELLANT

LUDOVIC EZDEL 2ND APPELLANT

VERSUS

JONAS MHEZA RESPONDENT

JUDGMENT

Date of Last Order: 21/09/2021

Date of Delivery: 05/11/2021

AMOUR S. KHAMIS, J.

Jonas Mheza, the respondent, herein instituted land dispute No. 18/2016 at Bukumbi Ward Tribunal against the appellants, Hamisi Ndigize and Ludovic Ezdel, over a piece of land located at Ishihimulwa Village, Bukumbi Ward within Uyui District.

The matter was fully heard by the Ward, tribunal and Jonas Mheza was declared a lawful owner of the disputed land.

In order to execute decision of the Ward Tribunal, the respondent filed an application for execution in the District Land and Housing Tribunal for Tabora vide Misc. Land Application No. 175 of 2019.

The application was heard *ex parte* against the 2nd appellant(Ludovick Ezdel) and the District Land and Housing Tribunal ordered both appellants to vacate from the disputed land within 14 days from 1/07/2020.

Dissatisfied with orders of the District Land and Housing Tribunal, the appellant filed this instant appeal couched on three grounds of appeal namely;

- 1. That, the trial Chairman of the Tribunal erred in law and fact by making order of eviction of innocent buyer (the 1st Appellant) and order of demolition of his house while he was bonafide purchaser and the whole time he was building the house the respondent was watching but kept silent.*
- 2. That, the trial Chairman of the Tribunal erred in law and fact by ordering eviction amid the illegality of Trial Judgment which ignored the reality that the 2nd Appellant and Respondent was allocated the suit land by the Village Authority or else if the Village Authority*

didn't allocate the suit land, the Village Council was to be the Plaintiff and not the Respondent Jonas Mheza.

3. That, the trial Chairman of the Tribunal erred in law and fact by ordering demolition of the 1st Appellant's house without resolving the fate of the 1st appellant's unexhausted improvement made onto the plot.

When the appeal was called on for hearing, both appellants and the respondent appeared in person under aid of a Virtual Court technology.

The parties orally addressed this Court based on contents of the Petition of Appeal and Reply to the Petition of Appeal which were accordingly adopted to form part of their respective submissions.

The 1st appellant submitted that, Ludovic Ezdel (2nd appellant) was allocated the disputed land in 2010 by the village council and then sold that land to Hamisi Nigeze.

It was further contended that at the time of sale, the second appellant did not sell an empty plot as he had constructed a foundation since 2012.

The appellant moved this Court to allow the appeal with costs.

On the other hand, the respondent submitted that, the grounds of appeal levelled by the appellants were not true since the case was heard on merit by the Ward Tribunal and the appellants did not appeal until execution was carried out by the District Land and Housing Tribunal.

He asserted that, the appellants forcefully continued with construction on the disputed land despite of pendency of this appeal. He therefore moved the Court to dismiss the appeal with costs.

In a short rejoinder, the appellants submitted that they were denied of a right to be heard in the trial tribunal and in the District Land and Housing Tribunal allegedly because all proceedings were conducted exparte and were not present when the Tribunal's Judgment was delivered.

In the course of examining records of this appeal, I noticed that the appeal was in respect of an execution order given by the District Land and Housing Tribunal.

Since both sides are lay persons, I failed to benefit from their views on the legal implications of that observation.

In the circumstances, and for the speedy delivery of justice, I intend to examine that issue in the course of addressing this appeal.

The issue raised by this Court is based on provision of Section 74 and Order XL of the Civil Procedure Code, Cap 33, R.E 2019 which specifies appealable orders.

An order arising from execution proceedings is not listed in the said provisions implying that an execution order is not appealable. The legal recourse that the appellants could have taken was thus to file an application for revision against the execution proceedings.

The appellants' submissions in this Court suggest that, they were not satisfied with the decision of the Ward Tribunal as well as subsequent orders given by the District Land and Housing Tribunal.

Section 19 of the Land Disputes Courts Act [Cap 216 R.E 2019 provides that, any person aggrieved by an order or decision of the ward tribunal may appeal to the District Land and Housing Tribunal.

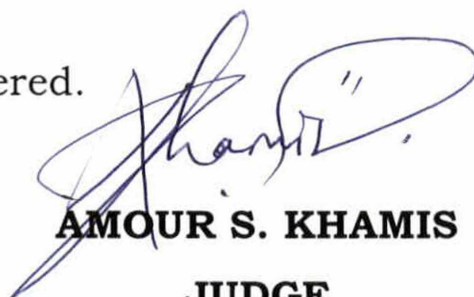
No doubt, an appeal to the District Land and Housing Tribunal was a correct avenue that the appellants ought to have followed but that was not done. On account of that

inaction, the respondent took steps towards execution of the trial tribunal's decision.

Unfortunately, as said before, orders of the District Land and Housing Tribunal made in the course of execution cannot be challenged by way of appeal to this Court.

For the aforesaid reasons, the present appeal is misplaced and thus struck out with no order for costs.

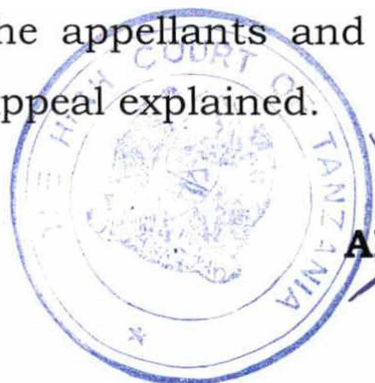
It is so ordered.



AMOUR S. KHAMIS
JUDGE

05/11/2021

Judgement delivered in chambers in the presence of the appellants and the respondent in person. Right of appeal explained.



AMOUR S. KHAMIS
JUDGE

05/11/2021