

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND REVISION NO. 5 OF 2021

*(C/f Application for Execution No 155 of 2012 District Land and Housing Tribunal of
Arusha at Arusha)*

JANE SAMBWETI (As administrator of

the estate of the late **Peter Nagari**) **APPLICANT**

VERSUS

EMMANUEL MUNGA **RESPONDENT**

RULING

07/06/2022 & 27/06/2022

KAMUZORA, J.

This is an application for revision brought under section 41 of the Land disputes Courts Act, No. 2 of 2002 Cap 216 R.E 2019 and section 79(1) (c) and 95 of the Civil Procedure Code CPC [Cap 33 R. E. 2019]. The Applicant is calling upon this court to call for the records of the District Land and Housing Tribunal for Arusha in Execution No. 155 of 2012 in order to satisfy itself as to the legality, propriety and correctness of the decision made therein. The application is supported by the Affidavit of the Applicant Jane Sambweti.

Briefly, the Applicant is the administratrix of the estate of her late husband one Peter Nagari who was the Respondent in Land Application No. 155 of 2012 before the District Land and Housing Tribunal of Arusha. The Respondent sued the Applicant for trespass to land and the matter proceeded ex-parte against the Applicant and was ruled in favour of the Respondent. The Applicant unsuccessfully made an application of extension of time to set aside the ex-parte judgment before the Tribunal but was granted by the High Court on appeal. The Respondent then applied for execution before the Tribunal which issued an execution order requiring the Applicant to vacate the disputed land within a period of 14 days. The Applicant was dissatisfied by the Tribunal order for execution hence filed the current revision application.

Hearing of the revision application was by way of written submission and as a matter of legal representation, the Applicant was represented by Mr. Hamisi Mayombo while the Respondent enjoyed the service of Mr. Peter Njau both learned advocates.

Submitting in support of the application, the counsel for the Applicant argued that, the deceased Peter Nangari was the Respondent in Land Application No. 155 of 2012 and he passed on while the matter was pending before the trial Tribunal but it was later determined ex-

parte. That, after the Applicant was appointed as an administrator of the estate of the deceased, she became aware of the ex-parte decision of the trial Tribunal which was in the process of execution. That, the Applicant filed in the Tribunal an application for extension of time to set aside the ex-parte judgment vide Misc. Land Application No. 507 of 2017 but the same was dismissed.

The Applicant challenged the decision to the High Court by filing Land Appeal No. 46/2017 and the High court Hon. Gwae J, granted extension of time to file application to set aside ex-parte judgement. That, following that order the Applicant lodged an application before the District Land and Housing Tribunal but was told to wait for the High Court to remit the file back to the Tribunal.

The counsel for the Applicant further submitted that, while the Applicant was making follow up of the matter, the chairperson of the District Land and Housing Tribunal proceeded with execution and issued an order requiring the Applicant to vacate from the house within 14 days. The counsel raised a concern that, the Applicant being a widow, she needs to be heard. Reference was made to the case of **David Ngonyani Vs National Insurance Cooperation** (1994) TLR 28, **Attorney General Vs Maalim Kadau and 16 others** (1997) TLR 69.

The counsel for the Applicant concluded by submitting that, the execution order has no merit as it was given while there was a pending application before the Tribunal hence prays for this court to nullify the execution order and direct the Tribunal to accept the application to set aside the ex- parte judgment.

Responding to the Applicant's submission, the counsel for the Respondent submitted that, based on paragraphs 8 and 9 of the Applicant's affidavit, the Applicant claims that her application to set aside the ex-parte judgment remained unregistered even after she filed the same before the Tribunal. That, the submission by the Applicant is based on new facts which are not pleaded under the affidavit. That, it is a principle that in the application like the present one, the reasons supporting the prayers sought must be pleaded on the supporting affidavit and not on submission as submissions are not evidence. He supported his argument with the case of **The Registered Trustees of the Archdiocese of Dar es Salaam v The Chairman Bunju Village Government and 4others**, Civil Appeal No 143/2006 CAT at Dar es Salaam (Unreported). The counsel insisted that, the claim that there was refusal in the admission of the case is an afterthought and that was the

case, the same could have been reported to PCCB or the Judge in-charge of the High court.

The counsel for the Respondent submitted further that, upon perusal of the Tribunal records he encountered no errors or material irregularity, illegality or any impropriety on the face of record of the trial Tribunal alleged by the Applicant. That, Execution No. 155/2012 originated from Land Application No. 155/2012 which has not been quashed by any court or set aside by the trial Tribunal. That, the claim by the Applicant is baseless, unfounded and with no legal basis and a technical delay to the Respondent's right to execute the Tribunal's order.

On the allegation by the Applicant that the application was rejected, the counsel for the Respondent submitted that, it is a mere assertion with no evidence. On the Applicant's claim on the right to be heard the counsel submitted that, the same is not automatic as one has to comply with limitation and principle set thereby. In concluding, the Respondents prays that the application be dismissed with costs.

Upon a brief rejoinder Mr. Mayombo submitted that, all facts were pleaded in the affidavit and he referred paragraph 8 and 9 of the Applicant's affidavit. He further added that, there is no law or authority that requires litigants to refer the matter to PCCB if aggrieved by non-

admission of documents as no claim for corrupt transaction was raised by the Applicant. That, the procedure is either to appeal or to make a revision or reference or apply for a review in the same Tribunal. He insisted that, pursuant to the order by Honourable Gwae J, an application was filed within 12 days from the date of the order as per annexure A6 but, the same was not admitted by the Tribunal. That, the issue of admission and assignment of filed documents is an internal matter of the Tribunal which litigants have no control over.

Before probing into determining the revision I find it pertinent to address the issue raised during submission that the Applicant has made his submission basing on new facts not pleaded under her affidavit. I have read the affidavit as well as the submissions made by the parties. I am certain that, what the Applicant submitted on referred facts deponed under the affidavit in support of the application. I thus, do not see any new facts that has been raised by the Applicant's counsel as so claimed by the counsel for the Respondent.

Turning to the application itself, reading the contents of the chamber application the Applicant calls for this court to examine the record in Execution No. 155/2012 which is before the District Land and

Housing Tribunal of Arusha at Arusha and to satisfy itself as to its correctness, legality and propriety of the order of the Tribunal.

From the records, there is no dispute that a decree was passed by the DLHT against the Applicant herein and an application was made before the same DLHT to execute such a decree. The law governing execution in this matter is the Land Disputes Courts Act (the District Land and Housing Tribunal) Regulation, GN. No. 174 of 2003 specifically Regulation 23 which read: -

"23 (1) a decree may as soon as practicable after the pronouncement of the judgment or ruling, apply for execution of the decree or order as the case may be.

(2) An application for execution of orders and decree under sub regulation (1) shall be made in the appropriate forms prescribed in the second Schedule to these Regulations; and shall indicate the mode in which the execution is sought to be carried out.

(3) The Chairman shall, upon receipt of the application, make an order requiring a judgment debtor to comply with the decree or order to be executed within the period of 14 days.

(4) Where after the expiration of 14 days there is no objection or response from the judgment debtor, the Chairman shall make execution orders as he thinks fit.

(5) The Chairman shall, where there are objections from the judgment debtor consider the objection and make such orders as may be appropriate.

Provided that hearing of the objections under this sub regulation shall be limited to the subject matter of the objections."

The above cited regulation sets out the modalities in the execution process before the Tribunal. I have gone through the records to see if there was non-compliance to Regulation 23. The record shows that, an application for execution was made in compliance with the legal requirement and received by the DLHT on 15/4/2021 after payment of necessary fees by the decree holder.

The DLHT record also shows that, the summons to the judgment debtor was issued and parties were called to address the trial Tribunal as to why execution should not take place. On 16/06/2021 before Hon. Mdachi, an order was issued to the judgment debtor to comply with the decree within the period of 14 days and the same was in compliance with Regulation 23(3) of GN No. 174/2003.

The record also reveals that, the DLHT appointed a broker, Kilicraas Adventures & Safaris Auctioneers to forcefully evict the judgment debtor and any other person from the disputed land and handover the vacant land to the decree holder and to file the report for the compliance and or non-compliance with the said order on or before 22/7/2021. This is still within the ambit of the Tribunal in compliance with Regulation 23(4) of GN No. 174/2003 which requires that, after the

lapse of 14 days with no response or objection from the judgment debtor, the chairman can issue execution order as he thinks fit.

It is with no doubt that the Tribunal issued a ruling on 16/06/2021 directing the auctioneer/broker to execute the order within 14 days by evicting the judgment debtor. There is a slight error in the order as it indicates that it was made on 16/6/2021 but at bottom of the order it indicate that, the order was issued on 12/06/2021. I however, consider it curable defect as the ruling of the Tribunal is very clear that the same was made on 16/06/2021.

The Applicant contends that, the execution order has been made while there was a leave granted by the High Court to file an application to set aside the ex-parte judgment and the said application had been filed but remain unregistered by the DLHT. I find this allegation unwarranted because, this matter being at the execution stage it cannot be stayed merely because the Applicant intended to file an application to set aside ex-parte judgment. By virtual of Regulation 25(1) of GN. No. 174/2003 a party who wants the execution to be stayed has to initiate an application for stay of execution. I therefore maintain that, an application to set aside an ex-parte judgment and or an appeal is not an

automatic stay of execution and for the appeal read also the provision of Regulation 24 of GN. No. 174 of 2003.

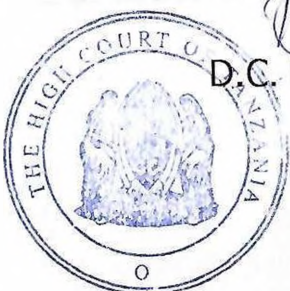
I understand the right is a fundamental right to every party to the case but, such right has to be exercised in proper forum. For the tribunal to stay the execution, all parties must be heard and for the parties to be heard on certain issue the tribunal has to be moved.

In this matter, the tribunal was not moved to stay execution thus, the applicant cannot claim that she was not accorded right to be heard in so far as execution is concerned. The allegation on refusal to register the case remain an administrative issue not part of the proceedings to make this court to probe into its legality. As the records in Execution No.155 of 2012 does not reveal issue of registration of cases, it cannot be said that this court has something to rectify in the tribunal proceedings.

Basing on the reasons advanced above, it is my conclusion that the application for execution was properly initiated and was in compliance with the law. I therefore find this revision application devoid of merit and it is hereby dismissed with costs.

DATED at **ARUSHA** this 27th day of June, 2022.


D.C. KAMUZORA
JUDGE



The seal of the High Court of Tanzania is circular. It features a central emblem depicting three figures, possibly judges or historical figures, standing under a canopy. The text "THE HIGH COURT OF TANZANIA" is inscribed around the perimeter of the seal. Below the emblem, there is a small circle containing the letter "O".