

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

LAND APPLICATION NO. 64 OF 2021

(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Application No. 76 of 2020 and Original Civil Case No. 11 of 2018 at Kassambya Ward Tribunal)

COCLESTINE KYARUZI----- APPLICANT

VERSUS

PHILBART RWEJUNA-----RESPONDENT

RULING

Date of Ruling: 04/03/2022

Mwenda, J.

This is an application filed by Coclestine Kyaruzi (the applicant) praying before this honorable court for the following orders;

- (1). This honorable Court be pleased to call for and inspect the correctness, legality or propriety of the proceedings conducted during execution process.
- (2). Costs of this application to follow the event.
- (3). Any other orders and reliefs as this hon. Court deem fit and just.

During the hearing of this application both parties appeared in person.

When invited to argue in support of his application, the applicant argued that, the land in dispute was not properly divided between them as the executed/divided land is not the land dispute. He also submitted that one of his neighbours, one Mr. Godian Kashatu was not involved in execution process. He concluded by praying this application to be granted.

In reply to the submission by the applicant, the respondent submitted that, the land was divided in presence of witnesses and both parties were satisfied. He further stated that the applicant was asked if he is satisfied and he answered in affirmative. They then signed the report.

He also contended that the absence of Godian Kashatu in execution exercise did not prejudice anybody as the exercise was witnessed by the village authority. The respondent concluded his submission by praying this application to be dismissed.

According to the first paragraph of the chamber summons, the applicant intends this court to call for and inspect the correctness, legality or propriety of the proceedings after the execution exercise.

The records referred to in the said paragraph are that of the District Land and Housing Tribunal for Bukoba at Kagera in Misc. Application No. 376 of 2020. This application was filed by the respondent following determination of Civil Case No. 11 of 2018 before Kassambya Ward Tribunal. In that case, the tribunal resolved the dispute between the applicant and the respondent by ordering the land in dispute to be equally divided among them or to be divided according to the sale agreement. Following that decision, the respondent applied for execution of decree in the District Land and Housing Tribunal for Bukoba at Kagera, in land Application No. 376 of 2020. When served with the application for execution's documents the present applicant responded by challenging the

decision reached by the ward Tribunal. He however did not prefer any formal appeal to challenge the said Ward Tribunal's decision.

When the District Land and Housing Tribunal convened to determine the application for execution the decree holder submitted and prayed that the execution be undertaken according to the Ward Tribunal's decision. On his part the judgment debtor (the present applicant) briefly submitted in the following words in that "***uamuzi wa baraza uzingatiwe***" meaning the Ward Tribunal's decision be considered in execution of the decree.

Following the parties submissions, the District Land and Housing Tribunal ordered the District Commissioner for Misenyi to divide the land in dispute in accordance to the sale agreement and to report back within one month.

After the completion of execution process, the Village Executive officer wrote a report stating what transpired. Both parties signed in the said report. The report shows that the disputed land was distributed equally to the disputants and that both parties were satisfied with how the exercise was conducted. This distribution is in accordance to the Ward Tribunal decision. In the said report there is also a long list of people who participated including village leaders.

However, on 5th July 2021, the applicant filed this application on the ground that the land which was divided is not the land in dispute and prayed for this court to revise the execution process. This led this court to frame one issue which is whether or not the execution exercise can be revised.

The circumstances under which this court can exercise revisional powers are covered under section 79 (1) of the Civil Procedure Code [CAP 33 R.E 2019]. In discussing the said circumstance this court in the case of **ABDUL HASSAN VS MOHAMED AHMED [1989] TLR 181** stated that:-

“ The High Court revisional powers under Section 79 (1) of Civil Procedure Code are limited to cases where no appeal lies and issues such as whether the subordinate court has exercised jurisdiction not vested, if vested, whether it has failed to exercise the same or has acted illegally or with material irregularity.”

In the present application the applicant claim that instead of executing a decree over the land in dispute, the executing officer executed the land which belong to him. On the other hand, however the executing officer wrote a report which indicate that the parties participated in the exercise and that they were satisfied with the way the execution was conducted. On top of that the applicant and the respondent appended their signatures in the said report.

Having scrutinized the report by the executing officer, this court finds the applicant's claim as baseless and afterthought. This is so because although the applicant alleged in his affidavit that he informed the chairman of the District Land and Housing Tribunal about the alleged anomaly but failed to take any action, this court went through the records of Application No. 376 of 2020 and

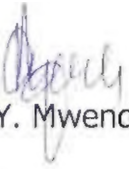
failed to locate record in respect of the said complaint. Secondly, the records are very clear that the applicant participated in the execution exercise and that he was satisfied with the way the said exercise was conducted. In the circumstances of this matter this court is convinced to believe the tribunal's records as authentic and bear what transpired.

From the foregoing observation this court find no merits in this application. It is therefore dismissed.

Each part shall bear its own costs.

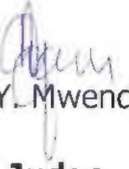
It is so ordered.




A.Y. Mwenda
Judge
04.03.2022

This ruling is delivered in chamber under the seal of this court in the presence of the applicant Mr. Coclestine Kyaruzi and in the presence of the respondent Mr. Philbart Rwejuna.




A.Y. Mwenda
Judge
04.03.2022

