

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB-REGISTRY)**

AT MWANZA

LAND APPEAL NO. 64 OF 2021

*(From the decision of the District Land and Housing Tribunal of Mwanza District at
Mwanza in Land Case No. 193 of 2006)*

CHAIRMAN, NYAMAGAMBA VILLAGE.....1ST APPELLANT
EXECUTIVE OFFICER, TSENI WARD.....2ND APPELLANT
DED KWIMBA DISTRICT COUNCIL.....3RD APPELLANT

VERSUS

OBEDI SELEMAN.....1ST RESPONDENT
PETER NTEMINYANDA.....2ND RESPONDENT
SYLVESTER KARATASI.....3RD RESPONDENT
NESTORY WILLIAM.....4TH RESPONDENT
DOMINICO MUSHILIMU.....5TH RESPONDENT

JUDGMENT

24th May & 14th July, 2022

DYANSOBERA, J.:

The three appellants herein are impugning the decision given by the District Land and Housing Tribunal in Misc. Application No. 188 of 2021 which ordered the respondent's decree in Land Application No. 193 of 2006 dated 13th July, 2012 to be executed against the appellants.

A brief background of the matter is that the five respondents successfully sued the appellants before the District Land and Housing

Tribunal of Mwanza for recovery of a suit land the appellants acquired from them illegally and without compensation. At the trial Tribunal seven witnesses testified in support of the respondents' claims and their evidence established that the respondents, without any colour of right did, on 19th March, 2005 grab the appellants' land for construction of a primary school. At end of the day, the respondents carried the day after the Chairman, Kapinga, joined hands with the assessors. The judgment was entered ex parte on 13th July, 2012 against the appellants after they defaulted appearance.

The appellants did not lodge any appeal to challenge that decision instead, they have been filing unremitting and disconsolate applications as will be demonstrated later.

On 31st day of May, 2021, the respondents filed Application for Execution before the District Land and Housing Tribunal which was registered as No. 188 of 2021 praying to execute their decree dated 13th day of July, 2012 in Land Case No. 193 of 2006. In that application, the respondents prayed to execute the decree of the sum of Tshs. 83,000,000/= . By its order dated 16th day of November, 2021, the Tribunal ruled as follows:

'Amri: Wadaiwa wanaamriwa kulipa kiasi cha shilingi 83,000,000/= kwa wadai ndani ya siku 14 kwa mujibu wa Kanuni ya GN. No. 174 of 2003. Msipolipa kwa wakatin basi taratibun zingine za kisheria zitafuatwa'

Ten days later, that is on 26th November, 2021, the appellants filed Land Appeal No. 64 of 2021 complaining on the delivery of order against non-existing legal entities, lack of jurisdiction on part of the Tribunal, ignoring the appellants' objection and failure to consider the impersonation of 3rd respondent.

The respondents resisted this appeal mainly on the ground that it was *res judicata*.

Parties requested and the court granted leave to hear the appeal by way of written submissions.

I have considered the submissions of either side and the following facts are clear and undisputed.

First, the decree that was passed on 13th day of 13th day of July, 2012 in Land Application No. 1193 of 2006 is still valid and remains binding on the parties.

Second, in 2016 the appellants filed Misc. Application No. 155 of 2016 before this court (Hon. Mlacha, J) for extension of time. The application was withdrawn on 4.10.2016 with leave to re-file.

Third, the appellants then filed Misc. Land Application No. 257 of 2016 in this court (Makaramba, J) seeking for leave to appeal out of time. That application was, by order of this court dated 20.12.2017, struck out for being incompetent.

Fourth, the appellants filed another application (Misc. Land Application No. 98 of 2018) for extension of time. The application was assigned before Hon. Matupa, J who struck it out on 6.12.2018 for being incompetent as it was *res judicata*.

Fifth, there was also another application No. 38 of 2019 in this court (Hon. Ismail, J) for rectification of a clerical mistake that omitted the name of the 4th respondent from the list. This application was granted and the name was accordingly rectified. That was on 21.10.2020.

From the last decision of this court made on 21.10.2020, the appellants have never made any application or lodged any appeal to challenge the decision in Land Application No. 193 of 2006 given on

13.7.2012. This means that the said decision which is still intact and binding on the parties is legally enforceable.

It is for that reason, the respondents, following the appellants' incessant and hopeless applications, did on 31st May, 2021 file Misc. Application No. 188 of 2021 before the District Land and Housing Tribunal at Mwanza seeking to have the decree in the Land Application No. 193 of 2006 executed.

By the order dated 16th day of November, 2021 the District Land and Housing Tribunal ordered the appellants to pay to the respondents a sum of Tshs. 83, 000,000/= under rule 23 (3) of GN No. 174 of 2003 failure of which other legal procedures would ensue.

The appellants, instead of executing the decree that has been valid and binding on them from 13th day of July, 2012 in Land Application No. 193 of 2006 and enforcing the order of the District Land and Housing Tribunal dated 16th day of March 2021 in Misc. Application No. 188 of 2021, resorted to appeal to this court.

Clearly, the appeal, apart from being incompetent as the order for execution is not appealable, the conduct exhibited by the appellants is tantamount to blatant abuse of court process as it is improper use of judicial process as well as an interference with the due

administration of justice. This Court in the case of **Starpeco Ltd and others v. Azania Bank Ltd and another**, Misc. Commercial Application No. 11 of 2020 reported in [2020] TZHCOMD 2077 (10th February, 2020) at p. 30, first paragraph, made the following pertinent observation on the concept of abuse of court process: -

‘The concept of abuse of court process has a common feature, which is an improper use of the judicial process by a party in litigation to interference with the due administration of justice. Such interference includes but is not limited to a situation where a party deliberately files a multiplicity of suits in court’.

Such a situation obtains in the present appeal whereby the appellants have been filing hopeless applications and ultimately an incompetent appeal. This court abhors the appellants’ conduct and as it is intended to lead to an endless litigation after the case between the parties has been determined to its finality.

The appellants are reminded to heed and adhere to the wisdom elucidated by the Court of Appeal in the case of **Stephene Masato Wasira v. Joseph Sinde Warioba and the Attorney General** [1999] 332aat p. 342 that: -

'The law of this country, like laws of other civilized nations recognizes like life, litigation has to come to an end. Those who believe that litigation may continue as long as legal ingenuity has not been exhausted are clearly wrong'.

Since this appeal is incompetent, the court has no alternative other than dismissing it. In consequence, I dismiss this appeal and order the appellants to pay the respondents costs incurred both in this court and in the Tribunal below.

Order accordingly.



W.P. Dyansobera

Judge

14.7.2022

This judgement is delivered at Mwanza under my hand and the seal of this Court on this 14th day of July, 2022 in the presence of the respondents but in the absence of the appellants without notice.



W.P. Dyansobera
Judge