

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

LAND REVISION NO. 03 OF 2020

(Arising from EXECUTION NO. 178 OF 2019, THE DISTRICT LAND AND HOUSING TRIBUNAL OF KOROGWE)

JOSIA WILLIAM MBOWE----- APPLICANT

VERSUS

USHIRIKA WA WAUZA MAZIWA KOROGWE----- 1ST RESPONDENT

MUSA ABDALLAH-----2ND RESPONDENT

SAFINA LUKWALO-----3RD RESPONDENT

CUTHBERT MWANGA-----4TH RESPONDENT

JUDGEMENT ON REVISION

Mansoor, J:

Date of JUDGEMENT- 27TH JUNE 2022

The Applicant have filed an application for Revision of the execution proceedings carried out by the District Land and Housing Tribunal for Korogwe, Execution Case No. 178 of 2019, the decree which was subject to execution was passed by the District Land and Housing Tribunal for Korogwe Land Case Application No. 23 of 2011, where the District Tribunal ordered the respondents to pay the Applicant herein Tshs 26,676,900 which was the cost of construction of offices on



the disputed plot. The respondents were aggrieved, they filed an appeal to the High Court, (Land Appeal No. 2 of 2013) the appeal was uncontested, and was allowed, thereby setting aside the decision of the District Land and Housing Tribunal for Korogwe. The Appellant had attempted to set aside the High Court Judgement via Misc. Land Cause No. 6 of 2014 but he was unsuccessful. Aggrieved by the High Court decision, the applicant lodged to the Court of Appeal Civil Appeal no. 73 of 2017, but, again, he was unsuccessful as the appeal was dismissed for being barred by limitations.

Following the dismissal of the Appeal by the Court of Appeal, the respondents herein applied for execution of the District Tribunal's Decree, Execution No. 178 of 2019, the Tribunal ordered the Applicant to yield vacant possession from the suit land located Industrial Area (KTC/MJ/IND/F) UWAKO Majengo Ward within Korogwe Township, measuring 1 acre, in default, Majembe Auction Mart were appointed to execute forceful eviction.



The Applicant was aggrieved by the execution orders, he filed the present application under Section 79 (1) of the Civil Procedure Code, and Section 43 (b) of the Land Disputes Courts Act, Cap 216 R: E 2019. The reasons adduced in the Applicant's submissions is that the execution was done on the land, which was not decreed upon, that there was excessive execution. The Applicant argues that the Decree to be executed was not attached to the application for execution, and the respondents did not clearly describe the land in which the decree was to be executed. Another irregularity pointed out is that no 14 days' notice was issued to the Judgement Debtor as required under Regulation 23 (3) of GN. 174 of 2003. The Applicant states that he was issued with the eviction notice by the Court Broker.

The respondents resisted the application for revision, and states that the execution has already been carried out since 29th September 2020. The respondents cited the case of **Juto Ally vs Lucas Komba and Aloyce Msafiri Musika, Civil Application No. 84 of 2017**, Court of Appeal sitting at Dar



es Salaam, in which it was held that *"we cannot make an order to stay it and that if it caused substantial loss to the Applicant, there is no order that can undo that"*

The respondents argues that the High Court in exercising revisional powers over execution proceedings cannot be moved to describe the land that was executed, and by doing so, the High Court will sit as an appellate court, and any decision that will be rendered in describing the land, which is subject to execution, would have the effect of reversing the original decree, and this is incorrect. The issue of ownership of land has already been determined by the Courts to the level of the Court of Appeal and cannot be re-litigated by the High Court for the second time in disguise of revising the District Tribunal orders made in execution proceedings. The respondents' states that during execution proceedings the land to be executed was properly described and the Land Officer of Korogwe District was required to participate in execution since the land is the surveyed land. That the Applicant was given the 14 days' notice as required by



regulation 23 (3), and therefore the Advocate for the respondent was present before the Tribunal at the execution proceedings.

The Applicants filed for revision of the proceedings of the District Land and Housing Tribunal for Korogwe in Misc. Application No. 178 of 2019, and these are the execution proceedings and asked this Court to revise and nullify the entire proceedings of that Tribunal for it involved injustices and contained material irregularities. The Application was made under Section 43 (1) (a) and (b) of the Land Courts Disputes Act, 2002, and Section 79 of CPC.

Section 79 (1) (c) of the CPC as well as Section 43 of Cap 216 empowers this Court to call for the records of the lower Tribunals in any case in which no appeal lies, if such Subordinate Tribunals appears to have acted in the exercise of their respective jurisdiction illegally or with material irregularities.

Section 43 of the Land Disputes Courts Act provide as follows:



- (1) In addition to any other powers in that behalf conferred upon the High Court, the High Court (Land Division)

(a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;

(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit.



Under the provisions of Section 79 (1) (c) of the CPC the Court can only call for the records of the lower Tribunals only for cases in which no appeal lies, if such Subordinate Tribunals appears to have acted in the exercise of their respective jurisdiction illegally or with material irregularities. Under Section 43 (1) (b) of Cap 216 if it appears that there has been an error material to the merits of the case involving injustice.

In the case of **Abdu Hassan vs. Mohamed Ahmed (1989)** **TLR 181**, Hon. Katiti J (as he then was) held that *"the High Court Revisional Powers under Section 79(1) of the CPC are limited to cases where no appeal lies and issues such as whether the subordinate courts has exercised jurisdiction not vested or, if vested, whether it has failed to exercise the same or has acted illegally or with material irregularity."*

The argument by the Applicant is that the application for execution was not accompanied by a copy of decree, the land to be executed was not described in the decree and that resulted in excessive execution, and that the procedures under



Regulation 23 (3) of GN No. 174 of 2003 were not followed as the Applicant was not served with the notice of execution, and he was refused a chance to be heard, and these constituted irregularities in the proceedings of execution by the executing Tribunal. The Applicant does not submit as to whether the order passed in execution proceedings passed by the District Land and Housing Tribunal is not an appealable order, and so it falls under the ambit of Section 79 (1) of the Civil Procedure Code, 1966, hence this court has powers to revise the records of the lower tribunal to see whether there was miscarriage of justice and material irregularities in the records.

From the submissions of the parties, and the records of the lower tribunals, indeed the Land Dispute No. 23/2011 which was conducted to its finality by the District Land and Housing Tribunal for Korogwe was reversed by the High Court on Appeal, thus the decree on appeal passed by the High Court in Land Appeal No 2 of 2013 became final. The Decree which was executed by the District Land and Housing Tribunal was that of the District Land and Housing Tribunal for Korogwe in



Land Application No. 23 of 2011 in which the Applicant here was ordered to be paid compensation for breach of contract to the tune of TZS 26,676,900 spent by the Applicant herein to construct offices in the plot belonging to the respondents. Then this decision was reversed, and this Court wonders as to what decree was being executed by the District Land and Housing Tribunal for Korogwe as even the Decree of the High Court passed on appeal was not attached to the application for execution.

Section 43 (1) (a) of the Land Disputes Courts Act gives the High Court power to call for records and give directions, and (b) gives power to the High Court to revise any proceedings determined in the District Land and Housing Tribunal in the exercise of its **original**, **appellate** or **revisional** jurisdiction. Thus, the High Court has powers under section 43 (1) (b) of the Land Disputes Courts Act to revise any proceedings of the District Land and Housing Tribunal exercising its revisional jurisdiction. However, section 43 (1) (a) allows this Court to call for records and revise any order passed by the



subordinate Tribunals, am satisfied that the Court can revise the proceedings of the lower Tribunals exercising execution proceedings if no remedy is available under the CPC, or any other written laws or for the interests of justice.

There is material placed before this Court which proves that the lower Tribunal committed an error apparent of the records to enable the High Court to invoke its revisional powers, as it executed a decree which was not availed to it. The power of revision by the High Court is superintendence over the subordinate courts or tribunals if the order or orders passed by the lower courts or tribunals would not come before the High Court directly in appeal.

The Applicant complained that it was excessive execution and prayed for revision of the proceedings of the District Land and Housing Tribunal dated 12/08/2020, in which no decree of the High Court which reversed the decision of the District Tribunal was attached. What was attached to the application for execution was the Judgement of the Court of Appeal which dismissed the Applicant's Appeal for being filed out of time.



The Chairman of the Tribunal ought to have asked for a Decree to satisfy itself as to what decree he was executing.

The Applicant's application before this Court is complaining on excessive execution and procedural irregularities in the execution processes by the executing Tribunal. The decree-holder does not say if he attached to his application the decree which was subject to execution and only argues that the decree was already executed, and nothing can be done to undue it.

The Decree sought to be executed should have been clear, it should have stated what needed to be demolished from the orders of the District Land and Housing Tribunal or by the orders passed by the High Court on appeal, and it should have stated clearly which land was to be handed over to the respondents, and since it is a surveyed land, the land would have been clearly described in the Decree which was the subject of execution. I just wonder as to where the executing Tribunal got the Decretal orders from in which he has ordered



to be executed if no decree was attached to the application for execution.

The irresistible conclusion from these facts and circumstances is that no order of demolition of the Applicant's house was ever issued by any court or Tribunal. The judgment debtor is entitled, by way of restitution to get from the judgment creditor a house which was demolished or its equivalent market value, if the house is already demolished, if not then the execution proceedings should be initiated afresh with the decree to be executed to be clearly availed to court.

It remains to be mentioned that that there was an order of this court in Land Appeal no 2 of 2013 and that no appeal lay from the order of this Court whereby the judgment-debtor's appeal was allowed. The Judgment of the High Court and its Decree was the one being executed by the Tribunal, but nothing was attached, and it is not known as to what was ordered by the High Court on appeal.



The judgment-debtor clearly complained that there had been excessive execution or an intention to carry out an excessive execution and that there is material illegality and procedural irregularity in the decision of Hon. Makombe, the Chairperson of the Executing Tribunal by ordering execution without having on record the decree, and continuation of the execution processes without ascertaining as to what is to be executed.

It must be borne in mind that the procedure for attachment of land is provided in the Code of Civil Procedure (Rules 44 and 54 of Order 21, Civil Procedure Code). Likewise, the procedure for delivery of possession in the case of land is provided for in the Civil Procedure Code. There is no Judgement available that shows what the Judgement Creditor is entitled as per the judgement of the High Court, as in the Judgement of the District Tribunal, the respondents herein were the Judgement Debtors, they became the Judgement creditors and so entitled to executing the decree only by the decree of the High Court. No one knows what the High Court Decreed, maybe it only



dismissed the appeal, and no reliefs were granted, no one knows as no decree was attached to the application for execution.

The Court Broker is under the obligation, to identify and give proper description of the property he intends to attach and affect the execution. That the court Broker is obliged to give in detail the proper measurements, numbers, and the area of the property to the executing court before it affects execution and this should be as per the Court or Tribunal's orders, no less no more. The proclamation of sale is a very significant document. As provided in Order 21, Rule 66, C.P.C., it is required to be drawn up after notice to the decree-holder and the judgment-debtor and is required to specify as clearly and accurately as possible the property to be sold and every other thing which the Court considers material for the purchaser to know to judge of the nature and value of the property. Likewise for delivery of possession of immovable property, as in this case the delivery of possession of land to judgement creditor in execution if at all decreed by the court should have been done



accurately and properly, and a notice to judgement debtor should have been given prior to execution. No such notice under Regulation 23 (3) of GN 174 of 2003, or by the Court Broker was given and that was irregular. The Rules of procedure under the Civil Procedure Code further clothes the executing Court with power to enter an enquiry for the purpose of ascertaining the matters to be specified in the proclamation or attachment of immovable property. All this shows that the sale proclamation or the procedures to be followed by the executing court and the court broker before affecting execution of a court order is the most valuable steps for the purpose of ascertaining what the Court intended to do in executing a court order. These procedures were violated by the executing court as well as the court broker. The court broker carried out excessive execution and contrary to the court orders. The executing Tribunal also did not know what it was executing as it did not have a decree and did not give notice to the judgement debtor. There is indeed incorrectness, illegality and procedural irregularities in the proceedings and decision of the executing court and the court broker.



Consequently, and for the above reasons, the application for revision is allowed. The proceedings and orders of the learned Chairperson of the executing Tribunal of 12/08/2020 are set aside. The Applicant may seek for appropriate remedies at the appropriate forum if the demolition is already done, and if not no demolition of the Applicant's house or structure is to be affected, or handing over been made, unless it is ascertained that it is in strict compliance of the High Court Decree. The Applicant shall have his costs throughout from the Respondents.

DATED at TANGA this 27TH day of JUNE 2020



A handwritten signature in blue ink, appearing to read "Mansoor", is written over the printed name.

MANSOOR
JUDGE,
27th June, 2022