

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

**LAND REVISIO NO. 4 OF 2019**

*(Arising from Misc. Land Application No. 206 of 2018 and Misc. Application No. 58 of 2018 from the District Land and Housing Tribunal for Kagera at Bukoba)*

**LAWRENCE WILBARD MTEMBEI.....APPLICANT**  
**VERSUS**  
**WILBROD KALIST.....1<sup>ST</sup> RESPONDENT**  
**ELIEZA ELIAS.....2<sup>ND</sup> RESPONDENT**


**RULING**

*20<sup>th</sup> June & 24<sup>th</sup> June 2022*

***Kilekamajenga, J.***

The applicant, in this case, sued the respondents before the District Land and Housing Tribunal. In that case, he prayed to be declared the lawful owner of the suit land. The trial tribunal was fully satisfied that the applicant lawfully purchased the suit land from Tanzania Tea Authority in 1998 hence ordered the respondents to remove their structures and vacate from the land. Thereafter, the respondents appealed to this court challenging the decision of the District Land and Housing Tribunal. On 27<sup>th</sup> November 2015, their appeal was dismissed and the decision of the District Land and Housing Tribunal was upheld.

Thereafter, the applicant applied for execution in the District Land and Housing Tribunal vide Miscellaneous Land Application No. 206 of 2018. In the execution application, he pressed for the removal of the respondents from the suit land. On 27<sup>th</sup> August 2018, the District Land and Housing Tribunal appointed the District Commissioner of Muleba District to execute its order. The District



Commissioner after receiving the order of the District Land and Housing Tribunal, assigned the Ward Executive Officer to execute the decree of the tribunal. In the execution process, the Ward Executive Officer visited the land in dispute and received evidence from the neighbours to the land who informed him that the suit land belonged to Madina Salum and that the second respondent bought the same in 1995. As a result, the Ward Executive Officer did not execute the decree.

The applicant went back to the District Land and Housing Tribunal complaining about the failure to execute the decree of the tribunal. The parties appeared again before the District Land and Housing Tribunal. On 23<sup>rd</sup> January 2019, Mr. Zeddy Ally (Advocate) who was holding brief for Advocate Danstan Mutagahywa addressed the tribunal stating that, the counsel for the applicant has informed him that the applicant was satisfied with the execution process. Hence, Mr. Zeddy Ally prayed for the case to be closed. When the applicant discovered that the case was closed, he filed a review before the same District Land and Housing Tribunal. On 27<sup>th</sup> June 2019, the application for review was dismissed on the reason that the tribunal was *functus officio* to determine the same case. The applicant appeared before this court by way of revision challenging the order to dismiss the review.

The application before this court was made by way of chamber summons under **section 41, 43(1) and 44 of the Land Disputes Courts Act, Cap. 216 of**

**2002** (Now RE 2019) and **section 79 of the Civil Procedure Code, Cap. 33**

**RE 2002** (Now RE 2019) and any other enabling provisions of the law. It was also accompanied with the affidavit of the applicant. The applicant prayed for the following orders:

- 1. That, this Honourable Court be pleased to call for and examine the records and proceedings of the District Land and Housing Tribunal for Kagera at Bukoba in Misc. Application No. 58 of 2019 so as to satisfy itself as to correctness and legality of an order of the tribunal chairman to close the execution which has not matured and to appoint the District Commissioner for Muleba to execute the decision of the tribunal.*
- 2. Costs of this application be provided for.*
- 3. Any other/further relief(s) that this Court may deem just and equitable to grant.*

During the hearing of this application, advocate Geoffrey James Mwachahe who appeared for the applicant invited the court to decide whether the chairman of the tribunal was right to close the execution process which had not matured; and whether the District Land and Housing Tribunal was right to appoint the District Commissioner of Muleba to execute the decree of the tribunal. He argued further that, under **section 79 of the Civil Procedure Code, Cap. 33 RE 2019**, where the District Land and Housing Tribunal fails to execute its order, the law allows a party to seek revision before this court. He reiterated further that, the District Commissioner who was appointed to execute the decree of the tribunal did not do so. The counsel invited this court to revise the order which directed the District Commissioner to execute the decree of the tribunal. Also, he stated,

it was not right for the District Commissioner to assign the Ward Executive Officer to execute the decree. He finally urged the court to allow the application and set aside the decision of the District Land and Housing Tribunal.


In response, the second respondent, who was not represented, insisted that the execution was lawfully done because the dispute needed further evidence which he tendered during the execution proceedings. There was no submission from the first respondent as the application was heard in his absence. Thereafter, there was no rejoinder.

In this case, having considered the submissions from the parties and perused the court file, the major issue for determination is whether the execution of the decree of the District Land and Housing Tribunal given in Application No. 16 of 2012 was lawfully done. As already stated earlier, soon after the decision of the District Land and Housing Tribunal which was delivered on 03<sup>rd</sup> December 2012, the respondents appealed to this court through Land Case Appeal No. 3 of 2013. Their appeal was dismissed on 27<sup>th</sup> November 2015 and the decision of the District Land and Housing Tribunal was confirmed. Thereafter, there was no further appeal. The applicant filed Misc. Application No. 206 of 2018 seeking to execute the decree of the trial tribunal. The chairman of the tribunal appointed the District Commissioner of Muleba to execute the decree. In my view, it was wrong for the chairman of the tribunal to impose the responsibility of execution to the District Commissioner. The proper procedure was for the tribunal

chairman to appoint a Court Broker to execute the decree. Furthermore, when the applicant complained that the execution failed, the chairman allowed the case to be closed even before ascertaining on whether the land in dispute was actually handed over to the applicant. In my view, it is as good as the execution was not done. As long as execution was not properly done, I still see the reason to order the execution process to be conducted. I hereby order the file to be remitted back to the District Land and Housing Tribunal before another chairman so that execution processes may be carried out for the applicant to get his rights. No order as to costs. It is so ordered.

Dated at Bukoba this 24<sup>th</sup> Day of June 2022.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**24/06/2022**

**Court:**

Ruling delivered this 24<sup>th</sup> June 2022 in the presence of the counsel for the applicant, Mr. Godfrey Mwachahe (Adv) and the 2<sup>nd</sup> respondent present in person. Right of appeal explained.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**24/06/2022**