

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

LAND APPLICATION NO. 13 OF 2021
(Arising from DHLT Kahama Execution Application No. 39 of 2018)

1. NATIONAL MICROFINANCE BANK(PLC).....1ST APPLICANT

2. DOLPHIN GENERAL BUSINESS

ENTERPRISES CO LTD 2ND APPLICANT

VERSUS

1. EMANUEL KASALA EVAREST.....RESPONDENT

2. ABEL JILALA SENI.....RESPONDENT

3. JUMA HEMEDI KINGUZARESPONDENT

RULING

6th July & 12th August 2022

MKWIZU, J:

This application emanates from execution proceedings No. 160 of 2018 originating from Land Application No. 39 of 2018 where the 2nd Respondent, **ABEL JILALA SENI** was ordered to reimburse the 1st Respondent a total sum of 8500,000/= being six million Tanzania shillings (6000,000/=) the purchase amount plus 2500,000 general damages. In view of realizing the award, the 1st respondent filed an application for execution before the DLHT via Execution No. 160 of 2018. Contrary to the decree of the DLHT, the executing court ordered the 1st applicant, **NATIONAL MICROFINANCE BANK(PLC)** to pay the decreed sum to the 1st respondent. Dissatisfied, the applicants have filed these revision proceedings praying for the following orders:

- i. That this Honorable court be pleased to call for record and revise orders of Misc. Land Application No. 160/2018 which emanates from Land Application No. 39/2018 sso as to ascertain its legality
- ii. Any other order that the court may deem fit to grant.

The application is by a chamber summons made under sections 41(1) and 43(1)(a) (b) and (2) of the Land Disputes Court's Act (Cap 216) RE 2019 supported by the affidavit by Mackanjero Ishengoma , the applicant's counsel.

In their counter affidavit in opposition to the application, 1st and 2nd respondent were of the view that the 1st applicant was ordered to pay the decretal sum after her failure to disclose the amount that remained in the judgment debtors account after deduction of her dues and therefore lawful. The matter proceeded *ex-parte* against the third respondent who was absent despite notice of the hearing through publication in one issue of Mtanzania Newspaper, dates 24/6/2022.

At the hearing of the revision, Pastory Beyengo was for the applicants while the two respondents that are the 1st and 2nd respondents were in person without legal representation.

Arguing the application, Mr. Biyengo for the applicant first prayed to adopt the affidavit in support of the application to form part of his submissions. He in addition submitted that, regulation 23(1) of the Land Disputes, Act GN No 173 of 2003 provides for what is to be executed. And sub-regulation 3 of the same regulation requires the executing tribunal to order the judgment debtor to comply with the decree but the executing

tribunal here abrogated its duties. He at the end prayed for the court to allow the application with costs.

The 1st respondent's submissions were in support of the application.

The second respondent was in opposition of the application without explanation.

I have given the matter a careful scrutiny. The only issue available for this court's determination is whether the execution Tribunal committed an error in ordering the 1st applicant to pay the 1st respondent the decreed sum contrary to the decree of the tribunal.

The word "Execution" is not defined in the Code of Civil Procedure. It simply means the process for enforcing the decree that is passed in favour of the decree-holder by a competent court. Execution of the land decree is guided by Part V of the Land Disputes Courts (The district land and Housing Tribunal) Rules, GN No 174 of 2003 which reads:

"23 – (1) A decree holder 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 decrees 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 that required 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 objections under this sub-regulation shall be limited to the subject matter of the objections.”(emphasis added)

The powers of the executing court according to the provision above are limited to the implementation of the decree brought before it. For that reason, a decree cannot be altered anyhow during execution except by a superior court acting on appeal or in revision or by the court passing it on review. Discussing the jurisdiction of the executing Court in **Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker** on 7 July 1960, AIR 1961 All 1, it was observed

"I hold it to be a correct proposition of law that a Court executing a decree is bound by the terms of that decree and cannot go behind them. It is equally true as a general proposition that such Court can neither add to such a decree nor vary its terms."

Discussing the roles of the executing court, this court in **Fortunata Edga KAungua V George Hassan Kumburu**, Misc Civil Appeal No 71 of 2019, My sister Massabo J, quoting with approval the Indian decision **The Lahore Bank, Limited, In Liquidation v. Ghulam Jilani**, (1924) I.L.R. V Lah. 54 said:

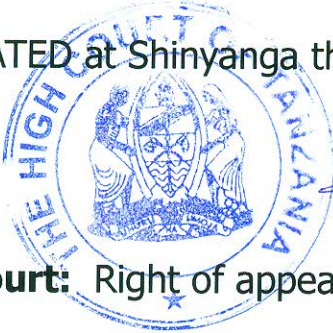


"...executing Court has no jurisdiction to criticize or go behind the decree, all that concerns it is the execution of the

respective decree. And, if the decree should be annulled, that is not the function of the executing court."

I find the decisions above persuading. The position is different in our case. While it is clear from the decree that the 2nd respondent **ABEL JILALA SENI** was held accountable to the 1st respondent for the payment of six million for the purchase price and 2500,000 as general damages, the executing tribunal changed the decree by ordering the 1st applicant, **National Microfinance Bank (PLC)** who is not the responsible party to clear the decreed sum. The executing court here committed an error by exercising powers not vested in it. It has no power of altering the decree.

In the premises, the application is found meritorious. The revisions application is allowed. The order dated 8/2/2019 by the executing tribunal, Kahama DLHT is quashed and set aside. The case file is remitted back to the execution court to execute the tabled decree in accordance with the law. Considering the nature of the application and the source of the confusion, I make no order as to costs.

DATED at Shinyanga this 12th day of AUGUST 2022.

 
E.Y MKWIZU
JUDGE
12/8/2022
Court: Right of appeal explained. 
E.Y MKWIZU
JUDGE