IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND REVISION NO. 10 OF 2021

(C/f District Land and Housing Tribunal for Arusha at Arusha, Misc. Application No. 184 of 2018, Original Land Case No 1/2005 from Oltrumet Ward Tribunal)

PAULO MEIJO KIVUYO (As an Administrator
Of the late **LOISULILE LAIZER) .....APPLICANT**

VERSUS

SAMWEL LOBAYA (As an Administrator of
the late **LOBAYA LEMOTIKA) ..... RESPONDENT**

JUDGMENT

11/07/2022 & 29/08/2022

KAMUZORA, J.

This application for revision was brought under certificate of urgency by way of a chamber summons per the provision of section 43(1) (b) of the Land Disputes Courts' Act, [Cap 216 R.E 2019]. The application is supported by the sworn affidavit by Omary Burhn Gyunda, counsel for the Applicant. The Applicant is calling upon this court to examine the records of the District Land and Housing Tribunal (DLHT) for Arusha at Arusha in Misc. Application No. 184 of 2018 for the purpose of satisfying itself as to the legality and propriety of the ruling and revise, quash and

set aside the ruling, order which needs to be executed against the Applicant. The application is contested by the Respondent through a counter affidavit deponed by Mr. Fredrick Simon Kinabo, counsel for the Respondent.

During oral hearing of the application, Mr. Omary Gyunda, learned advocate appeared and submitted for the Applicant while the Respondent enjoyed the service of Mr. F.S. Kinabo, learned advocate.

The Applicant's counsel adopted the chamber application and its supporting affidavit and submitted that, this application emanates from the ruling in execution No. 184 of 2018 that was issued by the DLHT. The counsel for the Applicant alleged that the contested ruling resulted from an execution application which was time barred. He claimed that, the decision of the Ward Tribunal to be executed was issued on 8/11/2005 while the application before the DLHT was initiated in year 2018 more than 12 years. He insisted that, as per the provision of Part V GN No. 174 of 2003 of the Land Disputes Courts (the District Land and Housing Tribunal) Regulation, specifically Regulation 24, an appeal is not a bar to execution.

Apart from time limitation, the counsel for the Applicant also submitted that, in the said application for execution, there was no

description of the disputed land. That, before the Ward Tribunal of Oltrumet the Respondent who was the claimant claimed that the disputed land comprises of 10 acres. That, the said land is unregistered and when the Ward Tribunal visited the locus, they pointed out that the land was estimated to be 10 acres thus, there is no exact assurance of the size of the land. That, as the Applicant is bordered with the Respondent by east, the execution to which the size of the land is unknown can result into taking of the Applicant's land in the intention of executing the exact 10 acres which is not there. He insisted that, in the said application for execution the boundaries were not identified thus, the execution will cause embarrassment to the Applicant and the Applicant and the neighbours.

The counsel for the Applicant also submitted that, the names in the application for execution before the DLHT are different from those in the Ward Tribunal. That, the names in the letters of administration are different from the names in application No. 184 of 2018. He was of the view that the defect in the names can cause disturbance to the Applicant and the Respondent who are all administrators of the estates of their deceased fathers.

Based on the above reasons the Applicant prays that the application be granted as so prayed in the chamber application.

Contesting the application, the counsel for the Respondent stated that, the present application was brought under section 43 (1)(a)(b) and (2) but, Regulation 24 mentioned by the counsel was not mentioned in the chamber application as enabling provision. Regarding the provision cited in application, the counsel for the Respondent submitted that, section 43(1)(a) the High Court can exercise such powers before the DLHT makes any decision. That the DLHT was an application for execution hence the proper provision is section 43(1)(a) gives this court supervisory powers to inspect the record of the DLHT and give directives. The interpretation of the above provision by the counsel for the Respondent is that, the High court can exercise such powers before the decision is made by the DLHT. He contended that in the present application, the DLHT had already made decision thus, as the application was brought under a wrong provision. He added that, as the decision was already made, the proper provision could be section 43 (1)(b) but he was of the view that, such provision is only applicable where the DLHT is dealing with matter in original, appellate or revisional jurisdiction. The counsel for the Respondent was of the view that, in dealing with Application No. 184 of

2018 the DLHT was not exercising its original, appellate or revisional powers thus, the same be dismissed for being filed under the wrong provision of the law.

Responding to the reasons for the dissatisfaction, the Respondent argued that, it is true that the decision of the Ward Tribunal was issued on 08/11/2005 and an appeal was preferred that is, Appeal No. 28 of 2005 as per annexure P1 which was again struck out by the DLHT on 03/03/2017. That, before an appeal could be struck out, the Applicant also filed Land Revision No. 1 of 2007 which was dismissed on 16/12/2013. That, the Respondent then filed an application for execution at the DLHT in 2018. He was of the view that, the application for execution was filed within 5 years from the date the revision application was dismissed by the High Court. That, as the law of limitation Act requires an application for execution to be filed within a period of 12 years after the decision, the counsel for the Respondent was of the view that the counsel for the Applicant counted the time without considering the procedure put forward by the Law of Limitation Act under section 21(2). That, such provision requires the time spent by the Applicant in prosecuting other proceedings in the respective court to be excluded.

He added that, it is true as submitted by the counsel for the Applicant and the law cited thereto that an appeal shall not be a bar to execution. He however contended that, the order to be executed was that of the Ward Tribunal and the cited Regulations does not apply to proceedings originating from the Ward Tribunal but with the proceedings originating from the DLHT.

Regarding the description of the land that it was not satisfactory, the counsel for the Respondent submitted that, the same was dealt with by the DLHT in Application No. 184 of 2018 where it was ruled out that the land was surveyed and was given number 743 and the same was bordered with the Applicant's farm. That, the execution applied for concerned the return of the demarcations that was there during the decision of the Ward Tribunal. That, this court is only bound to look into the propriety of the application for execution and not to change the decision of the Ward Tribunal.

Regarding the names of the parties being different the counsel for the Respondent submitted that, the original parties to the suit passed away and the present parties are all administrators of the estate of the deceased. That, the Applicant did not explain the difference in names he was referring. The counsel for the Respondent was of the view that, this

application was made without enough reasons thus prays the same to be dismissed.

In a brief rejoinder submission on the claim that the application was brought under a wrong provision, the counsel for the Applicant submitted that, such argument was brought as a preliminary objection while it was not raised while filing the counter affidavit hence raising the same at this stage is taking the Applicant by surprise. He added that, the court has power to determine the rights of the parties and not to be bound by technicalities. He insisted that, the application at the DLHT was filed out of time because Regulation 23 (1) of GN No. 174 of 2003 requires the decree holder to apply for execution as soon as possible. Regarding the claim that the application originated from the Ward Tribunal and that Regulation 24 does not apply the counsel for the Applicant submitted that, all executions originating from the Ward Tribunal and the DLHT are regulated by Part V of GN No. 174 of 2003. That, Form 3 which is used in filing execution originating from the Ward Tribunal is found under the Regulations.

On the argument that the farm was registered as No. 143 the counsel for the Applicant submitted that, there is nowhere showing the size of the farm to be 10 acres. He insisted that, in the absence of actual

measurements of the disputed land and in considering that the Applicant and the Respondents are neighbours, the execution will cause inconvenience. The Applicant's counsel reiterated the prayer raised in the submission in chief.

Having analyse the submissions by the parties, it is important for this court to address the issue raised by the counsel for Respondent that the Applicant has not cited the proper provision of the law. According to the Respondent's counsel the proper provision is section 43 (1) (b) of the Land Dispute Courts Act Cap 216 R.E 2019 and not section 43 (1)(a) of the Act. That, it was wrong to rely on the provision of section 43 (1)(a) and (b) to move this court in this application. It is unfortunate that, the counsel for the Respondent did not enlighten this court as to what he thinks to be proper provision for application of this nature. I will therefore look into the law and deliberate on the section cited as enabling provision.

It is clear that in the chamber application filed by the Applicant section 43(1) (a) (b) and (2) of Cap 216 R.E 2019 was cited as enabling provision. The said section read;

> *"43. -(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-*
> *(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.

(2) In the exercise of its revisional jurisdiction, the High Court shall have all the powers in the exercise of its appellate jurisdiction.

The preamble to the above provision is on the supervisory and revisional powers. My interpretation to the above provision is that, the High Court is vested with powers to call and examine the records of the DLHT for purpose of satisfying itself as to the correctness of the same. Under paragraph (a) of the provision, the word *'at any time'* is used to mean that the High court can give directives at any stage of the proceedings. The argument that the directives cannot be given after the decision is made is baseless as that is not the wording of the provision. I therefore find that the Applicant has properly moved this court to exercise its revisional power hence there was a proper citation of the enabling provision of the law.

This court now turn into determining if there is any irregularities or errors committed by the lower Tribunal to warrant this court to invoke its revisional powers. The Applicant has alleged irregularities on three issues areas, time limitation, non-description of the disputed land and names of the parties.

Starting with time limitation, the Applicant contended that much as the original decree was issued in 2005, the application for execution filed in 2018 was time barred as it was filed after the expiry of 12 years specified by the law. This similar issue was raised before the DLHT and the tribunal formed a view that the application was filed within time considering that there were other proceedings being prosecuted by the parties which its time should be excluded in computing time limitation.

There is no doubt that, the law which regulate matters before the DLHT is the Land Disputed Courts (the District Land and Housing Tribunal) Regulation, 2002 GN No. 174 published in 2003. It is clear that under Regulation 23, the decree holder is supposed to apply for execution as soon as practicable after the pronouncement of the judgment. However, the said Regulations does not describe the time limit for filing the execution application. In that regard, the Civil Procedure Code Cap. 33

R.E 2019 and the Law of Limitation Act Cap. 89 R.E 2019 becomes relevant. Under section 39 of the CPC an application for execution has to made within 12 years from the date of the decree sought to be executed. Based on that provision the Applicant believes that the 12 years' time has to be computed from the date the decision was made. The Respondent however believes on the exclusion rule that, the time spent in prosecuting the appeal or revision has to be excluded. Section 21 (2) of the Law of Limitation Act Cap. 89 R.E 2019 reads: -

> *"In computing the period of limitation prescribed for any application, the time during which the Applicant has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party, for the same relief, shall be excluded where such proceeding is prosecuted in good faith, in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."*

The law allows an automatic exclusion of period within which the Applicant was bonafide prosecuting his claims in courts of law against the same party for the same relief. It is undisputed fact that, after the decision of the Ward Tribunal was issued, the aggrieved party that is, the Applicant herein lodged an appeal to the District Land and Housing Tribunal of Arusha in Appeal No. 28 of 2005 and the same was marked abated by the Tribunal on 3/3/2017 as per annexure P1 to the Applicant's affidavit filed

in support of the application. The Respondent was aggrieved by the order of the DLHT marking the suit as abated in Appeal No. 28 of 2005 hence initiated a revision application to the High court, Revision No. 1 of 2007 which was dismissed by the High Court on 16/12/2013 for non-appearance of the parties. With those records, I agree with the Respondent's arguments and the DLHT conclusion that, pursuant to section 21 (2) of Cap. 89 R.E 2019 the time that the parties were prosecuting other cases related to the subject matter in dispute ought to be excluded while computing the time to institute an execution application.

It was contended by the Applicant that since under the law an appeal is not a bar to execution, the Respondent was supposed to proceed with execution process. I agree with the argument that appeal or revision is not a bar to execution under the law. But, where there is ample evidence that the records of the case were forwarded to the Higher court for appeal or revision purposes, it become obvious that no execution can proceed unless and until the appeal or revision process are complete. That is the essence of section 21 (2) of excluding the time spent on appeal or revision or any other proceedings relating to the same subject matter. In the circumstance of this case, it cannot be said that the Respondent was

in a position to proceed with execution process while the records were before the High court for revision purposes. In that regard, I maintain the position of the DLHT that, the time spent by the parties in prosecuting the appeal before the DLHT and revision before the High Court should be excluded in computing time limitation for execution application. With that in mind, it is my settled view that the application for execution was properly instituted before the DLHT.

On the second issue related to non-description of the disputed land, this again was an issue before the DLHT tribunal. It was put clear that the disputed land was clearly described by the Ward Tribunal. Looking into the records, I also agree that although the Ward Tribunal estimated the size of the land, it clearly started that the land in question is the one referred to as farm No. 743. The DLHT also pointed out the proceedings of the Ward Tribunal which indicated the boundaries of the farm in question. The descriptions of the boundaries were also captured at page 5 of the ruling of the DLHT in Application No. 184 of 2018. Thus, the contention that the execution process will cause the embarrassment to the Applicant and other people is unwarranted. Much as there is no decision which reversed the decision of the Ward Tribunal, this court believes that the execution before the DLHT is only for purpose of

executing the said decision and the DLHT cannot create new boundaries of what is to be executed. I therefore find no merit in this argument.

On the issue that the names of the parties in the application for execution before the DLHT are different from those in the Ward Tribunal, I find the same baseless. The records show that the suit was filed by Lobaya Ole Motika Mollel against Loisulie Laizer. There is no dispute that the two original parties passed away and the current parties, Paulo Meijo Kivuyo, the Applicant herein and Samweli Lobaya, the Respondent herein are administrators of the estate of the deceased. The proceedings before the DLHT indicated the name Lobaya Lemotika referring the original applicant Lobaya Ole Motika Mollel. It is on this basis the applicant is alleging that there is difference in names likely to affect the execution.

I understand that the names of the parties in the execution must be clear reflecting also the correct names of the original parties. I however find the defect curable as it does not go to the merit of the matter. The parties can apply for amendment to insert the correct names of the original parties as reflected in the original decision and the parties appearing under administration capacity.

It was also argued by the counsel for the Applicant that, the names in the letters of administration are different from the names in Application

No. 184 of 2018. It is unfortunate that he did not point out the exact difference and looking into the records, I was unable to find copies of the letters of administration referring different names as so alleged by the Applicant. I however came across the document titles *'Special Power of Attorney'* to which Paulo Meijo Kivuyo, the Applicant herein was appointing Tulinawe E. Kashagama to represent him in Misc. Application No. 84 of 2018. Thus, I do not see the difference in the names alleged by the Applicant which is likely to cause disturbance to the Applicant and the Respondent who are all administrators of the estates of their deceased fathers. But assuming that there is those changes or difference in names, still the same can well be addressed before the DLHT for it to be determined if it affect the execution process.

In the upshot, and in considering all what has been stated above, I find no merit in this Revision Application. I therefore dismiss the application with costs.

DATED at **ARUSHA** this 29th day of August, 2022.

D.C. KAMUZORA

JUDGE