

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

TANGA DISTRICT REGISTRY

AT TANGA

LAND REVISION NO 04 OF 2021

(Originating from the decision of Misozwe Ward Tribunal dated 09/11/2011 and the District Land and Housing Tribunal for TANGA in Land Execution No. 101 of 2021)

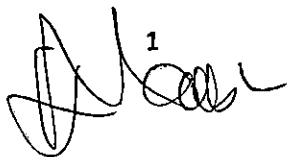
FLORA MBWANA.....APPLICANT

VERSUS

AYUBU CLEMENT.....RESPONDENT

RULING ON REVISION

The applicant is moving this court for orders that this Court calls for records and revise the proceedings, judgment and orders of the District Land and Housing Tribunal in Application for Execution No. 101 of 2021 issued on 26 October 2021. The application is brought under Section 43 (1) (a) and (b) of the Land Disputes Courts Act, Cap. 216 R.E 2019. It is supported by an affidavit sworn by Mr. Yona Lucas, learned advocate for the applicant, who also appeared to argue the application. The Respondent, Mr. Ayubu Clement who is fending for himself



unrepresented filed a counter affidavit to counter all what is deposed in the applicant's affidavit.

On the date of hearing viva voce on 07th March 2022, Mr. Yona adopted his affidavit to form part of his submission. He submitted that the applicant is the owner of a piece of land measured at 5 acres located at Misozwe Ward, in Muheza District, Tanga Region. In 2011, the respondent trespassed into that area and the applicant filed a complaint at the Ward tribunal of Misozwe and the tribunal decided in her favour on 09th November 2011. This decision was never appealed against. The Ward tribunal made demarcations upon the land and ordered the respondent not to trespass the fixed boundaries. However, the respondent continued to trespass beyond the demarcated borders. The respondent thereafter filed a fresh suit at the tribunal. The tribunal stated that it did not have jurisdiction to hear the dispute. The respondent hence filed a suit in the District Land and Housing Tribunal of Tanga at Tanga which is Land Application No 77 of 2017 where he won.

The applicant decided to file an application for execution of the Ward Tribunal Decision. This application was decided on 26th

October 2021 where it was dismissed and the chairperson held that the time to apply for execution had lapsed and also that the ward tribunal decision was not executable. In her decision the hon chairperson did not cite any law on time limitation. Concerning the tribunal decision being non executable, she stated that the decision was non-existent in the eyes of law.

Mr. Yona Lucas explained that the main reason that prompted him to file the application for revision is the judgment and orders made by the District Land and Housing Tribunal which are tainted with irregularities and errors. He elaborated that the Honourable Chairperson of the trial Tribunal, without any justifiable cause decided that the time to apply for execution had lapsed and also that the ward tribunal decision was not executable.

Mr Yona further claimed that this was a new issue brought up by the chairperson but did not afford parties an opportunity to submit on it. The decision of the ward was delivered on 09th November 2011 and the application for execution was filed in the year 2021. With these submissions, the learned Counsel prayed for this Court to invoke its revisional powers over execution

proceedings by quashing and setting aside all orders emanating from the decision of the District Land and Housing Tribunal and order the matter to be tried de novo by a different chairperson, alternatively that the application for execution be allowed.

On his side, the respondent Mr. Ayubu Clement being a layman, stated shortly that he objects the application. Elaborating, he stated that the applicant is not the owner of the estate of the late Mbwambo. He added that the decision of the ward tribunal sought to be executed is different from the land dispute that was brought to the District Land and Housing Tribunal. The issue at the Ward Tribunal was over the boundaries and was over and decided. He never appealed against it. In 2014 one Daudi sued him for trespass in his own land. The case was filed at the Ward Tribunal and later quashed by the District Land and Housing Tribunal. The applicant thereafter filed a fresh case at the District Land and Housing Tribunal of Tanga where the respondent was declared a lawful owner of the land, a farm of 12 acres located at Misozwe Village, Misozwe Ward in Muheza District. He applied for execution in the District Land and Housing Tribunal then the tribunal stopped hearing of the case as there was an application

for extension of time but this application was dismissed and so his application for execution was granted on 04th February, 2022. Majembe Auction Mart was appointed and on 04th February 2022 the farm was handed over to him.

In rejoinder, Mr Yona Lucas stated that he had no idea of what the respondent has submitted as it is the first time he comes across the facts adduced by the respondent that the farm is already handed over to him by Majembe Auction Mart. He averred that the decision he seeks to challenge adjudicated on 5 acres and neither 10 nor 12. He blamed the respondent for not responding to any of his submission in chief. He prayed that his application be allowed.

I have scrupulously gone through the record of this revision as well as submissions by both parties in this application. Section 43 (1) of the Land Disputes Courts Act, Cap 216 R.E 2019 with which this application is brought provides that; -

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.

As the law above dictates, so as to revise the decision and orders of the District Land and Housing Tribunal, the High Court must satisfy itself that in deciding the matter, there was an error material to the merits of the case, involving injustice.

The decision sought to be revised is Application for Execution No 101 of 2021. In revision proceedings, the law requires this court to call for and inspect the records of the relevant tribunal and give directions as it considers necessary in the interests of justice. In a bid to abide with the above law, this court on 08th February 2022, issued an order for calling of the records relating to the application at hand, that is Application for Execution No **101 of 2021** of District Land and Housing Tribunal of Tanga.

The order was hurriedly complied with, except that the Registrar called for records of Land Application No **110 of 2021** between the Applicant and the Respondent herein. I reason, and I think rightly so, that this was a sheer typing error. Funny enough, the file which was brought in response to this order and was annexed to this file was that of Land Application No 77 of 2017, which is also between the same parties but completely different from the file which was requested.

Despite the mix up above, going through the main complaint by the applicant in this matter, none touches the procedural aspect of Application for Execution No 101 of 2021. What is complained of is to a great extent, the decision of that tribunal. The mere fact that the proceedings of Application for Execution No 101 of 2021 are not brought cannot therefore deter this court from adjudicating on this matter.

The injustice complained of by the learned counsel for the applicant is seen under paragraph 6, 7 and 8 of his affidavit which I find imperative to quote; -

6. That in addition to what is stated under paragraph 5 above, the District Land and Housing Tribunal reasoned that

*the applicant's application for execution was **One** base (sic) on land whose size is not known and is not executable and **two**, that time barred (sic)*

7. That the District Land and Housing Tribunal determined the matter with material irregularities which have occasioned miscarriage of justice

8. That the District Land and Housing Tribunal erred in law in concluding that the decision of the trial tribunal is not executable and it is time barred.

In record there is annexure FL-1 which is a Ward Tribunal decision which the applicant desired to execute at the District Land and Housing Tribunal fruitlessly. The tribunal chairperson stated that the same is not executable and is time barred in her decision which is fortunately also in record as Annexure FL-3.

I have inspected the decision of the Chairperson to find whether there were any material irregularities which occasioned failure of justice. According to Bryan A Garner's Black's Law Dictionary, 8th Edition, the term irregularity is explained at page 848 to mean "*something irregular especially an act or practice that varies from the normal conduct of an action*". Meanwhile the word irregular is defined as "*not in accordance with the law, method or usage*".

I have asked myself whether there is anything in the decision which suggests that the chairperson was acting irregularly in the determination of the matter and found none. I am drawn to think that perhaps since a decision for execution is not one of the appealable matters under section 74 and Order XL of the Civil Procedure Code, Cap. 33, R.E. 2019 and given the fact that the applicant herein was irritated by the tribunal's decision, then the only available remedy was to bring his protests to the attention of this court by way of revision, which is proper.

Auspiciously the legislature in its wisdom, knowing such situation may arise, enacted Section 43 (2) of the Land Disputes Courts Act, Cap 216 R.E 2019 which bestows this court with powers to sit as an appellate court while in the exercise of its Revisional Jurisdiction. The Section goes as thus

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

Starting with the complaint that the Chairperson decided that the matter was not executable; I have observed the Ward Tribunal's decision and ended up wondering what executable decree would

be extracted from that decision. The learned counsel alleges that the matter was named Land Dispute No 24 of 2011 but this number is not reflected anywhere in Annexure FL-1. Secondly, description of the land in dispute is unspecified. The ward decision mentions "eneo lenye mgogoro" throughout without specifically identifying in exclusion of all other areas, what is intended by "eneo lenye mgogoro". At the end it is stated, "Eneo lenye mgogoro kuanzia leo ni mali yako ndugu Flora Mbwana" This is the decree sought to be executed. No wonder the applicant claims for rights over a land measuring 05 acres but the respondent claims to own 10 or 12 acres.

Rule 9 of Order XX of the Civil Procedure Code Cap. 33 R.E. 2019 provides

"9. Where the subject matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by a title number under the Land Registration Act, the decree shall specify such Title number".

On this very subject, I find persuasion in the case of **Paulo Lekamoi vs Mary Alice Chipungahelo** and 2 others, Land Revision No. 35 OF 2011 (Mziray J, as he then was) and two cases by (Utamwa J) one; **Romuald Andrea vs Mbeya City Council** and **17 others**, Land Case No. 13 Of 2019 and two; **Daniel Dagala Kanunda (as Administrator of the estate of the late Mbalu Kushaba Buluda) v. Masaka Ibeho and 4 others**, Land Appeal No. 26 of 2015, High Court of Tanzania (HCT), at Tabora (all unreported)

In the case of ROMUALD ANDREA the court had the following to state; -

*In my view, the law did not make these obligatory provisions for cosmetic purposes. Its intention was to ensure that, the court determines the controversy between the two sides of a suit related to landed property effectively by dealing with a specific and definite piece of land. **The law further intended that, when the court passes a decree, the same becomes certain and executable.** I underscored the importance of the requirement mentioned above in various cases including the Daniel Dagala case (supra) and I repeat the same in the case at hand as a means of emphasis on the importance of the requirement.*

*The legal requirement highlighted above is indeed intended for the purposes of an authentic identification of the land in dispute so as to afford courts make certain and executable orders. It is the law that, court orders must be certain and executable. It follows thus that, **where the description of the land in dispute is uncertain, it will not be possible for the court to make any definite order and execute it.***

In a that similar vein, having observed that the suit land subject to execution was not described, it is my firm view that the District Land and Housing Tribunal chairperson did not err in holding that the Ward Tribunal decision is not executable.

Now moving to the question of time limit, the applicant in this application is not contended with the tribunal's decision that his application was brought out of time. While I slightly agree that the chairperson ought to have explained what was the requisite time and how late the applicant was, but weirdly the applicant's advocate too in his submission did not state what he thought or knew was a proper time limit to file execution of decisions of the Ward tribunal in the District Land and Housing Tribunal in the eyes of the law.

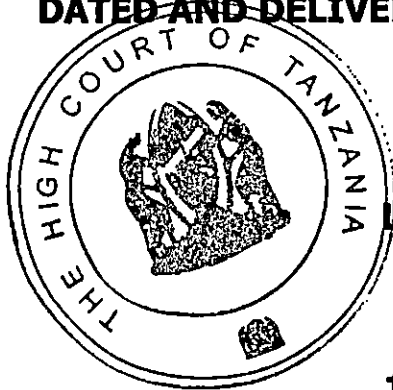
If read between the lines, the Law of Limitation Act, Cap 89 R.E 2019 applies to proceedings in the District Land and Housing Tribunal. Para 18 of part III of the schedule to that law provides **time limitation for Applications** under the Civil Procedure Code, the Magistrates' Courts Act or other written law **for which no period of limitation is provided** in that Act or **any other written law** to be **sixty days**. An application in this Act is interpreted under Section 2 (1) to mean *application made to a court, which is of, or in relation to any proceeding of, a civil nature*. Owing to the explanation above, filing an application of a decision rendered in 2011, in the year 2021 was definitely way out of time.

Mr. Yona argues that there is a breach of one of the principles of natural justice i.e. Right to be heard committed by the tribunal Chairperson in that after she discovered that the decision is not executable for not disclosing land description sufficiently and also that the application was time barred, she had to afford parties right to be heard before reaching its conclusion. I beg to differ with the views of the learned advocate. The matters which were brought up by the chairperson are matters of law and not facts

which might require proof from parties. If the law is clear that the land description must be clearly identified and that the time limit to file execution is sixty days after the decision, what facts would the parties adduce to change what is already provided by the law? In my considered opinion, if courts were required to recall parties for discussion of matters clearly stipulated in the law, then the hands of justice will be defeated by delay.

Having stated that, it is therefore apparent from the record that the order of the District Land and Housing Tribunal made on 26/10/2021 had no error at all which is material to the merits of the case, let alone an error involving injustice. It is for that reason I dismiss this application with costs.

DATED AND DELIVERED AT TANGA ON 18TH MARCH 2022




LATIFA MANSOOR

JUDGE

18TH MARCH 2022