

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA
LAND APPEAL NO. 80 OF 2019**

**(Arising from Misc. Application No.107 of 2019 of the District Land and
Housing Tribunal for Dodoma at Dodoma)**

SAIMON N. CHIHOMAAPPELLANT

VERSUS

ABEL DEULE..... RESPONDENT

JUDGMENT

28/7/2022 & 06/9/2022

KAGOMBA, J

The appellant, SAIMON N. CHIHOMA, being aggrieved by the Order of dismissal of his application for execution of decree, which was made by the District Land and Housing Tribunal for Dodoma at Dodoma (henceforth "Dodoma DLHT"), has appealed to this court against the said Order of the Dodoma DLHT on the following grounds:

1. That, the Dodoma DLHT erred in law and fact when it dismissed the Appellant's application for execution of decree which was filed

before the said Dodoma DLHT for the reason that the Appellant/ Decree holder had absolutely failed to describe properly in his application the disputed land sufficient to identify it, without considering that the Appellant won the case at Nzuguni Ward Tribunal after the Respondent/ Judgment Debtor had failed to turn up in court to prove his ownership legality over the land in dispute, the absence which forced the trial Ward Tribunal to hear the case and deliver its judgment *ex-parte* in absence of the respondent on 26/02/2019.

2. That, the Dodoma DLHT erred in law and fact when it dismissed the Appellant's application for execution of decree which was filed before the said Dodoma DLHT for the reason that the Appellant/ Decree holder had absolutely failed to describe properly in his application the disputed land sufficient to identify it, without considering that the Appellant won the case at Nzuguni Ward Tribunal after he had tendered as his evidence Customary Land Title Deed which he was offered by the Nzuguni Village Government

under the village Land Act. No. 5/1999 on 16/04/2008 which certified his ownership over the land in dispute.

Briefly, as it can be garnered from the grounds of appeal and records before the court, the appellant successfully sued the respondent at Nzuguni Ward Tribunal (‘the trial Tribunal’) over ownership of a parcel of land at Martin Area within Nzuguni Ward in Dodoma. The respondent had told the appellant that he was also given the land parcel in dispute by the Capital Development Authority (CDA). Being so told, on 03/01/2019 the appellant filed the dispute at trial Tribunal where the respondent appeared and told the tribunal that the land wasn’t his, but it’s owned by government. Both parties didn’t bring witnesses. Since that day the respondent never entered appearance. Hence, the trial Tribunal proceeded *Ex-parte* against the respondent and pronounced judgment in favour of the appellant.

Having won the dispute, the appellant filed his application for execution at the Dodoma DLHT. The application was dismissed in absence of the appellant/applicant for a principal reason that the land in dispute was

not described sufficiently, in the plaint, to enable enforcement of the decree of the trial tribunal. This decision aggrieved the applicant, hence this appeal.

On 07/6/2022 I ordered the hearing of the appeal to proceed *ex-parte* against the respondent after the respondent was properly served with petition of appeal but opted not to enter appearance. Prior to this order, I had ordered that service to the respondent be done by publication. This order was complied with vide *Nipashe* Newspaper dated 22/5/2022, to no avail.

Upon hearing of the appeal, the appellant who was unrepresented, submitted that the Dodoma DLHT dismissed his application for execution without hearing from his side. He said, if he were to be given the right to be heard, he would have described the land which was the subject of the execution proceedings.

In further expounding his appeal, the appellant submitted that the trial tribunal did visit the *locus in quo* and made a report of the suit land, which led him to win the case.

Regarding his absence on the date when the Dodoma DLHT dismissed his application for execution, the appellant submitted that after filing his application, he was given summons to serve the respondent and did serve him accordingly. That, he was attending at Dodoma DLHT regularly but was surprised to hear that the respondent's advocate had gone prayed for dismissal of the application, and the prayer was granted without him being heard. He prayed the court to allow the appeal with costs.

The above submission by the appellant brings forth only one issue for determination, which is whether the Dodoma DLHT was legally justified to dismiss the appellant's application for execution filed before it.

I have perused the proceedings and judgments of both the trial tribunal and Dodoma DLHT. The Dodoma DLHT when considering the appellant's application for execution, observed that the appellant/ decree holder absolutely failed to properly describe in his application sufficient details to identify the land subject of the execution proceedings. It therefore held that failure to sufficiently describe the suit land was not only against law but made it difficult for the decree of the trial tribunal to be executed.

In fact, it is for these reasons, the Dodoma DLHT quashed and set aside the proceedings of the trial tribunal, with no order as to costs.

As correctly observed by the Dodoma DLHT, the records of the trial tribunal reveal that the suit was filed by the appellant by simply stating as follows:

“ mimi ninalo eneo langu pale Martini. Kuna sehemu yote ya eneo nimekuta mtu kaweka nguzo zake ambae anajulikana kwa jina Habel Deule. Baaada ya kuonana nilimuuliza vipi bwana mbona hili eneo langu. Yeye amesema kapewa na C.D.A na kama unataka uende C.D.A ukadai haki yako, ila mimi sijaenda C.D.A”.

(Literary translated thus: I have my land parcel at Martini area. I have found that someone known as Habel Deule has installed poles in the whole area. Upon meeting with him, I told him this land parcel is mine. He replied that it has been allocated to him by C.D.A and if I want to claim my right over it, I should go to C.D.A. I have not gone to C.D.A).

The proceedings of the trial tribunal further reveal that both parties never brought any witnesses and no any evidence was recorded. According to the proceedings, the trial tribunal decided to enter *ex-parte* judgment in favour of the appellant upon failure of the respondent to appear for trial. There was no even *ex-parte* proof of ownership of the land by the appellant. Nowhere in the proceedings of trial court the land in dispute was described. The appellant has attached to his Petition of appeal some Land forms which describe the land in dispute. However, the details filled in those forms were not part of the proceedings and judgment of the trial tribunal.

Under the above circumstances, I find the Dodoma DLHT absolutely right to quash the proceedings of the trial tribunal for reasons stated. The tribunal proceeded to determine a dispute over unknown land. This is a serious irregularity which must vitiate the trial proceedings.

Again, as have I stated above, the trial tribunal gave judgment in favour of the appellant without requiring him to prove his ownership. It is trite law that he who alleges must prove. As the appellant was the one who alleged to be the owner of land in dispute, he had a duty to prove his

ownership even if the matter was heard *ex-parte*. In **Kalyango Construction and Building Contractors Limited v. China Chongoung International Construction Corporation (CICO)**, Civil Appeal No. 29 of 2012 (Unreported), the Court of Appeal held as follows: -

"The appellant was the one who sued the respondent. Regardless of whether the matter preceded ex-parte or not, he had the duty of proving the case against the respondent on the standard required".

On the other hand, the proceedings reveal that on 19/08/2019 when the application came for hearing, the appellant/applicant was absent. The respondent/ decree debtor appeared in person and prayed for dismissal of the application for non-appearance of the applicant. It was after being so moved, the Dodoma DLHT perused the trial proceedings and came up with a finding that the decree of the trial tribunal was not executable for failure to describe the land in dispute sufficiently as required by the law. As such, the basis of the decision of Dodoma DLHT was not mere non-appearance of the appellant, but the glaring defects on the face of trial proceedings. According to the proceedings, the appellant was aware of the date fixed for hearing as he was personally present on the date the hearing date was set.

It is for this reason, his complaint that he was denied right to be heard lacks legs to stand on.

In the circumstances, I find the entire appeal devoid of merits and the same is accordingly dismissed. The decision of the Dodoma DLHT is upheld. Since the trial proceedings of the trial tribunal have been quashed and the resultant judgment set aside, the appellant is at liberty to file a fresh suit to prove his land ownership, if he is still interested to pursue his right. Each party to bear his own costs. Order accordingly.

Dated at Dodoma this 6th day of September, 2022.



A handwritten signature in blue ink, appearing to read "Abdi S. Kagomba".

ABDI S. KAGOMBA

JUDGE