

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY)  
AT MWANZA**

**LAND APPEAL No. 26 OF 2022**

*(Arising from the Order of the Court in Misc. Land Application No.38 of 2019 before  
Ukerewe District Land and Housing Tribunal at Nansio)*

- 1. JOSEPH LUGANGIZA BISEKO**
- 2. STEVEN CYPRIAN**
- 3. TILUSASILA MASOBE**
- 4. MKWAYA MASOBE**
- 5. ANDREA TILUBUZA**
- 6. BENARD MAGOGO**

.....APPELLANTS

**VERSUS**

- 1. SERIKALI YA KIJIKI ITIRA**
- 2. SABATO MALEGESI**
- 3. MAILA MANYASI**
- 4. NYALUBAMBA MAYOBYO**
- 5. GONOVEVA MGOBELA**
- 6. MLALA MAFURU**
- 7. BEATRICE ANTON**
- 8. GAUDENSIA CHAMBUSI**
- 9. VERONICA SIKITU TILUBUZYA**
- 10. MTATYA MISANA**
- 11. BAGAILE MAFURU**
- 12. CHARLES MAMBO MJELA**
- 13. KATABALILA MNYEGE**
- 14. MATABIKO MKARUKA**
- 15. NG'ENDO MKARUKA**
- 16. MATUKULU MANGARA**
- 17. BAGAILE MNENE**
- 18. BILOMO WANGELE**
- 19. KILWANA BONIPHACE**
- 20. BAGALILE MALIMA**
- 21. MKWAJI MANYAMA**

.....RESPONDENTS

## **JUDGMENT**

*27<sup>th</sup> September & 04<sup>th</sup> October 2022*

### **OTARU, J.:**

This is an Appeal from the Order of the Ukerewe District Land and Housing Tribunal (DLHT) at Nansio in Land Application No.38 of 2019 in which the tribunal dismissed the Application for Execution of the Decree for failure to attach the Decree sought to be executed by the Appellants. Dissatisfied, the Appellants filed this Appeal.

At the hearing, the Appellants were represented by Mr. Mushongoi learned advocate and the Respondents were represented by the 12<sup>th</sup> Respondent and the chairman of the 1<sup>st</sup> Respondent who appeared in person. The Appellants advanced three grounds of appeal, and argued them to the following effect;'

1. On the 1<sup>st</sup> ground; that the chairman erred in law to dismiss the application for execution for failure to attach a decree to the application. That failure to attach this document made the application incompetent which would have attracted rejection thereof or striking out but not dismissal, to allow for rectification of the defect and re-filing of the Application.
2. On the 2<sup>nd</sup> ground; that failure to attach the decree and judgment to the application is curable under the law. Using the principle of

*overriding objective* by virtue of Section 3B of the **Civil Procedure Code** (Cap.33) (**CPC**) such that the court or other body is to consider this principle basing on provision of justice and not technicalities.

3. The 3<sup>rd</sup> ground; that the tribunal erred in law to dismiss the application for execution for failure to attach the Decree while the same is only a requirement in executing monetary award while this was not a monetary award. It is a legal requirement to attach Decree together with the judgment but not in executing land matters. Citing Order XXI Rule 12 of the **CPC**, Mr. Mushongi vigorously submitted that attaching a Decree or Judgment is not a legal requirement because the area in dispute is known from the very beginning thus there is no possibility for the Decree to differ from the judgment and prayed for the Appeal to be allowed with costs and Order the matter to be returned to Ukerewe DLHT for execution.

The Respondents on the other hand argued that it was proper for the tribunal to take that decision because an application for execution of Decree with no Decree is not an application. That the defect is incurable and the *overriding* principle is not there to blind defects. Finally, they submitted that the court cannot execute the decree that it does not see.

They went on to pray for dismissal of the Appeal, costs to follow the event and any other relieves this court may see fit to grant.

The question before me is whether the learned chairman of the DLHT had legal mandate to dismiss the Application. I have gone through the Memorandum of Appeal, submissions by the parties, the record of the DLHT and the relevant provisions of the law. I have observed that the Application in question was dismissed under Order XXI Rule 10(2) and (3) of the **CPC**, after sustaining the preliminary objection raised by the Respondent.

The parties did not dispute that DLHT has jurisdiction to execute own orders and decrees under Section 33(3) of the **Land Disputes Courts Act** (Cap. 216 of the Laws) and the execution was correctly filed under the **CPC** as **Land Disputes Courts Act** is silent on that.

Having read thoroughly the provision of the law cited by the learned chairman of the tribunal, Order XXI Rule 10(3) of the CPC provides, I quote;-

*'The court to which an application is made under sub-rule (2) **may** require the applicant to produce a certified copy of the decree' (emphasis mine).*



The above provision is clear that, attachment of the Decree is not mandatory, however, the court or the DLHT in our instance, could have requested for the same to be provided under the above cited provision of the law, instead of dismissing the Application. I am therefore in agreement with the Appellant's learned counsel under 3<sup>rd</sup> ground of Appeal, although not under the provisions cited, that attaching a Decree or Judgment in executing land matters is not a legal requirement. Consequently, the learned Chairman of the Ukerewe DLHT at Nansio did not have the legal mandate to dismiss the Application.

I am strongly tempted to reiterate what has been stated in the case of **Sykes Insurance Brokers v Sam Construction**, Civil Revision Case No. 8 of 2010 (CA) (unreported), that, the execution of court decrees is an essential component of the administration of civil justice because it is the final process for enforcing or giving effect of the judgment of the court.


In the circumstances, therefore, the Appellants should be requested and allowed to attach the Decree under Order XXI Rule 10(3) of the CPC cited above.

Therefore, for the above reasons, this Appeal has merits and is hereby allowed. The decision of the Ukerewe District Land and Housing Tribunal in Misc. Application No. 38 of 2019 is hereby set aside.

The Application is remitted to the Ukerewe District Land and Housing Tribunal to proceed with the execution process. No Order for costs is made.

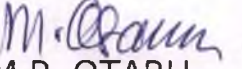
It is so ordered.

**DATED** at **MWANZA** this 04<sup>th</sup> day of October, 2022.

  
M.P. OTARU  
**JUDGE**

Judgement delivered in Court, in the presence of Steven Cyprian and Andrea Tilubuza for the Appellants and Cleophase Murungu Mwenyekiti Serikali ya Kijiji and Charles Mambo Mujela for the Respondents.



  
M.P. OTARU  
**JUDGE**  
**04/10/2022**