

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
BUKOBA DISTRICT REGISTRY
AT BUKOBA
LAND APPEAL NO. 41 OF 2022

(Originating from Civil Case no.85 of 2010 of the Kahororo Ward Tribunal and Misc. Application No.226 of 2010 of the District Land and Housing Tribunal for Kagera at Bukoba and Misc. Land Appeal No.78 of 2021 of the High Court of Tanzania at Bukoba)

GOSBERT KAHWA..... APPELLANT

VRS

MSAFIRI M MALANJA.....RESPONDENT

JUDGMENT

08/09/2022 & 28/10/2022
E. L. NGIGWANA, J.

The appellant herein was the Plaintiff who sued in Civil Case No.85 of 2010 of Kahororo Ward Tribunal where the matter started. In the trial tribunal, he was claiming right of way (easement) where he alleged the said right of way to have been obstructed by one Suleiman Bugowe (the defendant thereat) who had bought another land in front of his land.

The decision in the Ward Tribunal was that, both parties should liaise and have a right of way as they had formerly agreed in Village Council. It appears that, on 4/7/2011 the appellant was granted extension of time by the DLHT through Misc. Application No.226 of 2010 to file an appeal to challenge the decision of the Ward Tribunal.

However, after the appellant had filed an appeal in the same case file which granted extension of time, the same appeal was dismissed for want of prosecution on 17.01.2013.

Again, the appellant appeared as an Applicant in the DLHT on 12.03.2013 upon which *ex parte* application was entertained and complained that the respondent thereat one Suleiman Bugowe blocked

the road to his land and thus, prayed the DLHT to visit a *locus in quo* and order to have the same unblocked.

The said complaint and visiting the *locus in quo* gave rise to the *ex parte* judgment delivered on 13/09/2013 which the DLHT termed it to be execution orders where the learned Chairman allowed the application with costs in favour of the appellant and ordered the blocked road "**EILEMBO**" be opened by removing any obstruction at the suit land.

On his way to execute a decree, the respondent herein filed an objection proceeding and on 14/06/2016 the DLHT entertained such application for objection proceedings upon which the respondent herein was complaining that the land which was ordered to be dissected into two to get right of way was already sold to the respondent herein by Suleman Bugowe.

Being so, the DLHT gave an interim injunction to stay execution pending determination of an application of objection proceedings interparty, which finally resulted into the ruling dated 15/08/2017 granting the prayer to the extent that the alleged way be maintained but it should be made in alternative way and it should not dissect the suit house applicant house or into two.

The current appeal seeks therefore to challenge the said ruling dated 15/08/2017 which differed from that of 13/09/2013 which was in favour of the appellant.

On 8/10/2021, this court granted the applicant extension of time to file the current appeal. Having filed the same, it was marked withdrawn on 18/03/2022 with the order of this court giving leave to re-file the same. The objectionable grounds in the petition of appeal are as follows:

1. *That, the Honourable Tribunal erred in Law and fact by granting an order for stay of execution to the third party who was not the party in the previous case and proceedings thereof.*
2. *That, the Honourable tribunal erred in Law and in fact by delivering a ruling which differs with its drawn order in terms of the reliefs sought and the reliefs granted.*
3. *That, the Honourable tribunal erred in law and fact by delivering a ruling which does not settle the dispute before it rather maintains the status quo of the parties.*
4. *That, the Hon.Tribunal erred in law and in fact by delivering a ruling on objection proceeding in favour of the applicant (sic) without evidence that establishes the ownership of the suit land by the applicant. (sic)*

The appellant is praying among other reliefs that the ruling and drawn order of the District Land and Housing Tribunal for Kagera at Bukoba be quashed and set aside.

This appeal was heard *exparte* after the service of the substituted summons to the respondent to have turned futile. The appellant being unrepresented had no more to elaborate to the grounds of appeal rather than praying to adopt the grounds as they are crafted in the petition of appeal. However, he insisted that the respondent was the fake person to disturb the execution that is why he did not turn up in this court despite of the appellant's commitment and efforts to have the said appear in court.

Now, the task of this court is to determine whether this appeal is meritorious? I exhausted enough time to read the record of the Ward Tribunal and the execution proceedings done by the DLHT which resulted in the impugned decision. When I related what I gathered from the said record with the all four grounds of appeal, I learnt that

the four grounds crafted by the appellant boil down to only one ground that the whole Misc. Application No. 226/2010 is coupled with irregularities which are incurable in the circumstance.

The following are the reasons for the incurability; **One**, when the appellant sought extension of time to appeal against the decision of the Ward Tribunal, the same file which is Misc. Application No. 226/2010 was opened and extension was granted for the appellant to file an appeal against the decision of the trial court.

After granting the extension, the appeal was filed in the same file and maintained the same number as Misc. Application No.226/2010 which was for extension of time.

Two, the appeal which was filed in the same case file was dismissed for want of prosecution thus, implying that the purported appeal which was registered as Application No.226/2010 was never existing, but to my surprise, the same file yielded an application for execution which resulted to execution orders dated 13/09/2013 which ruled in favour of the appellant. The question is how comes the same file on appeal which was dismissed can change into execution proceedings of the decision of the ward tribunal.

Three, the DLHT after it had visited the locus inquo and issuing execution orders on 13/09/2013, it changed its mind and giving different orders in the same file which was termed as objection proceedings which in fact the said order brings a confusion because does not even put the controversial issues at rest as rightly argued by the appellant. Moreso, it was a total confusion how the respondent came in the proceedings.

In other words, the procedures for objection proceedings were violated. In objection proceedings, the court should gather evidence

from tripartite parties to ascertain ownership of the property to be executed, the procedure which was not complied with, instead, the DLHT granted the suit land to the respondent who purported to have bought it while it was still under litigation but also the decision of the Ward Tribunal was never challenged by way of appeal. For issues of objection proceedings, see also **Kephuleni Lubimbi vs Buhinu Ngwaje and Another**, Land Revision No.09 of 2020, HCT at Mwanza (Unreported)

At the end, the tribunal or court must state whether execution must proceed to the property to be executed or another alternative method should be resorted to. Assuming the procedures were in order, still there was another flaw as the DLHT was not dealing with appeal but was an executing tribunal to the decision given by the Ward Tribunal which was never challenged by way of appeal.

It is my considered view that the DLHT could have executed the decree as it was issued by the Ward Tribunal since it was not appealed against to the higher tribunal or court. Executing court should execute the decree as it is without alteration. **See** decision of this court in **NCL International Limited versus Alliance Finance Corporation Limited**, Civil Reference No. 6 of 2021, HC at Bukoba.

In the event, I find this appeal meritorious. I quash the entire proceedings of the District Land and Housing Tribunal for Kagera at Bukoba in Misc. Application No. 226 of 2010 and all what transpired in that file as they were a nullity. Its orders and rulings therein are quashed and set aside as prayed by the appellant.

I further direct that the decision of the Ward Tribunal remains intact. Should any party wish to set it in motion or take appropriate measure

on it, is at liberty to do so subject to the current laws of the land. It is so ordered.

Dated at Bukoba this 28th day of October, 2022.




E. L. NGIGWANA

JUDGE

28/10/2022

Court: Judgment delivered this 28th day of October, 2022 in the presence of the Appellant in person, Hon. E. M. Kamaleki, Judge's Law Assistant, Ms. Sophia Fimbo, B/C, but in the absence of the respondent.




E. L. NGIGWANA

JUDGE

28/10/2022