

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISCELLANEOUS LAND APPLICATION NO. 118 OF 2021

(From the District Land and Housing Tribunal for Mbeya at Mbeya in Application No. 13B of 2021. Originating from Land Application No. 13 of 2021 from the District Land and Housing Tribunal for Mbeya at Mbeya.)

MUSIBHA MOHAMED NYAKULINGA.....APPLICANT

VERSUS

ALFRED MWAKIWONE.....RESPONDENT

RULING

Date of Last Order: 17/03/2022

Date of Ruling : 27/04/2022

MONGELLA, J.

The applicant filed the application at hand under certificate of urgency seeking for this Court to call for, inspect, and revise the records of the District Land and Housing Tribunal for Mbeya at Mbeya (the Tribunal) in Application for Execution No. 13B of 2021 on account of errors material to the merits of the case involving injustice. When filing counter affidavit, the respondent, through his legal counsel, Mr. Victor Mkumbe, filed a notice of preliminary objection on two points to wit:



- 1. That the application is defective as it originates from cases or applications that have never existed.*
- 2. That this Hon. Court has no jurisdiction to entertain the application as it ought to have been filed in the DLHT or court that issued the Eviction order.*

The preliminary objection was argued by written submissions following the prayer by the parties. The written submissions were filed in accordance with the scheduled orders by the Court.

With regard to the first point, Mr. Mkumbe found the application defective for referring to non-existent cases. He contended that the cases referred to as Application No. 13B of 2021 and Application No. 13 of 2021 in the applicant's pleadings have never been there between the parties in this matter and much worse none of the decisions has been attached to the application. In addition he had a stance that the defect renders the application with no legs to stand on, thus ought to be struck out with costs.

Arguing on the second point, Mr. Mkumbe was of the view that this Court lacks jurisdiction to deal with execution orders issued by lower courts/tribunals. To that effect he referred to **Regulation 23 (1), (2), (3), (4) and (5) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, G.N. No. 174 of 2003**, which directs the decree holder to apply for execution and the Tribunal Chairman, upon receiving the



application, to make an order requiring the judgment debtor to comply with the decree or order to be executed within 14 days."

He said that on 27th December 2021, the applicant received the notice of execution and the Order by the Tribunal from M/S Pamoja Auction Mart requiring him to vacate the property in dispute within 14 days. Mr. Mkumbe was of the stance that in accordance with **Regulation 23 (4) of G.N. 174 of 2003** the applicant ought to have filed his complaint in the Tribunal within 14 days for him to be heard as to why the eviction order should not be carried out against him. **Regulation 23 (4)** provides that : **"where after the expiration of 14 days there is no objection or response from the judgment debtor the Chairman shall make execution orders as he thinks fit."** Considering the provision, he faulted the applicant's move to approach this Court for redress. He therefore prayed for the application to be struck out with costs.

On his part, the applicant was represented by Mr. Kamru Habibu, learned advocate. Replying on the first point, Mr. Habibu first conceded on the error pointed by Mr. Mkumbe. He submitted that the error is a slip of the pen whereby instead of writing Application for Execution No. 13B of 2021 originating from Application No. 13 of 2014, it was written Application No. 13 of 2021 with regard to the original suit. Being a typing error, he prayed for the court to invoke the slip of the pen rule "*lapsus calami*" as well as the principle of overriding objective provided under **section 3 of the Civil Procedure Code, Cap 33 R.E. 2019.**



With regard to the second point, Mr. Habibu opposed the assertion that this Court lacks jurisdiction. He argued that under the law, whoever is aggrieved by orders of executing officer has the remedy to apply for revision in the higher court. He challenged Mr. Mkumbe's contention that the application has been filed prematurely as the Tribunal had not yet issued execution order. On this, while referring to "Annexure MMN-2" he argued that the Tribunal Chairman had issued an execution order requiring the applicant to vacate the suit premises. That, the said order was directed to the Tribunal Broker one PAMOJA AUCTION MART to evict the applicant and the broker was about to execute the order. In the premises he argued that the order by the Tribunal was final, but the applicant was not afforded an opportunity to show cause why the decree should not be executed.

Further, he referred to authorities by this Court whereby it was ruled that the remedy that be invoked by an aggrieved party by orders of the executing officer is revision. Specifically, he cited the case of **Kelvin Rodney Zambo vs. UAP Insurance Tanzania Ltd. (Formerly Known as Century Insurance Ltd)**, Civil Revision No. 27 of 2019 (HC at DSM, unreported); **Felister Kifulugha vs. Royal Mwalupembe**, Misc. Land Appeal No. 28 of 2019 (HC at Mbeya, unreported); and that of **General Tyre (E.A) Ltd. vs Amenyisa Macha & Others**, Civil Appeal No. 21 of 2003 (HC at Arusha, unreported).

On the strength of the authorities cited, he had a stance that the point of preliminary objection is misconceived as the executing officer had already ordered the execution to proceed placing the applicant at



liberty to move this Court to call for and inspect the record of the execution proceedings in the Tribunal and to revise the same if satisfied that there are errors material to the merits of the case involving injustice. He prayed for the preliminary objection to be overruled with costs.

Mr. Mkumbe rejoined particularly on the second point of preliminary objection. He maintained his stance that the procedure enshrined under Regulation 23 (4) of G.N. 174 of 2003 was not adhered to by the applicant rendering this Court with no jurisdiction. He insisted that the law puts a limit of 14 days for the judgment debtor to respond or file any objection against the execution order by the Tribunal. He distinguished the cases cited by Mr. Habibu on the ground that they were on matters governed by the Civil Procedure Code and the Magistrates' Courts Act which are not applicable in the Land Tribunal. That, the proper law applicable is the Land Disputes Courts Act, Cap 216 R.E. 2019 and its Regulations including G.N. 174 of 2003.

I have considered the rival submissions from both counsels. To start with the first point, as hinted by both counsels, to which I subscribe, the defect is minor and curable under the law. The mistake in writing the correct year of the case referred can be rectified even by handwriting. See: **Alliance One Tobacco Tanzania Limited & Hamisi Shoni v. Mwajuma Hamisi & Heritage Insurance Company (T) Limited**, Misc. Civil Application No. 803 of 2018 (HC at DSM, unreported). The applicant is therefore ordered to amend the documents by writing the correct citation of the case.



On the second issue, first of all I am of the view that there is a need of understanding the gist of the applicant's application. He calls for this Court to revise the proceedings and order of the Tribunal in the Execution Proceedings mainly on the ground that he was not given the opportunity to be heard. He claims not have been summoned to attend the proceedings, but was only served with execution order.

As much as I agree with Mr. Mkumbe that the applicable provision in the matter is Regulation 23 of G.N. 174 of 2003, I think, considering the nature of the applicant's claim, he has misconceived the application of the provisions of Regulation 23 (4). In my view, before embarking to invoke Regulation 23 (4), the Tribunal ought first to adhere to the provisions of Regulation 23 (3) which require the Chairman, upon receipt of the application for execution, to make an order requiring the judgment debtor to comply with the decree or order to be executed within the period of 14 days. Specifically it provides:

"The Chairman shall, upon receipt of the application, make an order requiring a judgment debtor to comply with the decree or order to be executed within the period of 14 days."

Regulation 23 (4) comes into play when the judgment debtor fails to comply with the order issued under Regulation 23 (3) as above. The question to be asked is therefore, whether the Tribunal Chairman issued any order in terms of Regulation 23 (3) as above and whether the order was duly served to the applicant. While Mr. Mkumbe argues that the order served to the applicant on 27th December 2021 was the one notifying the



applicant to comply, Mr. Habibu argues that the same was an eviction order. Before I pen down my mind as to what it amounts to, I find it pertinent to reproduce it hereunder for ease of reference. The Order issued on 20th December 2021 goes as:

"AMRI

- Wewe Musibha Mohamed Nyakulinga unaamriwa kuondoka na kukabidhi nyumba Namba 1848 Kitalu "M" Forest Mpya Mbeya ndani ya siku 14.
- Pamoja Auction Mart watekeleze amri hii.
- Taarifa ya utekelezaji iletwe tarehe 18/1/2022."

My understanding of the provisions of Regulation 23 (3) and (4) is that the Tribunal ought to make two separate orders. The first, requiring the judgment debtor to comply with the decree within 14 days, and the second, where the first is not complied, to execute the decree. Scrutinizing the Tribunal order as quoted above, it is clear, as argued by Mr. Habibu, that it was for execution in terms of Regulation 23 (4). This is because the Tribunal went further to direct Pamoja Auction Mart, a court broker, to effect the execution and file a report to that effect to the Tribunal by 18th January 2022. In my considered view, the order in terms of Regulation 23 (3) ought to direct the judgment debtor to comply with the decree within 14 days otherwise necessary execution orders shall be effected in terms of Regulation 23 (4).

The same also must be duly served to the judgment debtor. It is the applicant's contention in the main application that he was not aware of the application for execution as he was never served. This touches the

appellant's fundamental right to be heard, which ought to be resolved in the main application. It is clear from Mr. Mkumbe's submission that the applicant was never made aware of the application as he did not dispute the claim.

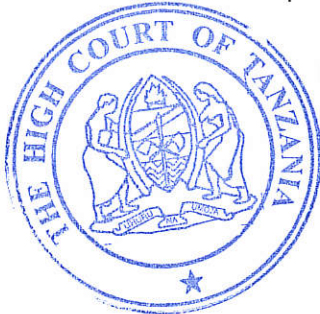
In the circumstances, I find this point of preliminary objection devoid of merit and dismiss it. Each party shall bear his own costs of the suit.

Dated at Mbeya on this 27th day of April 2022.


L. M. MONGELLA

JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 27th day of April 2022 in the presence of the parties and Mr. Victor Mkumbe, learned advocate for the respondent.




L. M. MONGELLA

JUDGE