

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

**AT MWANZA**

**MISC. LAND APPLICATION NO. 4 OF 2022**

*(Arising from Misc. Land Application No. 20 of 2014 in the District Land and Housing Tribunal for Mwanza at Mwanza; dated 22/10/2021, Delivered By, Mayeye S. M, Chairman, Originating from Mkolani Ward Tribunal Case No. 0137/2012.)*

**MASAMAKI SULIGI..... APPLICANT**

**VERSUS**

**ROGALIUS KAJETANI..... RESPONDENT**

**RULING**

*29<sup>th</sup> March & 6<sup>th</sup> May, 2022*

**ITEMBA, J.**

By a Chamber Summons, filed on 27<sup>th</sup> January, 2022, the applicant has moved this Court to revise the decision of District Land and Housing Tribunal for Mwanza herein the DLHT, in Misc. Application No. 20 of 2014, in which the respondent's prayer for execution was granted and the applicant was ordered to destroy the premise he has erected in the suit land. The application is supported by an affidavit sworn by the applicant, setting out grounds on which the supported application is based. The respondent replied to the affidavit through his own sworn counter-affidavit.

When the matter was called on for hearing, the applicant urged the Court to consider paragraph 7 of his affidavit and prayed his application to be allowed.

On his part the respondent through his learned counsel, has prayed to adopt his own counter affidavit to form part of his submission. He objected the application arguing that based on paragraph 4 of the counter affidavit, the applicant was summoned by the DLHT on 12/4/2021 and 30/5/2022 to explain why the decision of the Mkolani Ward Tribunal should not be executed, but he did not appear. He further submitted that efforts by the applicant to pray for relief which he should have brought before the District Tribunal is abuse of Court process.

On the issue of illegality raised by the applicant in paragraph 5, he contends that there is no any illegality in the said decision.

Finally, he argued that since the applicant did not rely on the correct legal position this application is incompetent before the Court. He prays the same to be dismissed with costs.

In his quick rejoinder, the applicant submitted that he was summoned on 12/4/2021 but he could not attend the Court on 30/5/2021 because he was sick. On 1/6/2021 he attended without knowing what he was called for. He alleged that the respondent brought

him a piece of paper dated 2014, without Court seal or his advocate's signature he did not trust it, hence, he chose not to reply as he respects the boundaries in the disputed boundaries and there is nothing built on that place. Finally, he asked the court to visit the *locus in quo*.

From these arguments, the question for settlement is whether the application has met the standard for this court to invoke its powers to revise the District Land and Housing Tribunal's decision.

It is the applicants' contention in the second paragraph of the affidavit that, the Ward Tribunal decided that both parties should respect the original boundaries while the respondent contends that raising this issue at this stage is an abuse of court process.

I wish to reproduce what transpired at the trial Ward Tribunal in respect of judgment in question which reads as follows;

***"Baraza limeona kwamba eneo la mdai na mdaiwa hawana mgogoro, bali waheshimu mipaka yao ya asili na wasikate miti. Kama watakata miti na kuchimba visiki basi waweke nguzo au kitu chochote kinachotenganisha na kuonyesha mipaka yao.***

***Mdai na mdaiwa mnatakiwa kuondoa mgogoro usio kuwa wa lazima."*** [Emphasis Supplied]

The record reveals that the respondent had instituted the claims against the applicant before the Ward tribunal on 21<sup>st</sup> August, 2012. He claimed that the applicant had encroached on his land. On 16<sup>th</sup> October, 2012 the trial Ward Tribunal ruled out that, the applicant now the (respondent) has failed to prove his allegations against the respondent who is the (applicant) in the matter at hand. That there is no dispute, each party should stick to the original boundaries. That the respondent should not entertain unnecessary disputes. Meanwhile the DLHT decision was for the applicant to demolish any part of his building encroaching the respondent's boundary.

Now the question is whether it was right for the District Land and Housing Tribunal to entertain the application for execution No. 20 of 2014. The said execution application emanates from the above quoted decision which actually meant that the Tribunal's findings were to the effect that there is no dispute between the parties and each party should respect the original boundaries. The respondent was not declared a winner thus there was nothing which he could have executed.

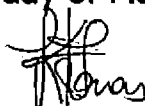
As the judgement from the ward tribunal was non executable the execution application before the DLHT was misconceived and the DLHT had no jurisdiction to entertain it.

In the event, this court is constrained to invoke its revisional powers under **Section 43 of The Land Disputes Courts Act [CAP. 216 R.E 2019]** and I hereby nullify the entire proceedings of the District Land and Housing Tribunal, and set aside the ruling issued by the DLHT in Misc. Land Application No. 20/2014 on 22.10.2021.

Accordingly, the application is allowed.

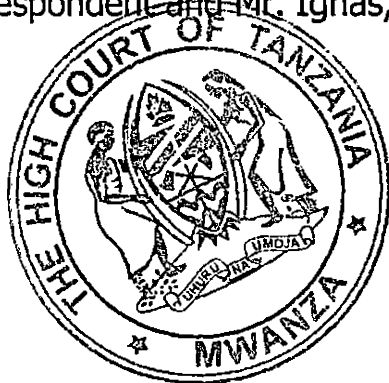
It is so ordered.

DATED at **MWANZA** this 6 day of May, 2022.



**L. J. ITEMBA  
JUDGE**

Judgment delivered today in the presence of both the applicant and the respondent and Mr. Ignas, RMA



**L. J. ITEMBA  
JUDGE  
6/5/2022**