

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND REVISION NO. 2 OF 2021

(Arising from Misc. Application No. 178 of 2020 in the District Land and Housing Tribunal for Tarime at Tarime)

BETWEEN

MARWA MUNGE APPLICANT

VERSUS

JOHN RYOBA ITEMBE RESPONDENT

RULING

22nd February & 15th March, 2022

A.A. MBAGWA, J.

The applicant filed this application for revision praying this Court to revise execution order delivered on 29th January, 2021 by the District Land and Housing Tribunal for Tarime (the DLHT) for purpose of satisfying itself on the correctness, legality and propriety of the proceedings.

The application was made by the way of Chamber Summons under section 43 (1) (b) of the Land Disputes Courts Act [Cap 216 R.E 2019] and it was supported by an affidavit sworn by Marwa Munge, the applicant.

The brief background of the dispute is that the respondent herein sued the applicant before the Ward Tribunal of Turwa, claiming that part of applicant's house encroached his land. Upon visiting the *locus in quo*, the Ward Tribunal of Turwa found that each part legally bought the piece of land and each piece of land was surveyed and demarcated by beacons. Thus, after hearing the evidence of both parties and upon visiting the *locus in quo*, the Ward Tribunal decided that each part should make development in its respective land. Consequently, on 24th September, 2020 the respondent filed an application for execution before the DLHT applying for the execution of the decree in the following mode;

- (a) An order to remove anything including part of the house attached by judgment debtor to the disputed land therein.
- (b) An order that, the decree holder is the lawful owner of the disputed land.
- (c) An order that the decree holder's land be demarcated.
- (d) Permanent injunction be issued against the judgment debtor and their agents from interfering the decree holder herein.

The District Land and Housing Tribunal for Tarime allowed the application and ordered as follow;

- (a) The Decree Holder is the lawful owner of the plot measured 40 x 15 paces.

- (b) Part of the Judgment Debtor house built in the Decree Holder land to be demolished with immediate effect failure to that Tribunal broker will demolish the said part of the house and hand over the disputed land to the Decree Holder.

The applicant was not amused by the ruling and order of the DLHT hence filed the present application. When this matter was called on for hearing, the applicant was represented by Onyango Otieno, learned advocate while the respondent was represented by Emmanuel Gervas, the learned advocate.

Arguing in support of the application, Mr. Onyango Otieno submitted that the Honourable Chairman of the DLHT misdirected himself by ordering something which was not canvassed by the Ward Tribunal. He contended that the Ward Tribunal for Turwa did not make an order for demolition of the house. He thus argued this Court to revisit, revise and satisfy itself on the correctness and legality of the execution orders of Honourable Chairman and finally nullify the proceedings.

Responding to the applicant's submission, Mr. Emmanuel Gervas raised two issues. One, whether the DLHT was right to order that a part of applicant's house be demolished. Two, if the part of the applicant's house advancing to the respondent's plot is not demolished, what is the meaning of execution.

Arguing on the first issue, Mr. Gervas averred that the Ward Tribunal visited the *locus in quo* and found each party ***bonafide*** purchased its respective plot. He was thus opined that the DLHT was right to order demolition because the evidence proves that the applicant's house extends to the respondent's plot. With regard to the second issue, Mr. Gervas was of the view that if the house is not demolished, the decision of the Ward Tribunal would have no meaning.

In rejoinder, Mr. Onyango reiterated his submissions in chief that the Chairman of DLHT was wrong to issue a demolition order as there was no such order in Ward Tribunal decision.

I have keenly canvassed the submissions made by both parties and the records of application. The issue for determination is whether the order of the DLHT is tainted with illegality and or irregularity.

The applicant herein prayed this Court to revise execution order delivered on 29th January, 2021 by the District Land and Housing Tribunal for Tarime (the DLHT) for purposes of satisfying itself on the correctness, legality or propriety of the proceedings. As hinted above, the impugned execution order provides beyond what is contained in the judgment of the Ward Tribunal of Turwa in land application No. 26 of 2020. In my view, the decision of the Ward Tribunal was not certain on who was a legal owner of the disputed land. Indeed, a decree or order cannot provide what is not

contained in the judgment. Order XX rule 6 (1) of the Civil Procedure Code states thus;

‘The decree shall agree with the judgment; it shall contain the number of the suit, the names and description of the parties and particulars of the claim and shall specify clearly the relief granted or other determination of the suit’

Further as per the Black’s Law Dictionary Eighth Edition, execution can simply mean a legal process of enforcing a judgment or ruling of the court or tribunal.

From the foregoing, it is clear that a decree to be enforced should be born out of judgment and must contain only orders which are provided in the judgment.

Therefore, the DLHT execution orders ought to be in consonance with the decision of Turwa Ward Tribunal. However, going through the judgment of Turwa Ward Tribunal, it is obvious that the impugned orders are not born from the judgment. At the last paragraph the judgment reads:

“Kwa Hukumu hii baraza limeamuru mdai John Ryoba Itembe ajenge nyumba yake katika kiwanja chake pamoja na mdaiwa Marwa Munge vilevile ajenge nyumba yake kwenye uwanja

wake kama kielelezo chake cha ununuzi kinavyoelekeza pamoja na ushahidi uliotolewa mbele ya baraza.”

There is nowhere in the judgment, the Ward Tribunal declared the respondent a lawful owner of the disputed land nor did it issue a demolition order. Surprisingly, the respondent filed an application for execution of the said judgment and the DLHT ordered the following:

- (a) The Decree Holder is the lawful owner of the plot measured 40 x 15 paces.
- (b) Part of the Judgment Debtor house built in the Decree Holder land to be demolished with immediate effect failure to that Tribunal broker will demolish the said part of the house and hand over the disputed land to the Decree Holder.

Compared to what was decided by the Ward Tribunal of Turwa, I am at one with the applicant's counsel that the Chairman of DLHT ordered what was not canvassed by the Ward Tribunal. The judgment of the Ward Tribunal did not declare the owner of the disputed land nor did it order the demolition of the applicant house. Thus, the respondent cannot be allowed to rectify the judgment through execution process.

In view thereof, I am constrained to exercise revisional powers conferred upon this Court by virtue of section 43 (1) (a) (b) of the Land Disputes Courts Act, [Cap 216 R.E 2019] and consequently, nullify and quash the

proceedings and ruling of the DLHT in Misc. Application No. 178 of 2020 for being nullity and set aside the resultant extract order. The Chairman is directed to compose ruling and extract order within the confinement of the decision of Turwa Ward Tribunal. A party who is not satisfied with the decision of Turwa Ward Tribunal may take appropriate measures to challenge it subject to the legal requirements.

I make no order as to costs.

It is so ordered.

The right of appeal is explained.




A.A. Mbagwa
Judge
15/03/2022