

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

MISC. LAND APPEAL NO. 27 OF 2021

*(Arising from the decision of the DLHT of Mwanza District at Mwanza
in Application No. 74 of 2019)*

DOTTO SALUM APPELLANT

VERSUS

JOHN M. LUFEGA RESPONDENT

JUDGMENT

28th Jan – 16th Feb. 2022

Kahyoza, J.:

This is an appeal against the decision of the District Land and Housing Tribunal (the DLHT) to the effect that the application for execution was not lodged out of time. Dotto Salum, the appellant raised five grounds of appeal which translate into the following issues: -

- (1) Does the law require a decree or an order to be executed within 14 days from the date of delivery?
- (2) Did the chairman error to determine the preliminary objection without assessors?
- (3) Did the chairman leave contested issues unresolved?
- (4) Did the chairman fail to consider substantive justice?
- (5) Was the application for execution of a decree of the Ward Tribunal time barred?

The background of this matter is that John M. Lufega (John) sued Dotto Salum (Dotto) before the Ward Tribunal. John emerged successful. Dotto did not appeal on time against the decision of the Ward Tribunal. He made attempts to appeal out of time and lost. In July, 2019, John applied to execute the decree or order passed by the Ward Tribunal vide Land Case No. 8/2017. Dotto raised a preliminary objection that the application (for execution) is incompetent as it floats paragraph 21 of the Schedule to the Law of Limitation Act, [Cap. 89 R.E. 2002 (2019)]. The chairman of the District Land and Housing Tribunal dismissed the preliminary objection on the ground that the application for execution was not time barred. Aggrieved, Dotto appealed to this Court.

I now consider the issues raised by Dotto's appeal.

Does the law require a decree or an order to be executed within 14 days from the date of delivery?

Dotto alleged in the first ground of appeal that Regulation 23 (3) of the Land Disputes Courts (the District Land Housing Tribunal) Regulations, G.N. No. 174 of 2003 (the Regulations) requires the chairman of the **DLHT** upon receipt of the application to make an order requiring judgment debtor to comply with the decree or order to be executed within a period of 14 days. John replied orally that the application was not time barred.

The allows the decree holder in this case, John, to apply for execution of the decree as soon as practicable after pronouncement of the judgment. Regulation 23 (1) reads:

"23-(1) A decree holder may as soon as practicable after the pronouncement of the judgment or ruling apply for execution of the decree or order as the case may be".

As regulation 23 (1) reads, there is not time provided within which the decree holder must apply for execution. The decree holder may apply for execution as soon as practicable. It is also not provided that the decree holder will be time barred if he will not apply to execute the decree as soon as practicable. I am unable to read from regulation 23 (1) the requirement that the decree holder must file an application for execution within 14 days.

I also considered the regulation 23 (3) of the Regulations to find out whether it requires the decree holder to apply for execution within 14 days. The regulation reads:-

*"23 (3) 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".*

The regulation 23 (3) imposes a duty upon the chairman and not upon the decree holder, in this case John, to order the judgment debtor (Dotto) to comply with the decree or order issued against within 14 days. The judgment debtor (Dotto) was therefore, required to vacate after being served with an order issued by the chairman within 14 days. If the judgment debtor disobeyed the order he was to suffer the consequences provided under regulation 23 (4) of the Regulations. Regulation 23 (4) provides

*"23 (4) The chairman shall where the expiration of 14 days there is no objection or **response** from the judgment debtor, chairman shall make execution orders as he thinks fit".*

The above regulation makes it mandatory for the chairman to give the judgment debtor 14 days notice before executing the decree or order. It is therefore a misdirection to argue that the application was time barred because it was not filed within 14 days. Consequently, I find that the first ground of appeal is baseless and the same is dismissed for want of merit.

Did the chairman to determine the preliminary objection without assessors?

The appellant submitted that the District Land and Housing Tribunal is composed by a chairman and not less than two assessors. He contended that the chairman heard and determined the application without aid of assessors. John, the respondent argued that the chairman sat with assessors.

The record is clear that the chairman did not sit with assessors as submitted by Dotto. Dotto submitted that it was fatal for the chairman to sit without assessors. To buttress his submission, he referred this Court to sections 23 (1) and 22 of the Land Disputes Courts Act, [Cap. 216 R.E. 2019]. I totally agree with Dotto, the appellant that the District Land and Housing Tribunal is composed by a chairman and not less than two assessors. However, there are circumstances where the chairman is allowed to hear certain applications without aid of assessors. One of such circumstances is

when the chairman is called upon to determine a preliminary objection. See regulation 22 of the Regulations; which states that:-

*"The **chairman shall** have powers to determine:-*

- (a) **preliminary objection** based on point of law;*
- (b) application for execution of orders and decrees;*
- (c) objection arising out of execution of orders or decrees;*
- (d) interlocutory applications."*

In present case, the chairman was hearing a preliminary point of law raised by Dotto. For that reason, he was mandated to determine the preliminary objection without sitting with assessors. Thus, Dotto, the appellant has no ground of complaint. I find the second ground of appeal without merit and dismiss it.

Did the chairman leave contested issues unresolved?

Dotto, the appellant, complained in the third ground of appeal that this chairman omitted to decide contested issues. He added that the chairman did not evaluate evidence.

John, did not address this issue in his submission.

The issue before the chairman was whether the application for execution was time barred or not. The chairman after considering the submission, he ruled out that the application was not time barred. He gave reasons for his determination. The chairman had the following to say:-

"Nimejaribu kupitia hukumu ambayo mshinda tuzo anajaribu kutekeleza ni hukumu ya mwaka 2017 ambayo iliamriwa tarehe 29/11/2017 na Baraza la Ardhi Magu, kwa msingi huo naona maombi ya utekelezaji yako ndani ya muda na pingamizi hili nalitupilia mbali bila gharama".

Given the chairman's holding above, I find that the chairman did determine the issue before him. Hence, the complaint in the third ground of appeal is baseless.

Did the chairman fail to consider substantive justice?

Dotto complained in the fourth ground of appeal that chairman erred in law and in fact by basing his decision on legal technicalities instead basing his decision on substantive justice. Dotto did not elaborate this ground of complaint.

The respondent had nothing to submit to counter to the fourth ground of complain.

I wish state without much ado, that the fourth ground of appeal is baseless. The chairman was called upon to decide the preliminary point of law. Thus, the issue for determination before the chairman was whether the application for execution was time barred or otherwise. That issue was raised by Dotto, the appellant. Dotto did not raise any substantive issue but only legal issue. The chairman therefore, determined the issue before him which was the legal issue. There is no reason for Dotto to complain that the

chairman relied on legal technicalities to determine the case. For that reason, I dismiss the fourth ground as baseless.

Is the execution of the decree of the Ward Tribunal passed on 29th November, 2017 time barred?

Dotto complained that the chairman erred to hold that the application for execution lodged after three years and 74 days was not time barred. He argued that the Law of Limitation Act, [Cap. 89 R.E. 2019] provides that "*Application under the Civil Procedure Code, the Magistrates' Courts or other Law*" for which no period of Limitation is provided in this Act or any other Written Law has to be made within a period of six days.

John, responded that the application for execution was not time barred.

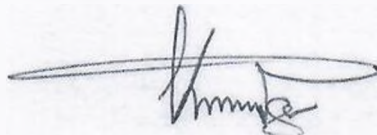
Dotto is of the view that the application for execution must be filed within sixty days. He based his argument on the **Law of Limitation Act**. I wish to point out that Dotto was misled and he must have been misguided by persons who pretend to know the Law. The Law of Limitation Act provides in no uncertain terms that an application for execution may be instituted any time before the expiration 12 years. The Law of Limitation Act provides under item 20 of Part three of the Schedule, thus:-

*"To enforce a judgment, decree or order of any Court where the period of limitation is not provided for in **this Act** or **any other Written Law** twelve years".*

The Ward Tribunal passed a judgment on 29/11/2017 and the applicant instituted an application for execution in July 2019. It is clear as daylight that John's application for execution was filed within time. Hence Dotto's preliminary objection was bound to fail.

In the end, I find that the appeal was lodged without merit. I dismiss the appeal, uphold the decision of chairman of the District Land and Housing Tribunal, save the order denying the respondent costs. I dismiss the appeal with costs before this Court and before the District Land and Housing Tribunal.

It is ordered accordingly.

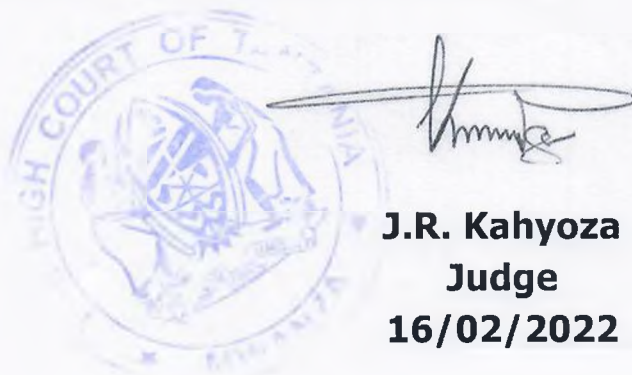


J.R. Kahyoza

Judge

16/02/2022

Court: Judgement delivered in the presence of Appellant and the respondent. B/C Ms. Martina RMA, Present.



J.R. Kahyoza
Judge
16/02/2022