

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND REVISION NO. 3 OF 2021**

**(Originating from Application for execution in Appeal No. 31 of 2016 at the District Land and Housing Tribunal of Arusha at Arusha)**

**ELIBARIKI ANDREA.....APPLICANT**

**VERSUS**

**RUKIA HUSSEIN.....RESPONDENT**

**RULING**

**23/11/2021 & 24/3/2022**

**GWAE, J**

The applicant is dissatisfied with the supplementary order dated 15<sup>th</sup> April 2021 delivered by the District Land and Housing Tribunal of Arusha at Arusha which directed the broker to complete an execution by removing structures (nguzo) which extended to the alleyway.

He has now filed this application under the provision of section 43 (1) (a), (b) and (2) of the Land Disputes Courts Act Cap 216, Revised Edition, 2019 and Section 79 (1) (b) and (c) of the Civil Procedure Code Cap 33, Revised Edition, 2019 seeking an order of the court revising the impugned supplementary order.

The application is supported by the affidavit of the applicant where he alleges that, the execution order varies with the decree in appeal and therefore it could not be executed. On the other hand, the respondent opposed the application by stating that the supplementary order was issued following a report filed by the tribunal broker one Regiz Co. Ltd which revealed that the execution was partly carried out and that the applicant did not oppose the application for execution.

At the hearing, the applicant was represented by Mr. Kennedy Jeremia Mapima, the learned counsel whereas the respondent enjoyed the legal services from **Mrs. Aziza A. Shakale**, also the learned counsel. The application was disposed by way of written submission.

It is the submission of the applicant that the execution order is contrary to the decree in appeal on reasons that, the decree on appeal ordered the applicant to fix a gutter on his house and throw water to his walls and to remove animals at the alleyway which was being used by the public. The applicant went further to submit that the order of the tribunal chairperson went against the decree in appeal by instructing the demolition of two structures alleged to have extended to the alleyway without clarifying how long the said structures have extended and without affording the

applicant the right to be heard on demolition of the said structures. The applicant submitted that he had complied with the decree in appeal by removing the animals and that the order for demolition has no any legal back up and is contrary to the direction of the appellate tribunal. The applicant thus urged this court to grant the application.

The respondent on the other hand contended that the parties herein were dully heard by the tribunal concerning the report of the tribunal broker, therefore it was his submission that the supplementary order was issued after parties have been heard. He further added that the applicant if at all was dissatisfied with the execution order he would have appealed against the same but he did not do so. The respondent also submitted that the applicant herein has not complied as he contends since he has not freed the alleyway for the respondent and the public to use. He thus concluded that parties herein were given right to be heard.

Having briefly outlined what transpired in the executing tribunal and in this application, the issue for the court's determination is; whether there was impropriety in the issuance of the supplementary order by the tribunal.

I am in agreement with the applicant's counsel that, in the first place that the decree in appeal does not tally with the execution order dated 30<sup>th</sup> September 2020 which ordered that and I quote;

"As the judgment debtor has failed to comply with tribunal's order by demolishing his structure erected on the alleyway, let the decree be executed by a tribunal broker. One Regiz Co. Ltd is hereby appointed to execute the decree by demolishing any structure erected on the alleyway so that it can be free for use by the decree holder...."

On the other hand, the decree in appeal vide Land Appeal No. 31 of 2016 is to the effect and I quote;

"The respondent is ordered to fix a gutter on his house at the eaves which seems to have been projected beyond the side of his storey building and throw water clear of his walls to appellant's house and direct that water into his own land or outside his land and clear and or remove animals at the alleyway which was being used by the public."

From the above orders, I am of the considered view that, the decree on appeal did not give direction as to the demolition of any structure save for the fixing of a gutter and removing of the animals. Equally, the supplementary order appears also to be contrary to what is in the decree in appeal. The supplementary order was issued following a report by the

tribunal broker stating that the execution was done partly as there was found to be two structures which obstructed the opening of the alleyway and it is at this juncture the tribunal gave a supplementary order directing the tribunal broker to demolish the two structures. Actually, this is the center of the dispute between the parties, and the applicant herein alleges that the decree in appeal did not anywhere direct on the demolition of the structures save for the building of a gutter and removing the animals in the alleyway, the order which he alleges to have complied with. It is further the complaint of the applicant that the order for demolition was issued without affording him the right to be heard.

I fully agree with the applicant's counsel that the tribunal misdirected itself by issuing orders which were not in the decree, further to that, I find that if at all, during execution new issues arouse as demonstrated by the tribunal broker to be the stumbling block the same ought to have been presented before the tribunal for the parties to address the court on such issues and explain why execution should not proceed or otherwise. More so, the learned chairperson ought to have visited the locus in quo as right observed on the 21<sup>st</sup> August 2020. With the above elucidations, I am satisfied

that the tribunal misdirected itself in issuing the orders without affording both parties.

In the event the execution order together with the supplementary order are hereby quashed and set aside. The parties are directed to appear before the tribunal in order to address on the two structures alleged to obstruct the execution, the executing tribunal chairperson, tribunal broker together with the parties should go to the locus in quo to ascertain if the execution has been carried out in conformity with the decree. In case new issues arise or observed those new issues should be separately dealt with. Each party shall bear costs of this application.

Ordered accordingly.

  
**M. R. GWAE**  
**JUDGE**  
**24/03/2022**

**Order:** The parties and their respective counsel shall appear before the executing tribunal on (DLHT) on 21/04/2022 for necessary steps (s)

  
  
**M. R. GWAE**  
**JUDGE**  
**24/03/2022**