

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

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**LAND REVISION NO. 05 OF 2021**

**BALOLE KISUNUNA.....APPLICANT**

**VERSUS**

**ALOYCE K. MCHILI.....RESPONDENT**

*(Arising from Execution Cause No. 23/202, originating from Land Appeal No. 06/2020 at District Land and Housing Tribunal of Mwanza at Mwanza)*

**JUDGEMENT**

Last Order date: 19/04/2022

Judgement Date: 18/05/2022

**M. MNYUKWA, J.**

The Applicant through Chamber Summons moved this court under Section 41(1)(a) and (b) of the Land Dispute Courts Act, Cap 216[RE:2019], seeking the following orders;

1. That, this Honourable Court be pleased to call and inspect the records of the District Land and Housing Tribunal for Mwanza in Misc. Land Application No. 23 of 2021 so as to satisfy as to the correctness, legality or propriety of the Decree and Judgement given, and then give appropriate directions in that;



- (a) That the Tribunal chairperson erred in law for failure to conform to the directions and Orders of **S.M Lumanyika J. Dated 25 June 2020** which set time limits for compensation of which has lapsed.
- (b) That Ruling delivered on 16 July 2021 did not consider the fact that after 25<sup>th</sup> day December 2020 the Tribunal had no jurisdiction to determine the prayer for compensation as the same has been taken by event.
- (c) That, whether the District Land and Housing Tribunal has jurisdiction of violating the Directions and Order of the High Court Judge.
- (d) Whether the Trial Tribunal was right in Interpreting that the six months of the judgement was for filling the Application for Compensation and not for compensating the Applicant.
- (e) That, whether the Chairperson was Right in Executing the decree of his mind instead of the High Court.
- (f) Whether the Chairperson was Right in denying the Applicant Right to be head in the Application for Execution and ordered the



Applicant to vacate his Residential Place without being given compensation.

2. Cost of the Application be provided by the Respondent.
3. Any other relief(s) this Honourable Tribunal may deem fit and just to grant.

The application was accompanied with an affidavit sworn by Balole Kisununa, the Applicant herein. Responding to the Application, the Respondent herein filed a counter Affidavit that contained preliminary objection against the Application that contained three points of law which are;

- a. The application is not maintainable for want of revising decision on interlocutory orders.
- b. The application is premature for failure to exhaust available remedy availed by the law.
- c. The application is incompetent for want to call for and revise non-existence decree and judgement of Misc. Application No. 23/2021. In the alternative the application is time-barred for intending to revise decree and judgement



As a matter of practice, this court scheduled the hearing of the preliminary objection raised, before the main application. As the matter was scheduled for ruling, in the course of preparing the Ruling this court formed the view that, it was for the purpose of convenience and practicable to dispose of the raised preliminary objection together with the grounds for revision, so as to avoid to prejudice the parties. Therefore, I reserved the Ruling and heard the parties on the application for revision. Being that the case, I will start to determine the raised preliminary objection, if the same will be sustained then I will end up there, and if the preliminary objection will be overruled then I will go on to determine on merit of the revision application.

Before I go further to determine the raised preliminary objection, I think it is desirable to narrate the facts that gave rise to this application. The facts goes as follows; The applicant herein instituted Application No. 41/2013 before the District Land and Housing Tribunal for Mwanza at Mwanza in 2013 against the respondent as the 1<sup>st</sup> respondent and The Director, Mwanza City Council and The Director, Ilemela Municipal Council as the 2<sup>nd</sup> and 3<sup>rd</sup> respondents respectively. The applicant's application sought the declaration that the sale of the disputed premises was unenforceable, maintenance of status quo as the respondent had



breached the contract of sale of the land, and declaration that the transfer of the right of occupancy by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were illegal and the cost of the suit. He also prays for any other orders the tribunal may deem fit and just to grant.

After the hearing of the Application, the trial tribunal judgement disfavoured the applicant and declared that the applicant failed to establish that he is the lawful owner of the suit premises (in this case plot No. 4 Bwiru), the 1<sup>st</sup> respondent was declared as the lawful owner of the suit premises. However, the trial tribunal ordered the respondent to the immediate performance of the agreement between the applicant and the respondent, and the applicant was ordered to immediate demolish all developments in the suit premises and the same be handed over to the 1<sup>st</sup> respondent.

Dissatisfied the applicant appealed against the judgement and decree of the tribunal to the High Court through Land Appeal No. 06/2020 which was heard before Rumanyika J (as he then was). At the conclusion of the appeal, my learned brother Rumanyika J, did not concur with the trial tribunal as he had the view that the appellant was the initial owner of the suit premises and so he deserved prompt compensation before the property was transferred to the respondent by the 2<sup>nd</sup> and 3<sup>rd</sup>



respondents. He went on to allow the appeal, and as the DHLT ordered, the respondent was given a grace period of six months from the date of judgement to adequately compensate the appellant, and short of that on expiry of the grace period the transfer of the title to the 1<sup>st</sup> respondent was to be inoperative and of no legal consequences.

As it seems that the parties were satisfied with the judgement pronounced, there was no further appeal until 26<sup>th</sup> November 2020, when the respondent herein filed execution application before the Tribunal on a certificate of urgency. In his application he applied to execute the decree of the High court in the manner that the Tribunal to appoint the court broker to hand over the house located at plot No. 394 Block "B" at Kangaye Area, together with the ownership document to the appellant as to the satisfaction of decree in appeal. He also prayed for the tribunal order of vacant possession against the respondent and failure to that, the appointment of a court broker for the forceful eviction of the appellant from the disputed land and demolition of the available structures and the suit premises to be handed over to the respondent.

The appellant objected to the execution and raised a preliminary objection that; the application was bad in law for being taken by event which renders the application non-executable, that the tribunal lacks



jurisdiction to entertain the application and the application was premature before the tribunal. The tribunal heard the objection and overruled it on ground that the application was within time and there was no reason as to why the execution should not be done. The tribunal went on to order the execution by the respondent handing over the house on Plot No. 394 Block "B" Kangaye to the applicant within 14 days failure to that the court broker Adili Auction Mart was appointed to execute the same. The applicant was dissatisfied with the Tribunals orders and he is now before this court seeking for revisional orders as outlined above. Therefore, this application is in respect of Execution Application No. 23/2021.

Throughout the entire hearing, the applicant afforded the services of Mr. John Edward, learned counsel while the respondent enjoyed the services of Mr. Akram Adam also learned counsel.

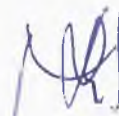
Starting with the preliminary objection, the respondent's counsel was the first to address the court and he argued on the 1<sup>st</sup> point of preliminary objection that, the application is not maintainable for wanting to revise the interlocutory order that was given on disposing of the preliminary objection and so the main application was not heard on its finality. That, the order made was an interim order and not derived from a case and therefore this court has no jurisdiction and cannot invoke its



revisionary powers on it. He cited the case of **Henry Lyimo Vs Eliabu E. Matee** [1991] TLR 93. He went on that, if the applicant was not satisfied with the Ruling, he was supposed to go back to the tribunal.

On the second ground, he argued that, this application is premature for failure to exhaust available remedy availed by the law. That, after the decision of the Tribunal the Chairman gave 14 days' notice to the judgement debtor to comply with the decree as per Regulations 23(3) and (4) of the Land Dispute Court (The District Land and Housing Tribunal) Regulations, 2003. That, after the notice the judgement debtor was given an opportunity to file an objection but instead, the applicant filed revisional application which is not correct as it is premature.

On the third ground, Mr. Akram argued that, the application is incompetent as there is no decree in respect of Misc. Application No. 23 of 2021 or judgement which is capable of being revised by this court. That, prayers in chamber summons are not correct as there was no judgement or decree and therefore the application is incompetent for want of decree and judgement. That, the court cannot revise the decree which is not before the court and he prayed for the application to be dismissed with costs.





Responding to the raised points of preliminary objection, the Applicant's counsel submitted that, they object to the raised preliminary objection and they pray for the same to be dismissed. On the first point of preliminary objection, the Applicant's counsel submitted that, it is not true that the application in which they seek this court to revise comes from interlocutory orders. That, Misc. Application No. 23/2021 was not decided and parties were not afforded an opportunity to be heard. That what was decided was the preliminary objection instead of the main application which is execution.

That the chairperson ruled on the preliminary objection as well as the application for execution before giving an opportunity to the parties on that objection. That, on page 6 of the Ruling, the chairperson dismissed the application without afforded parties with opportunity to be heard and so he went further to determine the main application and therefore that was not interlocutory order. He went on that, the cited case is distinguishable in our case at hand as there was no pending matter. That, since there was illegality the applicant brings this application therefore the first ground of preliminary objection lacks merit due to the nature and circumstance of this case.



On the second ground, the applicant's counsel succumbs that, the only remedy for the applicant was to seek for revision because there was illegality and impropriety of the trial tribunal's decision. He went on that according to Regulations 23(4) and (5) of 2003, if the judgement debtor has any objection to the execution, the chairman has to consider and make such orders as it may be appropriate. That, they filed objection in relation to the execution, but the chairperson did not consider and automatically the chairperson gave an order for execution without affording the parties right to be heard on it.

He further submitted that, section 43(1) (a) (b) of the Land Disputes Courts Act, R.E 2019 gives power to this court to revise the proceedings in the lower court including the Tribunal. That, orders of the tribunal conclusively decided the matter as the judgement debtor was supposed to vacate on the area within 14 days. For that reason, the present revision is the proper remedy and therefore the preliminary objection lacks merit.

On the 3<sup>rd</sup> ground, the applicant's counsel submitted that, the 3<sup>rd</sup> ground also lacks merit as the applicant challenges the decision which still exists. That the presence of the word judgement and decree is just the typing error which cannot make this application to be fatal as the



application itself specify that it originates from the Ruling of District Land and Housing Tribunal for Mwanza in Execution Cause No. 23 of 2021.

He went on that, paragraph 1(a)(b) of the application in Chamber Summons deals with the Ruling of Misc. Application No. 23 of 2021 which is also attached. That, their application is also supported by affidavit on paragraph 11 and therefore they challenge the application which exists. That preliminary objection shall base on the points of law, and the typing error does not affect the validity of the present application. He finalised by praying the objection raised to be overruled and the applicant should get an opportunity to be heard.

In rejoinder, the respondent's counsel submitted that, the applicant's counsel averment on the first ground is not correct. That, the Tribunal's decision was in compliance with Regulation 23(3) in exercising its powers. That, the right to be heard was there as they could have filed the objection as it is provided under Regulation 23(4) and (5) therefore their right to be heard was not there. That, this revision is interlocutory and pre-mature because the 14 days' notice was subjected to be challenged by that time and therefore this application is premature.

He further submitted that, the prayers are not kept in citation but after chamber summons. That even the prayers, request the revision of the



application in which there is no decree and judgement. That, the court deals with what is before it, and the court grant prayers and not affidavit and paragraph 11 is evidence and not prayers. He finalised his rejoinder by praying this court to dismiss the application with cost.

From both side submissions, I formed one issue to determine as to whether the application before this court is competent or not. In determining this issue, I will determine each raised ground of preliminary objection.

Starting with the first point of objection, its Respondent's counsel submissions that this application is not maintainable for revising decision on interlocutory orders. That the decision was against the decision on preliminary objections which did not decide the application on its finality. It is a settled law that, revision cannot be done in interlocutory orders. This has also been reflected in number of cases, as it was held in the case of **Sudi Khamis Sudi and Three Others VS. Maureen George Mbowe Jiliwa and Three others**, Civil Application No. 362/17 of 2018.

The Land Disputes Courts Act, has no any provisions that carters for the position. However, the same position has been provided under the Civil Procedure Code Cap 33 R.E 2019, under Section 79(2). As it the law that whenever there is Lacuna in the Land Disputes Courts Act, then



provisions of Civil Procedure Code, Cap 33 R.E 2019 can be invoked. The said section 79(2) of the Civil Procedure Code Cap 33 R.E 2019, provides that;

*79.(2) Notwithstanding the provisions of subsection (1), no application for revision shall lie or made in respect of any preliminary or interlocutory decision or order of the Court unless such decision or order has the effect of finally determining the suit.*

The statutory phrase "*finally determining the suit*" was defined in the case of **Pardeep Singh Hans vs Merey Ally Saleh and 3 Others**, Civil Application No. 422/01 of 2018 (unreported) quoting with approval the case of **Junaco and Another V. Harel Mallac Tanzania Limited**, Civil Application No. 473/16 of 2016(unreported) to mean;

*"an order or decision is final if it finally dispose the rights of the parties."*

From that position of the law above, we now have to see whether the said Tribunal's Ruling falls under interlocutory order or not. As section 79(2) has provided, the exception that revision will only be done when the pronounced decision has the effect of finally determining the suit.

It is Applicant's submission that the ruling did not determine the case to its finality. Contrary to the Applicant's assertion, the respondent asserts that the trial chairman decided on the raised preliminary hearing



and went on to decide the main application and therefore it was not an interlocutory order.

Looking at the trial tribunals proceeding and the Ruling itself, it is my firm view that the ruling decided the execution application to its finality. It is also my firm view that, I will only confine myself to determine whether the ruling was an interlocutory decision that finalised the application or not and not engage myself to see whether the trial chairman conformed to the provisions of regulation 23(3)(4) and (5) of the Land Dispute Court's (The District Land and Housing Tribunal) Regulations, 2003 as argued by the Applicant's counsel as doing that will pre-empt the application for revision.

Referring further to the trial tribunal's Ruling, the decision determined the application to its finality, as the trial tribunal chairman gave its decision on the raised preliminary objection and thereafter gave final orders that disposed of the execution application. I would like to quote the trial tribunal's Ruling on page 6 as follows;

*"Kutokana na sababu hizo hapo juu natupilia mbali mapingamizi ya awali kwa gharama kwani hayana mashiko kabisa lakini pia kwa lugha nyingine sijaona sababu nyingine kwanini maombi haya yasitekelezwe.*

*Kwa maana hiyo naamuru maamuzi ya mahakama yatekelezwe mshinda tuzo kumfidia mshindwa tuzo na mshindwa tuzo akabidhi nyumba iliyopo kiwanja N. 394 Block "B" Kangaye, jijini Mwanza ndani*



*ya siku 14 wakishindwa kutekeleza kwenye muda huo Dalali wa mahakama **Adili Auction Mart** atatekeleza Amri hii.*

***Inaamliwa hivyo."***

Therefore, looking at that last paragraph of the trial tribunal's decision, Hon. chairman finalised the matter in its decision by giving out orders that disposed off the execution application by pronouncing the rights and obligation of the parties to the application. That is to say, the orders given, marked the end of the application, therefore, the decision finalised the application and it is not an interlocutory order therefore it is capable of being revised by this court.

Similarly, the same situation was also discussed in the case of **Pardeep Singh Hans vs Merey Ally Saleh and 3 Others**, (supra) where the Court of Appeal discussed the exception of revision to interlocutory orders that finalise the suit. From the above reasoning, I dismiss the first point of preliminary objection for it is not merited.

On the second point, the Respondent avers that the application is pre-mature as the Applicant was supposed to file objection within 14 days, but instead he filed for revision. As I said earlier, I will not confine myself to see whether the procedure was abided to or not as that will pre-empt the revision. At this stage, it is worth to say the application is not premature, as I have already ruled out that the trial tribunal decision



finalised the application and therefore, the exception under section 79(2) applies here and therefore the application is competent before the court. This point is also dismissed.

On the last point, I concur with the Applicant's counsel's assertion that, the word judgement and decree is just slippery of the pen that is typing error as Misc. Land Application No. 23 of 2021 was disposed of by a ruling and not judgement. Therefore, I proceed to dismiss the third point of objection. In the upshot, all raised preliminary objections are hereby dismissed and the court goes on to determine the revision application by the applicant.

In revision hearing, the applicant's counsel was the first to submit and he adopted the accompanying affidavit to be part of his submission. He started to submit on the first reason that, the Application for execution did not adhere with the orders given by Hon. Rumanyika, J on Land Appeal No. 6 of 2020 which ordered the 1<sup>st</sup> respondent, who is also the respondent in this revision to compensate the appellant who is now an applicant. That, the court gave the period of 6 months for the respondent to compensate the applicant adequately and in lapse of the grace period, the transfer of title to the respondent will be inoperative and with no legal consequences.





That, up to now there is no adequate compensation and the respondent was required to compensate the applicant on 25<sup>th</sup> December 2020. That, the DLHT execution decision delivered on 16/7/2021 required the applicant to vacate on his house without following the decision of Hon. Rumanyika J. He went on that, it is their view that the DHLT had no jurisdiction on execution application as it was taken by event following the decision of Hon. Rumanyika, J.

Applicant's counsel cited the case of **Shakila Malick Vs. Said Almas**, Civil Application No. 3 of 1999 where the court objected the application on pages 1 and 2 as the matter was taken by event and therefore the court had no jurisdiction to proceed with the application. He inserted the principle of precedent, that the lower courts are bound by the higher court's decision regardless of their correctness. He also cited the case of **Jumuiya ya Wafanyakazi Tanzania (JUWATA) Vs. Kiwanda cha Uchapishaji cha Taifa Tanzania (KIUTA)** 1988 TLR 153, to cement his assertion. That, the DHLT was tied up their hands as the decision which was supposed to be executed was the decision of the High Court.

He submitted further that, the main issue was a compensation of plot No. 394 Block B in which the High Court stated that the appellant



should be compensated adequately. That, up to now the applicant has not been compensated despite the lapse of ordered time. That this court did not order that the execution application to be filed after 6 months rather it was ordered that the applicant to be compensated.

It is Applicant's assertion that, execution was to be filed after the applicant has been compensated. And that the High Court ordered that after the expiration of 6 months without compensation to be done then the transfer of title to the respondent will be of no legal consequences.

He lamented further that, on 16/07/2021 the transfer of title from the applicant to the respondent was of no legal effect and therefore the DLHT had no powers to give any orders therefrom. That, the DLHT went on to order the applicant to vacate without being satisfied that he was adequately compensated and without taking into consideration that the decree of the High Court set a time limit.

That after the expiry of the time set, need to return to the court which passes that order. For that reason, they are in the view that the DLHT did not have power to go contrary with the decision of the High Court.

On the last ground, the applicant's assertion is on the denied right to be heard by the DLHT in the application for execution as it ordered the

applicant to vacate from his residential place without being given compensation. Counsel went on to outline the series of events in the execution proceeding that, on 4/12/2020 the applicant prayed to file affidavit to show cause why execution should not be heard. On 13/1/2021 the applicant filed affidavit to object to the execution and the preliminary objections. On 13/1/2021, the court ordered the preliminary objection to be heard and after hearing the preliminary objection it was dismissed and without hearing the parties, the DLHT gave orders on the application for execution without affording parties the right to be heard on Application No. 23/2021. That, in such circumstances it is their view that the applicant was not given right to be heard. He finalised his submission in chief by praying this application to be allowed with cost.

Responding to the applicant's submission, the respondent opposed the Applicant's submission and he submitted that, the decree was very clear as it confirmed the order of DLHT. That, when referring to pages 4 and 5 of the High Court's decision, the High Court quotes what has been decided by the DLHT. The counsel also prayed for the adoption of the respondent's affidavit to be part of his submission.

Respondent's counsel submitted that, for this court to execute the decision of the High Court, it was supposed to go back in the order of



DLHT. Thus, execution done by the DLHT was proper because the decree of the High Court cannot be executed without the decision and order of the DLHT as the same order was not quashed and set aside.

He went further that, the DLHT ordered the respondent to compensate the applicant as per their arrangement. That, their agreement is reflected on paragraph 6 of the respondent counter-affidavit and its annexure. That the agreement was already executed that's why the respondent applied for execution because the same compensation was done. He further asserted that, the respondent filed an application for execution so as to perform his part of handling over the house and require the applicant to vacate on the house.

That, the applicant need compensation which is not in the decree because the compensation as per the decision of the DLHT is to construct the house in which the respondent had already constructed and file the application for execution so as to hand over the house and require the applicant to vacate the house which was in dispute.

He admits that, compensation was supposed to be done within 6 months, but the applicant was demanding compensation which is in the decree as he was not agreeing to receive the house located at Plot No. 394 Block B Kangaye Area, which was built as per agreement. Since the



applicant denied that's why the respondent filed an application for execution so as the decree to be effected before the expiration of 6 months as it was within 6 months. That, the execution application was filed on 26/11/2020, therefore it was one month before the expiration of the period of execution.

He further submitted that, the applicant filed his execution under a certificate of urgency and that the proceeding was delayed due to the tribunal calendar and so he cannot be punished for failure of the DLHT to furnish the execution within time. He submitted that, the matter was not taken by event as execution has to be done within 12 years and so the tribunal had powers to execute.

Respondent's counsel distinguished the cited case of **Shakila Malick** (Supra) as the case was dealing with stay of execution which was already executed and so it is distinguished. He further submitted that, the case of KIUTA (supra) is also not applicable in our case at hand. That the DLHT execute in accordance with a decree of the High Court and the DLHT. He finalised his submission that, for that reason applicant's argument that the respondent application was out of time should be disregarded.



On the last ground, the respondent's counsel submitted that, the applicant was given the right to be heard. He submitted that after the decision on the preliminary hearing, the Applicant was supposed to bring the objection after 14 days and failure to that, execution was absolute as per regulation 23(3) of 2003. That, the applicant instead of bringing the objection under regulation 23(4), he filed revision before the mature of 14 days. Therefore, he submitted that, the applicant was not denied the right to be heard.

He submitted further that, the notice to show cause was prematurely filed because the objection to show cause was supposed to be filed within 14 days after the decision. He prayed for the dismissal of revision application as the court has nothing to revise as the applicant was not denied the right to be heard.

In rejoinder, the applicant's counsel submitted that, the decree which was to be executed was that of the High Court, that the order of compensation only confirms with the order of the DLHT. However, the High Court stated that the applicant should be given adequate compensation. He further submitted that there was no document that was handled over to the applicant over Kangaye Plot, which is surveyed. That,



the compensation was not done and on 16/7/2022 the DHLT ordered the respondent to handover the house.

He went on that, the decree concerned compensation is mostly fixed with time that's why the Hon. Judge Rumanyika gave time limit. Therefore, it is not correct to state that decree is executed within 12 years. The agreement referred by respondent's counsel in his affidavit was pre-contractual which cannot be relied on.

On the issue of the right to be heard, he submitted that, they were served with summons by DLHT ordered to bring objection. That, that showed that they had right to be heard. That was all for the submissions. Before I board to determine this revision, I appreciate both counsels for their argued submissions.

From the raised revision grounds together with the parties' submissions, it is my firm view that, the raised grounds falls into the following three issues as follows;

- a. Whether the trial tribunal had jurisdiction to entertain the execution application which is now subject of revision?



- b. Whether the trial tribunal chairman observed procedural law in entertaining Execution application No. 23/2021?
- c. Whether the trial tribunal interpreted correctly orders given in Land Appeal No. 6/2020 by Hon. Rumanyika J?

I will now determine each raised issue separately while reflecting and connecting to the raised and argued grounds of revision by the parties.

In answering the first issue, first of all I have chosen the question of jurisdiction to be argued foremost, as it is a principle of law that jurisdiction is a core foundation for any court to be able to entertain any suit. If court lacks jurisdiction then everything that has been done by such court will sadly crumble down instantly. This can be witnessed in a number of case laws such as; **Sospeter Kahindi Vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017 CAT Mwanza (Unreported), **Jumanne Leonard Nagana @ Azori Leonard Nagana and Another V Republic**, Criminal Appeal No. 515 of 2019, e.t.c.

It is Applicant's submission that, the trial tribunal had no jurisdiction to entertain the execution application as it was taken by event following the decision of Hon. Rumanyika, J. I do not agree with the applicant's





assertion, the reason being there was no any execution that has already been determined by any court in respect of the land application No. 41/2013 or Land Appeal No. 6 of 2021. As cited by the applicant, I am inclined to agree with the respondent counsel that **Shakila Malick** case does not apply to our case at hand, as the circumstances are different as in Shakila's case the subject matter was already sold and so the application for staying of execution was already taken by event.

On the other hand, I agree with the Applicant's counsel submission that, lower courts must be bound by decision of a superior court as it was rightly held by the Court of Appeal in JUWATA's case. However, we must understand first that what was to be executed in our case at hand. It is apparent that, we have two decision, one from the trial tribunal and the second, from the High Court resulting from appeal. The decision of the trial Tribunal decided in favour of the Respondent herein by ordering that, the respondent was a lawful owner but it ordered the respondent to compensate the applicant herein subject to their prior arrangement.

After that decision was appealed against, the High court did recognize the applicant herein as the initial owner of the disputed land. However, it went further to agree with the trial tribunal that the respondent did acquire the property from the 2<sup>nd</sup> and 3<sup>rd</sup> respondent in




land application No. 41/2013 but the transfer was short for lack of adequate compensation to the applicant. And so, the High Court reached the same decision as the trial Tribunal but with some modification to the point of setting an ultimatum of 6 months, for the said compensation to be done.

Therefore, it is my considered view that, the High Court did not pass a new decree but it supported the trial tribunal's decision and therefore the trial tribunal was a proper forum to adjudicate the execution proceeding as the order or decree to be executed emanated from its decision. In simple language we can now say that trial tribunal had jurisdiction to entertain the execution proceedings. This is also provided under section 33 of the Civil Procedure Code which states that;

*33. A decree may be executed either by the court which passed it or by the court to which it is sent for execution.*

Looking at this provision of the law, then the court passed decree is the court to execute. Even though the matter went to appeal, still the High Court cemented on the prior passed decree of the trial tribunal. Thus, I join hand with the respondent's assertion that the trial tribunal was executing what was said by the High Court which was similar to its decision. In the foregoing, the first issue is hereby answered in affirmative



and so I proceed to dismiss the reasons advanced on ground (b) and (c) of revision.

Moving on the second issue, whether the trial tribunal chairman observed procedural law in entertaining Execution Application No. 23/2021, the applicant's counsel has raised his concern on the denial of right to be heard to the applicant. While arguing the last ground, the applicant's counsel was in the view that, the tribunal denied the applicant's right to be heard as after the preliminary objection hearing tribunal gave orders on the execution application without affording right to be heard from parties.

Procedural law that governs execution in District Land and Housing Tribunals is the Land Dispute Courts (The District Land and Housing Tribunal) Regulations, 2003. Particularly, Regulation 23 provides for the execution of decrees and orders. I find it pertinent to reproduce the cited regulation as hereunder;

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

*(2) An application for execution of orders and decrees under sub-regulation (1) shall be made in appropriate forms described in the second schedule to these Regulations and shall indicate the mode in which the execution is sought to be carried out.*



*(3) The chairman, shall upon receipt of the application, make an order requiring a judgement debtor to comply with the decree or order to be executed within the period of fourteen days.*

*(4) where after the expiration of fourteen days there is no objection or response from the judgement debtor, the chairman shall make execution orders as he thinks fit.*

*(5) The chairman shall, where there are objections from the judgement debtor consider the objection and make such orders as maybe appropriate.*

*Provided that hearing of objections under this sub-regulation shall be limited to the subject matter of the objections.*

After looking at what law provides, now I find it necessary to look at the tribunals proceeding in order to satisfy myself if the right to be heard was not granted.

From the tribunal's records of typed proceeding, after execution application had been filed on 26<sup>th</sup> November, 2020, the tribunal chairman gave orders in accordance with Regulations 23(3) and (4) of G. N 174 of 2003 on 4<sup>th</sup> December, 2020. The applicant was supposed to file an objection within 14 days as ordered. However, proceedings reveal that, the applicant prayed to file affidavit to show cause on 4<sup>th</sup> December 2020 and he filed a preliminary objection on 16<sup>th</sup> December, 2020. That is to say that, there was no any objection in terms of Regulation 23 that was filed on by the applicant as ordered by the tribunal. What was filed by the



applicant was the affidavit together with a preliminary objection to challenge the competence of application for execution and not objection on subject matter as the proviso to Regulation 23 provides for. This is to say, the tribunal chairman was right to give orders for execution as there was nothing to bar the filed application by the respondent.

The applicant asserts that the trial tribunal was supposed to give them right to be heard after he had overruled the preliminary objection, but that is not the directions on Regulation 23 as provided above. Therefore, it is my firm view that the Applicant misdirected himself on what procedure to follow for him to challenge the execution to be done in accordance with the procedural law that governs the execution in Land Tribunals. Thus, the trial Chairman was right in terms of procedural law as he acted in accordance with Regulation 23 of the *Land Dispute Courts (The District Land and Housing Tribunal) Regulations, 2003*. Consequently, the second issue is answered in affirmative, thus ground f is also dismissed.

In answering the third issue as to whether the trial tribunal interpreted correctly orders given in Land Appeal No. 6/2020 by Hon. Rumanyika J, I will also be addressing grounds (a) (d) and (e). It is the applicant's reason for revision that the trial tribunal executed decree of



his own mind as he failed to conform to the directions given on decree of Hon. Rumanyika which set time limitation of six months of which the trial Tribunal translated it to be time for filing execution application and not for compensating the applicant.

The applicant's counsel argued that the decree given by Hon. Rumanyika J, ordered the respondent to compensate the applicant within six months and failure to that, transfer of title to Respondent will be inoperative and with no legal consequences. That, the applicant was ordered to vacate while he was not compensated.

At this point I would go back to Regulation 23(1) of the *Land Dispute Courts (The District Land and Housing Tribunal) Regulations, 2003*. The provision is very clear that a decree-holder is entitled to file his/her application as soon as practicable after the pronouncement of Judgement or Ruling for executing his decree. From our case at hand, the respondent was the decree-holder as the judgement of the High Court favoured him over the applicant and he was given six months to make sure that he compensates the respondent so that his title could be operative. For ease of reference it is prudent to reproduce the order given as follows;



"  
..."

***THIS COURT DOTH HEREBY ORDER THAT***

*Appeal is allowed with costs. Like the DLHT ordered, the 1<sup>st</sup> Respondent is once again ordered within six (6) months of the judgement to compensate the appellant adequately short of which on expiry of the grace period the transfer of the title to the 1<sup>st</sup> respondent shall be inoperative and of no legal consequences"*

From the wording of the decree, it is clear that from the date of judgement which was 25/6/2020, the respondent had six months which ended on 25/12/2020, to compensate the applicant. From the filed execution application by the respondent, it sought to exactly do compensate the applicant as he was ordered. As argued by the Respondent's counsel, the execution application was for the respondent to hand over the house on Plot No. 394 Block B Kangaye as compensation ordered by the High Court.

It is my firm view that, the applicant misinterpreted the order given that's why he contends that, the application for execution was premature. His assertion that the respondent was supposed to compensate the applicant before filing execution proceeding is also misplaced in our case scenario. The reason being, if the respondent would have waited for the six months to pass then his title would have been inoperative for not



adhering to the directions given by the appellate court. Furthermore, I understand that it would be impossible for the respondent to hand over the house to the applicant without the guidance of the court considering the hostile relationship between them that has emerged through the court battles.

In the applicant's rejoinder, counsel submitted on the issue of the property to have been surveyed and the document was not handed over. It is my strong opinion that, if the issue was over the value of the property subject to compensation, the applicant was supposed to object to that as per the directions and requirements in the proviso of Regulation 23.

On the foregoing, the respondent was right to institute an execution application within six months as it was ordered by the High Court, for him to hand over the house for compensation purposes. The third issue is also answered in the affirmative and grounds (a) (d) and (e) are not merited.

In the event, I find no legal absurdities to fault the findings of the DLHT orders for execution. I proceed to order the matter to be remitted to the DLHT to proceed with the execution proceedings from where it ended.

Right of appeal explained to the parties.







**M.MNYUKWA**  
**JUDGE**  
**18/5/2022**

**Court:** Judgement delivered today this 18<sup>th</sup> day of May, 2022, in presence of parties.

**M.MNYUKWA**  
**JUDGE**  
**18/5/2022**