

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

AT KIGOMA

LAND DIVISION

(APPELLATE JURISDICTION)

LAND REVISION NO. 02 OF 2022

(Arising from Execution No. 149 of 2021 of the District Land and Housing Tribunal of Kigoma at Kigoma before F. Chinuku, Chairperson)

BASOA MFAUME.....APPLICANT

VERSUS

ULIMWENGU SUNGURA HAMIMU.....RESPONDENT

R U L I N G

14/3/2022 & 22/4/2022

L. M. MLACHA, J.

This is a ruling on an application which was opened suo mottu by the court following a complaint lodged by the applicant, Basoa Mfaume who was brought by a good Samaritan Mr. Lubuva. Mr. Lubuva who identified himself as coming from the Roman Catholic church Kigoma alleged that the applicant who is an elderly woman was being victimized by the legal process. He suspected some corruption in the case which sought to evict the applicant from her house. On being required to state her complaint, she expressed her dissatisfaction on the way the execution of the decision of the District Land

and Housing Tribunal for Kigoma (the DLHT) made in Application No. 132 of 2016 was being carried out. Execution of the decision was being done in Miscellaneous Application No.149 of 2021. A calling for the records was issued following the opening of the revision. The parties were summoned and given a right to address the court.

Mr. Mosses Rwegoshora appeared for the applicant. The respondent Ulimwengu Sungura Hamimu appeared in person.

Submitting before the court, Mr. Rwegoshora said that the respondent had no decree. And when this aspect was raised at the DLHT during execution it was rejected. Further that, the applicant was not given a notice to attend the hearing of the execution proceedings. The respondent replied that the applicant was given 45 days within which to appeal but could not do so. He then applied for execution which was granted. A court broker and the police were asked to work together to execute the decision.

I have inspected the records of Miscellaneous Application No. 149 of 2021. It is an application for execution of the decree of the DLHT made in Land Application No. 132/2016. The judgment of the DLHT (F. Chinuku

chairperson) dated 5/2/2021 is attached. Reading through, I could find the issues which were framed and determined by the tribunal. They read thus:

- 1. Whether the house in plot No. 959 Block 'O' Ext. Majengo is the Estate of the late Sungura Hamimu Omari.*
- 2. Whether the respondent is legally occupying the suit premises.*
- 3. To what reliefs are the parties entitled to.*

The DLHT found that the applicant (now respondent) has a right to administer the estate of the late Sungura Hamimu Omari (who is the applicant's son) because he was duly appointed by Ujiji Primary Court in Probate cause No. 50/2014. The respondent (now applicant) was ordered to hand over the original documents in respect of the house. It was further ordered that the applicant, who is one of the beneficiaries of the estate, being the mother of the deceased, had to wait for the distribution of the estate to obtain her share. The applicant could not see justice in the decision and took steps to appeal. She was faced with difficulties but finally managed to file land appeal No. 4 of 2022. She did not seek for orders of stay of execution. She was then subjected to the execution proceedings and is about to be evicted from the house by her own grandson.

The records show that the applicant was dully served because she appeared and lodged a defence with a preliminary objection which reads as under in Swahili; *"Maombi haya ya muombaji ni mabovu kwani muombaji hajaambatanisha decree."* The objection was heard and dismissed.

In dismissing the objection, the DLHT had this to say;

"Baraza linakubaliana na mleta maombi kwamba sheria aliyonúkuu mjibu maombi haina takwa la kuambatanishwa tuzo kwenye maombi ya kukaza hukumu"

The chairman had in mind, Rule 23 (1) of The Land Dispute Courts (The District land and Housing Tribunal) Regulations 2003 GN 174 of 2003 which 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"

Truly, rule 23 (1) does not have a requirement to attach a decree but reading through the whole rule and the corresponding provisions of the Civil procedure Code Act Cap 33 R.E. 2019, one can see that there is a requirement to attach the decree. Sub rule 3 require the chairman upon receipt of the application, *make an order requiring the judgment debtor to*

comply with the decree or order to be executed within the period of 14 days.

One may wonder which decree? This presupposes the existence and service of a copy of the decree to the judgment debtor. Further, a successful party does not go to the tribunal to execute the judgment. We don't go to the court to execute the whole judgment which may be long and confusing. We execute the summary of it which is called a decree. Failure to attach a copy of the decree was therefore a fatal irregularity. That vitiated the execution proceedings and orders which could follow.

But, there is a second reason why the execution of the decree should not be allowed to proceed. The parties are closely related people. The existence of Land Appeal No. 4 of 2022 and the close relations (mtu na mjukuu wake) make the execution a bit unusual calling for a stay of execution of the judgment to give the court a chance to hear the appeal and see why the grandmother who should always enjoy protection from our families is now sought to be evicted by force.

That said, the proceedings and orders of the DLHT made in Miscellaneous Application No. 149 of 2021 are vacated and set aside. The execution of the judgment of the DLHT made in Land Application No. 132/2016 is stayed

pending hearing and final determination of Land Appeal No. 4 of 2022
pending before this court.

It is ordered so.



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L.M. MLACHA

JUDGE

22/04/2022

Court: Ruling delivered. Right of Appeal Explained.



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L.M. MLACHA

JUDGE

22/04/2022