

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

LAND APPEAL NO. 55 OF 2022

*(C/F from Land Appeal No. 275 of 2021 of Kahama District Land and
Housing Tribunal, Originating from Bulyanhulu Ward Tribunal)*

ELIAS KISAMU.....APPELLANT

VERSUS

JOHN NGWAKULE..... RESPONDENT

JUDGMENT

Last order 17/02/2023

Judgment date 24/03/2023

MASSAM, J

This appeal arises from the decision of Bulyanhulu ward Tribunal where the Respondent unsuccessfully sued the Respondent claiming they invaded to his plot which he won after filling a case against them.

During the hearing the appellant abandoned his claim after being challenged if that was a new case or an execution which led the Ward Tribunal to declare the respondent as the lawful owner of the disputed property. Thereafter the appellant herein filed a Misc. Land Application at the District land and Housing Tribunal seeking for an execution order to evict the respondent from the disputed property.

At the District land and Housing tribunal his application was dismissed due to the illegalities on the Ward Tribunal's decision such as no document was submitted to explain his claim and the evidence was not given under oath. Further to that no column was shown during the hearing. The said decision aggrieved the appellant who is now before this court challenging it based on the four (4) grounds of appeal as depicted from his memorandum of appeal.

When the appeal was called for hearing on 17/02/2023, Mr Isangi Siwale, learned counsel represented the appellant and the respondent appeared in person, unrepresented. The appeal was argued orally.

Supporting the appeal, Mr Siwale with the leave of the court added a new ground of appeal and decided to deal with it and abandoned the rest of the grounds. He submitted further that, the District Land and Housing Tribunal erred in law and in fact by dismissing the decision of

ward tribunal in execution stage. Further to that, he told the court in order for a decision to be dismissed based on irregularities there has to be an appeal or revision. He supported his argument with the case of **Hosea Kihwelo and 5 Others vs Abdallah Ramadhani Mkumba**, Civil Revision 347 of 2018 (CAT-Unreported) and prayed for the DLHT to be ordered to proceed with the execution.

Opposing the appeal, the respondent stated that the District Land and Housing Tribunal's decision was correct based on the reasons adduced that the ward Tribunal's decision was tainted with illegality. The disputed property belonged to him and he went to Ward Tribunal so as the appellant could be evicted but they decided otherwise. He prayed for the tribunal to order the appellant to vacate from the disputed land.

In brief rejoinder, Mr Siwale reiterated what he had already submitted and prayed for the appeal to be allowed and the Decision of the District land and housing Tribunal to be quashed and set aside and Execution No. 275/2021 to proceed.

Having gone through the rival submissions from the counsel for the appellant and from the respondent himself, also venturing the documents revolving around this appeal, the issue for determination is **whether the appeal has merit.**

This court on perusal of the court records finds out that the only claim of the appellant herein is the act of the District land and Housing Tribunal to nullify the decision of Ward Tribunal at the execution stage based on the reasons which were supposed to be dealt with at the appellate or Revision stage.

In the case of **Hossea Kihwelo and 5 Others Vs Abdallah Ramadhani Mkumba and Another**, Civil Revision No. 347/17 of 2018 (CAT-reported at Tanzlii) the Court held that:

"A judgment of a court cannot be quashed in an execution proceeding. There should be an appeal or revision before the higher tribunal."

The same was held in the case of **Maharaj Kumar Mahmud Hasan Khan vs Moti Lai Banker** on 7 July 1960, AIR 1961 All 1 cited with approval in the case of **Mihayo Maziku Misana (Administrator of the Estate of late Maziku Misana) vs Abdallah Mashimba Nzingula**, Land Revision No. 3 Of 2021 (HC- Reported at Tanzlii) that:

"I hold it to be a correct proposition of law that a Court executing a decree is bound by the terms of that decree and cannot go behind them. It is equally true as a general

proposition that such Court can neither add to such a decree nor vary its terms."

Guided by the cited authority this court is of the firm view that it was wrong for the executing tribunal to nullify the entire decision suo moto for deficiencies exposed in the decision without the involvement of the parties, if the executing tribunal finds some irregularities or issues which thought that it was wise to get clarification by the parties he was supposed to summon them in order for the parties to address him on the particular issue/s.

For the foregoing reasons, the appeal is found with merit and its hereby allowed, Accordingly, the decision of Kahama District land and Housing Tribunal is hereby quashed and set aside.

It is so ordered.

DATED at SHINYANGA this 24th day of March 2023



A handwritten signature in blue ink, appearing to read "R.B. Massam".

R.B. Massam
JUDGE
24/03/2023