

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA
LAND APPEAL NO. 49 OF 2022**

[Originating from the decision of Mogitu Ward Tribunal Land Case No. 6 of 2017 and Manyara District Land and Housing Tribunal Application for Execution No.131 of 2021]

MASSAY TLAQA.....APPELLANT

VERSUS

STEPHANO DANIELI.....RESPONDENT

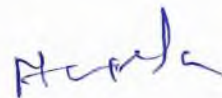
22/05/2023 & 20/06/2023

JUDGMENT

MWASEBA, J.

This appeal emanates from the decision of Manyara District Land and Housing Tribunal in application for Execution No. 131 of 2021. The appellant herein who was the judgment debtor at the tribunal is dissatisfied with the decision of both lower tribunals and has come before this court by way of appeal having the following two grounds:

- 1. The appellate Chairman grossly erred in granting the application for execution when the decision of the trial tribunal was an ambivalent one.*

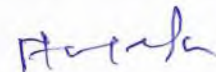


2. The appellate Chairman grossly erred in granting the application for execution when the procedure in the trial Ward tribunal had numerous shortcomings.

During the hearing of this case Mr. Patrick J. Ami learned counsel appeared for the appellant. The respondent was duly served and entered appearance once through his legal representative but later he defaulted appearance hence the appeal was disposed of exparte.

Supporting the appeal Mr. Ami submitted on the first ground that the appellate Chairman grossly erred in granting the application for execution while the decision of the Ward tribunal was ambivalent one. He said the decision of the trial tribunal is not clear as to who won the case between the appellant herein and the respondent. So, the appellant did not intend to appeal as he thought that nobody won. On 28/04/2021 he was surprised to be served with the execution documents from the District Land and Housing Tribunal. His client objected the execution but the Chairman overruled it.

He submitted further on the second ground of appeal that all the proceedings at the trial tribunal had numerous shortcomings. He said they never wrote a coram all the dates the trial tribunal sat for determination of the case. So, it is impossible to know how many ladies



were there according to the law. That the coram was written on 3/1/2018 on the judgment date but still the sex of the parties was not indicated. So, he prays that the decision of the two lower tribunals be quashed and set aside with costs. He referred this court to the case of **Adam Masebo vs Lines Nzunda**, Land Appeal No. 33 of 2021 to support his argument.

Having heard the submission from the learned counsel for the appellant and going through the records, the pertinent issue that calls for my determination is whether this appeal has merit or not.

In determining this issue, I will argue both grounds of appeal jointly. As stated earlier, this appeal emanates from the decision of application for execution of a decree that was delivered at Mogitu Ward tribunal and executed by Manyara District Land and Housing Tribunal. In his submission, Mr. Ami learned counsel is challenging the judgment delivered by the trial tribunal to be vague and that the procedure for determining the case was not in compliance with the law. Due to the said anomalies, he argued that the hon. chairman of the district land and housing tribunal ought to abstain from executing the said decree. With due respect to the learned counsel, I don't agree with his notion. It is settled that the duty of the executing officer is to execute the decree



before him/her and not to challenge the decree. As it was held in the case of **V. Ramswami vs T.N.V. Kailash Theyar**, reported in AIR 1951 S.C, 189 (192), where the court observed that:

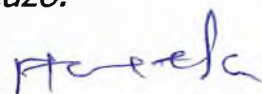
"The duty of an executing Court is to give effect to the terms of the decree. It has no power to go beyond its terms. Though, it has power to interpret the decree, it cannot make a new decree for the parties under the guise of interpretation".

The same was held in the case of **Fortunata Edga Kaungua vs George Hassan Kumburu**, Misc. Civil Application No. 71 of 2019 (HC-Reported at Tanzlii) that:

"It can safely be concluded that the role of the execution court is to finalize the case, that is, to deal with the orders and decrees as decided by the trial court."

Basing on the above legal position, I find that the hon. chairman exercised his legal duty by executing the decree before him. In his ruling he said:

"Nimepitia hukumu ya kata ilisomwa tarehe 3/1/2018 na kaza hukumu hii imefunguliwa tarehe 28/4/2021 kwa hesabu ni karibia miaka minne tangu hukumu ya kata isomwe. Hakuna jambo lolote la kuzuia hukumu hiyo. Maombi haya yanakubaliwa kama alivyoomba mshinda tuzo."



The hon. Chairman concluded that nothing objects him to execute the decree due to the fact that no one challenged the decision of the ward tribunal which was delivered four years ago. So, he proceeded with execution. I concur with the hon Chairman as that was the legal position. It should be noted that if a party was aggrieved by the decision of the ward tribunal, he had to appeal to the District Land and Housing Tribunal as per **Section 19 of the Land Disputes Courts Act**, Cap 216 R.E 2019. Failure to do so the decree remains unchallenged and so it is subject for execution.

Having forestated, this appeal is dismissed for being non meritorious. The decision of the District Land and Housing Tribunal is remained undisturbed.

It is so ordered.

DATED at ARUSHA this 20th day of June, 2023.



A handwritten signature in blue ink, appearing to read "N.R. Mwaseba".

N.R MWASEBA

JUDGE