

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPEAL NO. 28 OF 2023

(C/F Misc. Application No. 195 of 2021, Originating from Application No. 7 of 2020 at
Musa Ward Tribunal)

ESTOMIHI GABRIEL.....APPELLANT

VERSUS

SAMWEL NAVAYA..... RESPONDENT

JUDGMENT

25/07/2023 & 22/08/2023

MWASEBA, J.

The appellant being aggrieved by the ruling of Arusha District Land and Housing Tribunal (DLHT) appealed to this court based on the following grounds:

1. That, the dispute was entertained by two different chairmen of equal jurisdiction hence arriving at an erroneous conclusion.
2. That, the District Land and Housing Tribunal erred in allowing ground number three (3) of the appeal that the respondent four witnesses were denied the right to be heard without any proof of their presence within the court premises.



3. That, the Land tribunal erred by ordering interested parties in the matter to file fresh proceedings in the appropriate Tribunal.

Briefly, the appellant filed an execution at the DLHT of Arusha to execute the decision of Musa Ward Tribunal in Application No. 7 of 2020 which was delivered on 9/2/2021 where the appellant was declared the winner of the disputed land. Having heard the parties herein, the tribunal decided that the respondent herein should vacate from the disputed land so that the decision of the ward tribunal to be executed and the winner to be given the disputed land. However, during the same time there was also a pending appeal originated from Application No. 7 of 2020 whereby upon hearing both parties the same tribunal dismissed the decision of ward tribunal. Thus, makes two decisions over the same application No. 7 of 2020. Aggrieved, the appellant filed the present appeal armed with three grounds as cited herein above.

During the hearing of an appeal, the appellant appeared in person, unrepresented whilst Mr. Emmanuel Kileo, learned Counsel represented the respondent. The appeal was argued orally.

Submitting in support of the appeal, the appellant argued that he was the winner in Application No. 7 of 2020 before Musa ward Tribunal. Thereafter he filed execution to Arusha DLHT where a court broker was appointed,



and the disputed land was given to him as ordered by the ward tribunal. He argued further that after the land has been given to him the respondent filed an appeal before the same DLHT and Hon. Kagaruki quashed the decision of the ward tribunal and ordered re-trial. Thus, currently there are two decisions from the same tribunal and he is confused as to which decision will stand. He prayed for the respondent to return his land as he had already paid for it.

Opposing the appeal on behalf of the respondent, Mr. Kileo submitted that it is true there are two decisions originated from Application No. 7 of 2020. In Land Appeal No. 17 of 2021 delivered on 27/10/2022 by Hon. Kagaruki quashed the decision of trial tribunal as the respondent was not accorded right to be heard at the ward tribunal. He argued further that, as some of the respondent's witnesses were never given the right to be heard, it was proper for the DLHT to quash the decision of the trial tribunal. He supported his arguments with the case of **The Registered Trustees of Africa Muslim Union v. The Registered Trustees of Natural Muslim Council of Tanzania (Bakwata)** Civil Appeal No. 300 of 2017. He prayed for the decision of Hon. Kagaruki to remain undisturbed and the grounds of appeal to be dismissed.



In brief rejoinder, the appellant submitted that this appeal is based on Execution No. 195 of 2021 and not in Land Appeal No. 17 of 2021 where both parties attended. The stay of execution was submitted after the execution has already been completed and court broker already done his work. Further to that, there was no proof that the respondent's witnesses attended before trial tribunal and denied the right to be heard. He prayed for the court to give him his right as the land is in his possession.

Having gone through the record of appeal and the submissions advanced by the appellant and the counsel for the respondent, the issue for determination is whether the appeal is meritorious.

Starting with the 1st issue, the appellant complained that a dispute was entertained by two different chairmen with the same jurisdiction hence arriving at erroneous decision. On his side, Mr. Kileo although he admitted there are two decisions of Arusha DLHT over the same dispute, he only supported his appeal that the DLHT was correct to order re-trial as some of the respondent's witnesses were never given right to be heard.

Having revisited the records of the DLHT, this court noted that there were two different cases which proceeded at the same time. The first one is Execution via Misc. Application No. 195 of 2021 and the second one is Land Appeal No. 17 of 2021. Both cases originated from Application No.



7 of 2020 at Musa Ward Tribunal. This court noted further that, the decision of Misc. Application No. 195 of 2021 was delivered on 29/03/2022 while the decision of Land Appeal No. 17 of 2021 was delivered on 27/10/2022 and both parties appeared in both cases.

It is a trite law that where there is an application for execution and an appeal is filed over the same disputed matter the one who filed an appeal need to file a stay of execution waiting for the determination of an appeal. As it was held in the case of **CRDB Bank PLC v. Finn W. Petersen & Three Others**, Civil Application No. 367 of 2017 (CAT-Unreported) that:

"Unless stay of execution is sought and granted by the court, execution at the High Court will proceed."

Therefore, guided by the cited authority, an appeal shall not operate as a stay of execution unless it has been sought and granted. Thus, taking into consideration the fact that there is no order for stay of execution, it is my considered view that the Hon. Mdachi, Chairman was correct to proceed with the execution.

For that reason, since the execution has already been done over the same disputed land the second decision of Land Appeal No. 17 of 2021 was overtaken by event and is with no merit. Therefore, this court finds merit on the 1st ground of appeal.

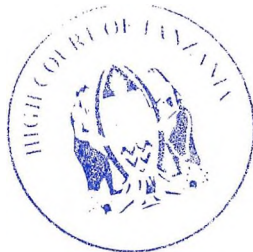


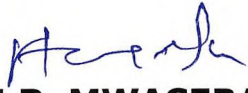
So long as the 1st ground of appeal disposes of the appeal, there is no need to determine the rest of the grounds.

In the event, the appeal is allowed with costs for being meritorious. The decision of Misc. Application No. 195 of 2021 is upheld and the decision of Land Appeal No. 17 of 2021 is hereby quashed and set aside.

Ordered accordingly.

DATED at **ARUSHA** this 22nd day of August, 2023.




N.R. MWASEBA
JUDGE