

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

**SUB-REGISTRY OF THE HIGH COURT**

**AT MWANZA**

**LAND APPEAL NO. 25 OF 2023**

(Arising from Geita District Land and Housing Tribunal in Misc. Application No. 100 of 2022)

**MAGESA MAYOMYA ..... APPELLANT**

**VERSUS**

**MUJI KAPIMA ..... RESPONDENT**

**JUDGMENT**

23/8/2023 & 8/9/2023

**ROBERT, J:-**

This is an appeal against the decision of the District Land and Housing Tribunal (DLHT) for Geita in Misc. Application No. 100 of 2022. The appellant, Magesa Mayomya, is challenging the decision of the DLHT in favor of the respondent, Muji Kapima. The DLHT, in Misc. Application No. 100 of 2022, granted an order for the execution of a decree in Land Appeal No. 20 of 2019, directing the Court broker to handle the landed property described as one acre to the respondent. The appellant, Magesa Mayomya, has challenged this decision on two grounds. The appellant is represented by Mr. Katemi Erick, while the respondent is represented by Mr. Benson Bernard, learned counsel.

The respondent, Muji Kapima, was the decree holder in Misc. Application No. 100 of 2022, seeking to execute a decree issued by the DLHT for Geita in Land Appeal No. 20 of 2019. The DLHT ordered the Court broker to execute the decree by transferring a one-acre piece of land to the respondent. Dissatisfied with this decision, the appellant filed this appeal armed with two grounds:

- (a) That the DLHT erred in law and fact by entertaining the application for execution, which was illegal and irregular.*
- (b) That the DLHT erred in law and fact when visiting the locus in quo by failing to follow legal principles, guidelines, and procedures.*

The appellant seeks various orders, including the quashing of the DLHT's proceedings and orders in Misc. Application No. 100/2022, as well as the proceedings and orders of the DLHT for Geita in Appeal No. 20/2022 and the Ward Tribunal of Kabukiro in Land dispute No. 05/2018.

On the first ground which faults Legality and Regularity of Execution Application, Mr. Katemi Erick, counsel for the appellant argued that the DLHT for Geita had no jurisdiction to entertain the application since the title to the application was addressed to the wrong DLHT for Sengerema instead of the DLHT for Geita, the applicant did not attach a copy of the decree to be

executed, and further that the applicant failed to specify the property for execution. Citing the case of **Audax M. Tibanyendela vs Hamza sued**, Land Revision No. 13 of 2019 (unreported), he contended that the application was tainted with obvious irregularity and illegality as there were no specific size and boundaries of the disputed land stated in the application for execution as required under regulation 3(2) (b) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 G.N. No. 174 of 2003.

In response, Mr. Bernard, counsel for the respondent conceded the error in addressing the application to the wrong DLHT but argued that it was a minor irregularity. He opposed the alleged absence of the attached decree and acknowledged the failure to specify the property for execution.

Upon review, it is evident that the appellant's first ground of appeal has merit. The application for execution did contain significant irregularities, including addressing it to the wrong DLHT, not attaching the decree, and failing to specify the property for execution. These issues are in violation of the law as exemplified by this Court in the case of **Audax M. Tibanyendela vs. Hamza sued** (supra). Consequently, the DLHT's decision to proceed with the execution was tainted with illegality and irregularity.

The second ground of appeal pertains to the DLHT's failure to adhere to legal principles, guidelines, and procedures during its visit to the locus in quo. The appellant claims that parties were not allowed to adduce evidence, and the proceedings lacked crucial information, such as questions asked during the visit and observations made. Citing *Barnabas Ludori vs Registered Trustees of Archdiocese of Mwanza*, Land Appeal No. 67 of 2021 and *Sikuzani Saidi Magambo & another vs Mohamed Roble*, Civil Appeal No. 197 of 2018, the learned counsel argued that the DLHT should have followed specific procedures during its visit. Specifically, he pointed out the lack of evidence regarding questions asked by assessors, observations made by the DLHT, and drawings created during the visit.

In response, Mr. Bernard argued that the DLHT did follow the requisite procedures, including measuring the disputed area and making findings about its size.

Upon review, it is apparent that there were deficiencies in the DLHT's record of the locus in quo visit. The absence of evidence regarding questions asked, observations made, and drawings created during the visit raises concerns about the integrity of the proceedings. This failure to fully


document the visit, as per the standards articulated in the cited cases of **Barnabas Ludori vs. Registered Trustees of Archdiocese of Mwanza** and **Sikuzani Saidi Magambo & another vs Mohamed Roble**, compromises the fairness and transparency of the process. As stated in the cited cases, following proper procedures and documentation are crucial to ensuring a fair and transparent process during locus in quo visits. The DLHT's failure to record proceedings during the visit to the locus in quo raises questions about the visit's integrity.

In conclusion, the appeal is allowed on both grounds. Therefore, this Court orders the following:

- (a) The proceedings and orders of the DLHT for Geita in Misc. Application No. 100/2022 are quashed and set aside.
- (b) The proceedings and orders of the DLHT for Geita in Appeal No. 20/2019 and the Ward Tribunal of Kabukiro in Land Dispute No. 05/2018 are not within the scope of this appeal and remain unaffected.
- (c) The matter is remitted back to the DLHT for proper consideration and fresh hearing of the application ensuring compliance with the law and proper procedure.
- (d) Each party to bear its own costs.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
8/9/2023