

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

**THE SUB-REGISTRY OF MWANZA**

**AT MWANZA**

**LAND APPEAL NO. 20 OF 2023**

*[From Misc. Application No. 108 of 2023 of the District Land  
and Housing Tribunal for Mwanza dated 11/5/2023]*

**RUKIA ABBASI -----APPELLANT**

**VERSUS**

**EDITHA M. MDOWO-----1<sup>ST</sup> RESPONDENT**

**AMOS KIGUMA-----2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

*August 16<sup>th</sup> & 25<sup>th</sup>, 2023*

**Morris, J**

Ms. Rukia Abbasi, the appellant above, is dissatisfied with the ruling of the District Land and Housing Tribunal (DLHT) in Application No. 108 of 2023. She has now appealed to this Court marshalled with four grounds of appeal. In the interest of brevity, I combine them into two major grounds. In a paraphrased architecture, the two grounds are that DLHT erred to rule that Misc. Application No. 108 of 2023 was *res judicata*; and it also erred in Misc.

Application No. 311/2022 to decide that the ward tribunal acted without jurisdiction.

I will recite the background of this matter in brief. The record reveals that the appellant sued the respondents and two other persons (not subject of this appeal) before Nyamanoro Ward Tribunal. Her dispute was registered as application no. 28 of 2021. The trial tribunal, on 15/7/2021, decided in her favor and ordered, among others, the respondents to remove their obstructions including the wall erected near her premises. However, on 11/1/2022 the same ward tribunal allegedly delivered another decision against only two respondents above. Through the subject decision, the respondents were purportedly ordered to leave the blocked areas free and passable within a fortnight.

On 15/8/2022, the appellant applied for execution before the DLHT vide Misc. Application No. 311 of 2022. Incidentally, she attached thereto a copy of the trial tribunal's decision of 11/1/2022. Hon. Mayeye, Chairman, nullified the proceedings and judgement of the ward tribunal on 17/2/2023. The basis for the nullification was that the trial tribunal acted without



jurisdiction in line with ***the Written Laws (Miscellaneous Amendments) (No. 3) Act***, Act No. 5 of 2021 which ousted ward tribunals' adjudicatory jurisdiction over land disputes effective 11/10/2021.

The appellant filed did not challenge the foregoing decision howsoever. Instead, she filled a fresh execution application (Misc. Application No. 108 of 2022) before the same DLHT on 23/3/2023. This application was faced with respondents' Preliminary Objection (PO) that it was *res judicata*. On 11/5/2023, Hon. Kato, Chairperson sustained the PO by holding that the second application was *res judicata* to Misc. Application No. 311 of 2022. It is on such backdrop account that this appeal finally got lodged into this Court by the aggrieved appellant.

During hearing of her appeal, the appellant appeared in person; unrepresented. The respondents were under representation of Advocate Steven Makwega. Regarding the grounds of appeal, it was generally submitted that the DLHT erred because the appellant was pursuing the ward tribunal's decision of 15/7/2021 which was decided while the ward tribunal was still seized with jurisdiction. That is, the cited ***Written Laws***

**(Miscellaneous Amendments) (No. 3) Act** (*supra*) had not been promulgated.

In reply it was submitted that according to section 41 (2) of ***the Land Courts Disputes Act***, Cap 216 of 2019; the appeal against Misc. Application No. 311/2022 was already time barred as it was supposed to be filed within 45 days of the decision. It was also maintained that the decision of Hon. Kato (in Misc. Application No. 108) was *res judicata* as it was the replica of Misc. Application No. 311 of 2022. To the respondents, prayers in both applications were the same and the genesis of each was Nyamanoro Ward Application No. 28 of 2021. In rejoinder, the appellant reiterated that her appeal was within time.

I have impassively considered the submissions by both parties. Deciding this matter, the Court is set to answer two questions: whether the appeal against Misc. Application No. 311 of 2022 is time barred; and whether Misc. Application No. 108 of 2023 was *res judicata*. Contextually, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal are also challenging the decision of Hon. Mayeye in Misc. Application No. 311 of 2022. To the appellant, challenging that

decision is within time. The respondents oppose the same on the basis of it being time barred.

The impugned decision of Hon. Mayeye was delivered in 17/2/2023. As correctly submitted by the respondents' counsel, the appeal from DLHT to this court ought to be filed within 45 days. The present appeal was filed on 1/6/2023 therefore it is out of time. It is a cardinal principle that the issue of time limit touches jurisdiction of the court. See the cases of ***John Barnabas v Hadija Shomari***, Civil Appeal No. 195 of 2018; and ***Muse Zongori Kisere v Richard Kisika Mugendi and 2 others***, Civil Application No. 244/01 of 2019 (both unreported). Therefore, this Court is not clothed with requisite jurisdiction to determine the so-called appeal arising from Misc. Application No. 311 of 2022. It is time barred. The appeal is, thus, partly dismissed to the stated extent.

I will now consider whether Misc. Application No. 108 of 2023 was *res judicata*. For this doctrine to apply there are conditions to meet. In the case of ***the Registered Trustees of Chama cha Mapinduzi v Mohamed***

***Ibrahim Versi and Sons and Another***, Civil Appeal No. 16 Of 2008 (unreported), five conditions were reaffirmed at page 8 that;

- i. The former suit must have been between the same litigating parties or between parties under whom they or any of them claim;
- ii. The subject matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and subsequently in issue in the former suit either actually or constructively;
- iii. The party in the subsequent suit must have litigated under the same title in the former suit;
- iv. The matter must have been heard and finally decided; and
- v. That the former suit must have been decided by a court of competent jurisdiction.

In the matter at hand, the DLHT has jurisdiction to execute decisions of the ward tribunal. I have traversed an application for execution filed in on 15<sup>th</sup> August 2022 under Misc. Application No. 311 of 2022. It sought to execute the decision of Nyamanoro Ward Tribunal in application No 28 of 2011. The respondents were being pursued to demolish the wall which was

overreaching into the applicant's premises and also blocking her way. Under paragraph 4(a) of the application, the applicant-appellant prayed for following mode of execution;

*"Kwamba ukuta uliojengwa na washindwa tuzo unaoziba njia ya mshinda tuzo na ambao pia umevuka vikingi (beacons) za mipaka uvunjwe na kuondolewa kwa nguvu nae neo (sic) libaki wazi."*

Further, in Misc. Application No. 108 of 2023 which was filed on 23<sup>rd</sup> March 2023, the applicant-appellant's prayer under paragraph 4 of the application reads;

*"Kwamba ukuta uliojengwa na washindwa tuzo unaoziba njia ya mshinda tuzo na ambao pia umevuka vikingi (beacons) za mipaka uvunjwe na kuondolewa kwa nguvu na eneo libaki wazi."*

Therefore, what the DLHT was invited to decide on the first application was the same as in the second application. Parties were also the same in both applications save for the addition of two more respondents in the judgement attached to the latter proceedings. Weirdly, there exists two Nyamanoro Ward Tribunal's judgements under the same number (*Shauri Na.*

28/2021) involving almost same parties but delivered on different dates over the same subject matter. From a hasty look at the record, both applications seem to be identical enough to warrant invocation of the doctrine of *res judicata*.

However, a copy of the ward tribunal's decision which was attached to the application for execution in the second application (No 108 of 2023) was decided on 15<sup>th</sup> July 2021; well, early enough before the law was amended to deny ward tribunals the mandate to determine land disputes. Hence, as the ruling by Manyenye was rooted in the ward tribunal's decision of 11<sup>th</sup> January 2022 which was rendered by it without jurisdiction; such decision should not, in my view, be extended to affect the subsequent application which was lawfully given on 15<sup>th</sup> July 2021.

That is, the similarity of parties, prayers and subject matter in both applications as shown above notwithstanding; the ward tribunal's decision dated 15<sup>th</sup> July 2021 is still a valid court decision to date. It can still be executed. The ward tribunal's decision dated 11<sup>th</sup> January 2022 is, however, non-existent for it was quashed on 17<sup>th</sup> February 2023.



In purview of the distinction drawn and analysis made above, therefore, I have to arrive at a conclusion that the second application was not *res judicata* to the former. Consequently, the DLHT erred to decide as it did. The appeal, hence, succeeds on such ground. In effect, therefore, the DLHT decision in Miscellaneous (Execution) Application No. 108 of 2023 dated 11<sup>th</sup> May 2023 (Hon. Kato, Chairperson) is hereby quashed and orders therefore set aside. The DLHT file is accordingly remitted back to the DLHT to continue with execution proceedings.

In fine, the appeal is merited and I hereby allow it. No order as to cost. It is so ordered and right of appeal is fully explained to parties.



**C.K.K. Morris**

**Judge**

**August 25<sup>th</sup>, 2023**

Judgement is delivered this 25<sup>th</sup> day of August, 2023 in the presence of Rukia Abbas (appellant); and Mr. Stephen Makwega, Advocate for the 1<sup>st</sup> respondent (also present) and holding brief of Mr. Erick Mutta; advocate for the 2<sup>nd</sup> respondent (also in attendance).



**C.K.K. Morris**

**Judge**

**August 25<sup>th</sup>, 2023**

