

UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IRINGA REGISTRY
AT IRINGA

LAND APPEAL NO. 21 OF 2023

*(Arising from Land Application No. 96 of 2022 and Originating from
Application No. 12 of 2009 in the District Land and Housing Tribunal for
Njombe at Njombe)*

CHRISTA DANDA.....APPELLANT

VERSUS

TABU GOHAGE.....RESPONDENT

JUDGMENT

Date of Last Order: 19.09.2023

Date of Judgment: 06.10.2023

A.E. Mwipopo, J.

The parties herein have been in court corridors for almost 14 years, tussling in the dispute over ownership of the suit land. Christa Danda, the appellant, successfully sued Tabu Gohage, the respondent, in Application No. 12 of 2009 in the District Land and Housing Tribunal for Njombe District at Njombe (DLHT) for trespassing in the suit land located at Melinze

Idundilanga Village within Township and Region of Njombe. In its ex parte judgment delivered on 26.11.2009, the trial Tribunal found the respondent to be a trespasser to the suit land, declared the appellant to be the lawful owner of the suit land, ordered the respondent to remove/ demolish his house in the suit land within three months from the date of the judgment, and the respondent was ordered to bear the cost of the suit. The respondent was aggrieved and successfully filed Misc. Application No. 26 of 2016 in the DLHT to set aside the judgment of the DLHT in Application No. 12 of 2009.

It was the turn of the appellant to be aggrieved with the decision of the DLHT to set aside ex parte judgment, and she filed Land Revision No. 02 of 2016 in the High Court of Tanzania Iringa Registry. In its ruling dated 17.11.2017, this Court found that the DLHT improperly admitted and dealt with Misc. Application No. 26 of 2016. The High Court nullified and quashed the decision, and its orders were set aside. The respondent was not satisfied with the decision of this Court in Land Revision No. 2 of 2016 and filed Civil Appeal No. 267 of 2018 in the Court of Appeal of Tanzania. The appeal before the Court of Appeal was struck out for incompetence on 19.08.2020.

On 03.10.2022, the appellant filed Misc. Application No. 96 of 2022 in the DLHT for enforcement of the decision of the DLHT in Application No. 12

of 2009. Before hearing of the application for execution, the respondent raised three preliminary objections, including that the application was time barred. The DLHT heard both parties on the objections raised and, in its ruling dated 01.02.2023, sustained the objection that the application for execution was time barred. The application for execution filed by the appellant was dismissed with cost. The appellant was not satisfied with the decision and filed the present appeal.

The petition of appeal filed by the appellant has four grounds of appeal as follows:-

- 1. That, the District Land and Housing Tribunal for Njombe District at Njombe erred in law and facts to dismiss Application No. 96 of 2023 for the execution of the orders of the Tribunal in Application No. 12 of 2009 by holding that the suit was time barred without taking into account the fact that the appellant had a duty in law to await the outcome of three cases between the same parties that had to be decided by the High Court and Court of Appeal of Tanzania before execution processes were commenced. The cases filed in Court included the Civil Appeal No. 267 of 2020, Court of Appeal of Tanzania at Iringa; Misc. Land Application No. 37 of 2020 in the High Court of Tanzania at Iringa Registry; and Land Revision No. 2 of 2016 in the High Court of Tanzania at Iringa Registry.*

2. *That, the District Land and Housing Tribunal for Njombe District at Njombe erred in law and facts in holding that under rule 24 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, G.N. No. 174 of 2003, the decree holder has the right to immediately start execution proceedings without delay whether or not the judgment debtor has appealed to the High Court or the Court of Appeal against the judgment of the tribunal.*
3. *That, the District Land and Housing Tribunal for Njombe District at Njombe erred in law and facts for not taking into account the judgment of the Court of Appeal of Tanzania that held that when the matter is in the High Court or Court of Appeal for appeal purposes, execution in the lower Court must stop and await the outcome of the decision of the High Court or Court of Appeal.*
4. *That, the District Land and Housing Tribunal for Njombe District at Njombe erred in law and facts for not considering the decision of the Court of Appeal in a similar matter between Ahmed Mbaraka vs. Mwananchi Engineering and Construction Co. Ltd, Civil Application No. 229 of 2014, Court of Appeal of Tanzania at Dar Es Salaam, (unreported).*

On the hearing date, the appellant was represented by Advocate Omary Khatibu and the respondent was represented by Advocate Morice Mwamwenda. The hearing proceeded orally.

The counsel for the appellant abandoned the 2nd, 3rd and 4th grounds of appeal and submitted only on the 1st ground of appeal. In support of the

1st ground of appeal, the counsel said the law is settled that whenever there is a pending case in the Superior Court, the lower Court is automatically ousted jurisdiction to entertain the matter. In this case, upon the judgment delivered on 24.11.2009 by the DLHT, the respondent immediately preferred application before this Court registered as Misc. Land Application No. 37 of 2020. Also, there was a pending revision before the High Court registered Revision No. 2 of 2016. All these cases ended in the favour of the appellant. The counsel was of the view that the appellant was barred from executing the judgment of the DLHT pending the determination of the two cases before the High Court. Further, there was a pending case between the same parties in the Court of Appeal registered as Civil Appeal No. 267 of 2018 which was struck out for being incompetent. The appellant failed to execute the decision of the DLHT as there were pending cases in Court.

In his reply, Mr Morice Mwamwenda opposed the appeal. He said that the appellant filed application No. 96 of 2022 in the Njombe DLHT out of time. There was no pending case before the Superior Court to affect or oust the application for execution filed by the appellant. The appellant filed Revision No. 02 of 2016, which could not stop the appellant from executing her decree in Application No. 12 of 2009. At the same time, the respondent

was trying to set aside an exparte judgment of the trial DLHT in Application No. 12 of 2009. During all this time, there was no pending execution application before trial DLHT in respect of its decision in Application No. 12 of 2009. It was in 2022 when the appellant filed Application No. 96 of 2022 to execute the decree of judgment of trial DLHT in Application No. 12 of 2009. The applicant was supposed to apply for an extension of time to file an execution application, which was filed out of time. Parties have been in Court for 14 years where the appellant is instituting one case after another. The decision of the DLHT in Application No. 12 of 2009 is not executable as the disputed land is unknown, and there is no description of the suit land in the impugned decision and decree.

In his rejoinder, the counsel for the applicant said that the trial DLHT declared in Application No. 12 of 2009 that the respondent was a trespasser and had to remove her house from the suit land. After the appellant had filed Application No. 96 of 2022 for execution, the respondent raised the issue of the description of the suit land is not known. But, the trial DLHT did not determine the issue. The application for execution was dismissed in the case of time limitation. Thus, the application for execution was disposed of for being time barred.

From the rivalry submissions, the issue for determination is whether the appeal has merits.

There is no dispute that the appellant is a decree holder in Application No. 12 of 2009 in the District Land and Housing Tribunal for Njombe District at Njombe between the parties herein. The trial DLHT delivered its ex parte judgment on 24.11.2009. On 03.10.2022, the appellant filed Application No. 96 of 2022 in the DLHT for execution of the decree in Application No. 12 of 2009. The DLHT dismissed the application for execution for being time barred. The appellant claims that the DLHT erred in dismissing the application on the issue of time limitation as it is a settled law that, where there is a pending case in the Superior Court, the lower Court automatically ousted jurisdiction to entertain the matter. The respondent contended that there was no application for execution filed by the appellant in the DLHT, and no pending case before the High Court could have hindered the appellant from filing the execution application within time.

The Land Disputes Courts Act, Cap. 216 R.E. 2019 provides for the power of the Minister to make regulations prescribing the practice and procedure of the District Land and Housing Tribunals and the execution of decisions and orders thereof. The Minister made the Land Disputes Courts

(the District Land and Housing Tribunal) Regulations, 2003, G.N. No. 174 of 2003, prescribing the procedures, practice and executions for the decisions and orders of the tribunal. The regulations are silent on the time limitation for applying for execution of the decree, but it provides in regulation 23 (1) that a decree holder has to apply for execution of the decree as soon as practicable after the pronouncement of the decision. The Regulations provide further in the proviso in regulation 24 that an appeal shall not be a bar to the execution of a decree or order of the tribunal.

Where the Regulations are inadequate, section 51 (2) of the Land Disputes Courts Act provides that the District Land and Housing Tribunals shall apply the Civil Procedure Code. The Land Disputes Courts Act further provides section 52 (2) that the Law of Limitation Act shall apply to proceedings in the District Land and Housing Tribunal and the High Court in the exercise of their respective original jurisdiction.

The Civil Procedure Code Act, Cap. 33 R.E. 2019 provides in section 39 (1) for the limitation time for execution to be 12 years. The section reads as follows:-

"39.-(1) Where an application to execute a decree, not being a decree granting an injunction, has been made no order for the execution of

the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

(a) the date of the decree sought to be executed;”

Likewise, the law of limitation Act, Cap. 89 R.E. 2019 provides in section 3(1), read together with Item 20 Part III of the Schedule thereto, that the time limitation for enforcing a judgment, decree or order of any court is 12 years. Thus, the law is settled that the application for execution has to be made before the expiration of twelve years from the date of the decree sought to be executed.

As the decision the appellant intends to enforce its decree was delivered on 24.11.2009 in her presence, she was supposed to apply for execution by 23.11.2021. The appellant applied for execution in the DLHT on 03.10.2022. There is no dispute that the appellant applied for execution after the time limitation of the law expired.

The appellant is of the view that the time at which the parties were prosecuting other cases was supposed to be excluded by the trial DLHT. The respondent averred that the said cases did not block the appellant from applying for execution within time. I agree with the respondent that the said cases filed by the respondent did not stop the appellant from enforcing the judgment of the DLHT. The Land Disputes Courts (the District Land and

Housing Tribunals) Regulations, 2003, provides in the proviso of regulation 24 that an appeal shall not, in any case, be a bar to the execution of a decree or order of the tribunal. The Court of Appeal stated a similar position in the case of **Jonas Bethwel Temba vs. Paulo Kisamo and Another**, Civil Application No. 17 of 2014, Court of Appeal of Tanzania at Arusha, (unreported), where the Court held, among other things, that the institution of an appeal shall not operate to suspend any sentence or to stay an execution. In **CRDB Plc vs. Finn W. Petersen & Others**, Civil Application 367 of 2017, Court of Appeal of Tanzania at Dar Es Salaam (unreported), it was held on page 12 of the judgment that:-

".....the legal position remained to be that unless a stay of execution is sought and granted by the Court, execution at the High Court will proceed."

From the above cited cases, the position is clear that the presence of an appeal or any case between parties in any Court does not bar the execution of the decree.

In this case, the appellant did not make any effort to file any application for execution before the expiry of 12 years time limitation provided by the law. It was on 03/10/2022 when the appellant filed Application No. 96 of 2022 in the DLHT for the execution of the decision of

the DLHT in Application No. 12 of 2009, which was delivered on 26/11/2009. The application for execution was delayed for almost ten months.

Under regulation 24 of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, G.N. No. 174 of 2003, the appellant was supposed to file an application for execution despite the presence of appeal, revision, and application in any Court. After the decree holder had applied for the execution of the decree within time, it was upon the judgment debtor to apply to the tribunal for a stay of execution under regulation 25 (1) of the G.N. No. 174 of 2003. Thus, the trial District Land and Housing Tribunal properly dismissed the application for execution for being filed after the expiry of the time limitation provided by the law.

Therefore, the appeal is devoid of merits, and I dismiss it. As the appeal originated from the decision in the execution application, each party shall bear its own cost of this suit. It is so ordered accordingly.

A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

A.E. MWIPOPO

JUDGE

06/10/2023