

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT MOSHI

MISC. LAND CASE APPEAL NO. 6 OF 2023

(C/F Application for Execution No. 01 of 2023 of the District Land and Housing
Tribunal for Mwanga at Mwanga)

IDDI SAIDI ANGOVI APPELLANT

VERSUS

SALIMINI SAIDI ANGOVI RESPONDENT

JUDGMENT

22/11/2023 & 13/12/2023

SIMFUKWE, J.

This appeal emanates from the ruling of the District Land and Housing Tribunal for Mwanga at Mwanga (the District Tribunal) dated 14th June, 2023. Before the District Tribunal, the appellant herein instituted application to execute the decision of Kifula Ward Tribunal in Shauri Na. 1 of 2020. The respondent herein challenged the said Application by raising eight grounds of objection as reproduced hereunder:

- 1. Maombi haya hayapo Barazani kihalali kwa sababu hayakulipiwa ada ya Serikali. Hati ya maombi haionyeshi chochote kuhusu ada hiyo wala nambari ya stakabadhi havipo.*
- 2. Maombi hayo hayako kihalali mbele ya Baraza kwa vile yameandikwa kienyeji badala ya kuletwa kwenye fomu maalum kulingana na sheria.*
- 3. Maombi haya hayako kihalali mbele ya Baraza kwa vile yanataja mambo ambayo hayamo kwenye hukumu. Aya ya tatu, kwa mfano, inataja TUZO/AMRI lakini vitu hivi havikuletwa mbele ya Baraza na au kama vimeletwa mimi sikupewa nakala.*
- 4. Hukumu ambayo inaombewa kukaziwa ni batili kwa sababu baraza la kata halikuwa na mamlaka ya kusikiliza shauri lenye thamani kubwa kuliko uwezo wa baraza hilo kisheria.*
- 5. Hukumu inayotakiwa kukaziwa ni batili kwa vile haikuwahi kusomwa na kama ilisomwa, ilisomwa kinyume na sheria za nchi. Imeandikwa tu "Hukumu leo*

tarehe 9/12/2021" lakini siku hiyo ilikuwa siku ya mapumziko ya kitaifa.

6. Maombi haya hayawezi kukubalika kwa sababu hukumu ambayo inazaa maombi hayo imelalamikiwa mbele ya Baraza hili, na Baraza halijatoa hukumu au uamuzi kuhusu malalamiko hayo.

7. Maombi ya muombaji yanapingwa kwa vile kulingana na maelezo ya muombaji, eneo la kukazia hukumu halifahamiki.

Anaomba Dalali kwanza arudishe mipaka inayodaiwa kung'olewa. Hii siyo kazi ya Dalali. Pia muombaji anataka Dalali huyo afuate ramani lakini baraza hilo halikuchora ramani yoyote ingawa linadai kuzuru eneo husika. Hakuna ramani yoyote kwenye hukumu wala kwenye maombi yake. Kukubali maombi haya ni kuibua migogoro mipya.

8. Hukumu ya baraza la kata ni batili kwa sababu muombaji katika baraza hakuwa na sifa za kuleta maombi hayo mbele ya baraza na baraza halikuwa na uwezo juu ya ardhi hiyo ambayo ilikuwa chini ya

usimamizi wa mirathi. Chombo sahihi kuhusu mgogoro wowote kwenye ardhi hiyo ni Mahakama ambayo ilifunguliwa masuala ya mirathi ya Marehemu Saidi Angovi yaani baba yetu, mimi na Iddi. Na jalada la mirathi hiyo bado liko wazi. (Taz. Mirathi Na. 4 ya 1995 katika Mahakama ya Mwanzo Ugweno)

The District Tribunal sustained the 5th ground of objection and nullified the whole proceedings and set aside the judgment and orders of the Ward Tribunal. The appellant was aggrieved, he preferred the instant appeal under the following grounds of appeal:

- 1. That, the District Land and Housing Tribunal solemnly erred in law for departing and failure to be bound by the decision of the Court of Appeal of Tanzania in as far as execution proceedings is concerned.*
- 2. That, the District Land and Housing Tribunal solemnly erred in law since it treated application for execution as an appeal or revision while the same was neither an appeal nor revision.*

3. *That, the District Land and Housing Tribunal solemnly erred in law for departing from a well-established principle of law that a party cannot be punished by errors committed by court since duty of the court is to administer justice and not to punish litigants*
4. *That, the District Land and Housing Tribunal solemnly erred in law for failure to consider section 15(1) and (2) of the Ward Tribunal Act [CAP. 206 R.E.2002]*
5. *That, the District Land and Housing Tribunal solemnly erred in law for failure to abide with the principle of overriding objectives for interest of justice.*

At the hearing of the appeal which was conducted *viva voce*, the appellant was represented by Mr. Salehe Salehe learned advocate while the respondent enjoyed the service of Mr. Emmanuel Ntungi and Mwakisiki Mwakisiki, the learned advocates.

On the outset, Mr. Salehe adopted all the grounds of appeal. He submitted jointly on the first and second grounds of appeal which are to the effect that the District Land and Housing Tribunal misdirected itself by failure to be bound by the decision of the Court of Appeal of Tanzania in the case

of **Hossea Kihwelo and 5 Others versus Abdallah Ramadhani Mkumba**, Civil Revision No. 347/17 of 2018 (CAT), at page 13 where the Court held that:

"The reason being that a judgment of a court cannot be quashed in an execution proceeding. There should be an appeal or revision before the higher tribunal."

Mr. Salehe explained that what was before the trial tribunal was an application for execution and not revision or appeal. Thus, the Chairman had no jurisdiction to quash the proceedings and the judgment of the Ward Tribunal as he was bound by the decision of the Court of Appeal in the case of **Hossea Kihwelo** (supra). He argued that, they cited the said case before the trial tribunal and the Hon. Chairman referred to it, but he did not say why he decided to depart from it.

Supporting the third ground of appeal that the Tribunal departed from the established principle of law that a party cannot be punished by errors committed by the court, Mr. Salehe contended that, it is trite law that courts do exist for doing justice between the parties and not for punishing them. That, it is a well-established principle of law that the object of the

court is to decide the rights of the parties and not to punish them for mistakes committed by the court in the conduct of the case. That being the case, the court has to focus on the rights of the parties and not legal technicalities in the due course of dispensation of justice.

Mr. Salehe argued further that the Hon. Chairman violated this principle by delivering a decision which seems to be a punishment to the parties on a mistake committed by the Ward Tribunal which was not correct. That, the appellant had no control of the proceeding of the Ward Tribunal. What was erred by the Ward Tribunal was a mere slip of a pen which was not occasioned by the appellant. He implored this court to be guided by the decision of the Court of Appeal in the case of **Tanzania Sewing Machines Company Limited v. Njake Enterprises Limited**, Civil Application No. 56 of 2007 at page 7, first paragraph.

It was the opinion of Mr. Salehe that if the District Tribunal found that it could not rectify the error, it could have remitted back the case file to the Ward Tribunal for rectification of the date to read 06th instead of 09th.

In respect of the fourth ground of appeal, it was complained that the District Tribunal failed to consider **section 15 (1) and (2) of the Ward**

Tribunal Act, Cap 206 R.E 2002 which is to the effect that the Tribunal shall not be bound by any rule of evidence and that it shall regulate its own procedure. He was of the view that the rationale of the said provision is easy access to the Ward Tribunal. He maintained that, the District Tribunal erred by overlooking that provision of law and quashing the decision of the Ward Tribunal. He supported his contention with the case of **Yakobo Magoiga Gichele v. Penina Yusuf**, (Civil Appeal 55 of 2017) [2018] TZCA 222 (09 October 2018) Tanzlii, in which the Court of Appeal insisted that Ward Tribunals are not bound by rules of evidence and that it should have regard to substantive justice and not technicalities. On that basis, Mr. Salehe implored this court to be guided by the cited decision as there is no prejudice on part of the respondent which will be occasioned if the judgment will show that it was delivered on 06/12/2021 and not 09/12/2021. That, even in his submission, the respondent did not state how he was prejudiced by the said date. Fortunately, the records of the Ward Tribunal show that the respondent waived his right to be heard. Based on what he stated, Mr. Salehe established that nothing can justify the act of the District Tribunal to quash the proceedings of the Ward Tribunal.

On the last ground that the District Tribunal erred in law for failure to abide with the principle of overriding objectives for interest of justice; Mr. Salehe submitted that, it is a cardinal principle that a country whose administration of justice did not afford redress in a case of this matter; would not be a state of civilization. He said, an application for execution was dismissed erroneously as the main case had already been determined by the Ward Tribunal. That, it was unfortunate that the respondent had never appealed against the said decision, and he had withdrawn his application for revision. Thus, there was no pending case which warranted the quashing of the decision of the Ward Tribunal. That, Since the respondent had waived his right to be heard, in such circumstances, the decision of the District Tribunal can only be allowed in uncivilized state. He cemented his statement by referring to the case of **Angelo K. Mzali v. Aloyce M. Chalamila [1980] TLR 83**. He added that, The District Tribunal erred even by assuming the jurisdiction which it did not possess as it failed to comply to **section 45 of the Land Disputes Courts Act, Cap 216 R.E 2019**. That, what was termed as irregularity did not go to the merit of the case. He also supported his argument by citing **section 3A and B of the Civil Procedure Code, Cap 33 R.E 2019**. He urged this court to be guided with the case of **Zahara Mingi v. Athumani**

Mangapi (Civil Appeal 279 of 2020) [2023] TZCA 212 (02 May 2023), Tanzlii.

In conclusion, he prayed all the grounds of appeal and this appeal be allowed.

In reply, Mr. Mwakisiki started by adopting their reply to form part of their submission. Replying the first and second grounds of appeal that the Chairperson misdirected himself by not complying to what was stated in the case of **Hossea Kihwelo** (supra), Mr. Mwakisiki submitted that the Hon. Chairperson directed himself properly by complying to all procedures of the District Land and Housing Tribunals. He stated that, execution of decrees and orders of District Tribunals are guided by **Regulation 23 (1) to (5) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, GN No. 174 of 2003. That, the learned Chairperson invited objections as provided under the law and the respondent herein filed eight objections, why the decree should not be executed. The Chairperson found one of the objections to have merit, that the judgment was delivered on a public holiday.

He submitted further that, in administration of justice, Courts and tribunals are guided by **Article 107A (2) (a) to (e) of the Constitution of the United Republic of Tanzania**, 1977, as amended from time to time which prescribes principles to be considered in administration of justice. One of the said principles is impartiality. He asserted that the act of the Ward Tribunal of delivering judgment on the public holiday raised doubts as to the impartiality of the Ward Tribunal. The learned advocate was of the view that, the judgment which was delivered on 09/12/2021 was illegal for the Ward Tribunal being impartial in hearing the parties.

Further to that, Mr. Mwakisiki noted that it is a principle of law that, justice should not only be done, but be seen to be done. He was of the view that delivering judgment on that date definitely showed that justice was not done. Therefore, the Chairperson was justified to overturn that judgment as he was upholding the principles prescribed under **Article 107 of the Constitution**. He added that, since the said judgment was illegal, there was nothing to execute before the District Tribunal.

Replying to the argument that the judgment cannot be quashed in execution proceedings. He questioned the essence of calling for objections under **Regulation 23 of GN No. 174 of 2003**? He was of the opinion

that the essence of calling for objections are: ***First***, to inform the court or tribunal if there is anything which may render the judgment inexecutable; ***second***, to avoid a party to benefit from an illegal judgment. He opined further that the principle can be relaxed where there is an illegality on the face of the record. That, in a situation for instance if the District Tribunal could have allowed execution of the judgment, and the judgment debtor decides not to appeal or apply for revision, then there would be that possibility of the judgment creditor to benefit from an illegal judgment. On the allegation that execution proceeding was treated as an appeal or revision, he said that such argument is not supported with **regulation 23** (supra).

Based on that submission, Mr. Mwakisiki concluded that the first and second grounds of appeal have no merit and the same should be dismissed.

Replying on the third ground of appeal that it is the duty of the court to determine rights of the parties and not to punish them for mistakes/errors occasioned by the court itself, Mr. Mwakisiki submitted that by saying so, basically, Mr. Salehe was conceding that there was an error. He said that, the principle should also be relaxed where the error occasioned by the

court has caused injustice to the adverse party. He distinguished the cited decision of **Tanzania Sewing Machines Company Limited** (supra) by stating that such case concerned a decree which was not properly signed while the present case is in respect of the judgment which was written that it was delivered on 09/12/2021.

Countering the argument that the date 09/12/2021 was a slip of the pen which does not go to the root of the matter, Mr. Mwakisiki insisted that, it is obvious that the judgment was delivered on 09/12/2021 which raises questions as to the impartiality of the tribunal.

Mr. Ntungi proceeded to submit on the fourth ground of appeal where it was argued that the District Tribunal overlooked **section 15 of the Ward Tribunal Act**. It was his submission that the District Tribunal directed itself properly considering the fact that **regulation 23 of GN No. 174 of 2003** governs executions of decrees and orders whereas the tribunal is empowered to invite parties to raise objections against the execution. That, it is a cardinal principle that the duty of the court or tribunal is to assist parties to reach proper decisions that are not arbitrary to another party. Mr. Ntungi reiterated that, delivering a judgment on 09/12/2021 which was a public holiday was contrary to **Article 107A of the**

Constitution (supra) as the same raised doubts as to the principle of impartiality of the Ward Tribunal. He submitted further that **section 15 of the Ward Tribunal Act** does not authorise Ward Tribunals to infringe rights of other parties.

Concerning the cited case of **Yakobo Magoiga Gichere** (supra) which concerns an overriding objective principle; Mr. Ntungi submitted that the said principle cannot be invoked to condone illegality.

On the fifth ground of appeal, Mr. Ntungi submitted that delivering a judgment on 09/12/2021 which was a public holiday was contrary to **Article 107A of the Constitution** (supra) and depriving parties their basic rights of being heard on a right time and right place. That, the Ward Tribunal was biased by delivering judgment on a public holiday.

Mr. Ntungi averred that, if our laws had no remedy in the scenario like in this case, then, the respondent could have lost his rights because of the mistakes committed by the Ward Tribunal by delivering a judgment on a public holiday. He was of the view that the entire appeal should be dismissed for lack of merit in law with costs. He prayed this court to uphold

the respondent's arguments and confirm the decision of the District Tribunal.

In rejoinder, Mr. Salehe contended that the submission of the learned counsels for the respondent is pure misdirection as they were not disputing that the respondent had a right to file objections. He explained that, what is contested is that the Chairperson had no powers to quash proceedings and judgment of the Ward Tribunal as **Regulation 23 of GN No. 174/2003** does not empower him to do so and the learned counsel has failed to cite any such provision because it is not there. That, if the law had aimed to empower the Chairperson to overturn the decision of the Ward Tribunal in Execution proceeding, it could have stated. He urged this court to be guided by the case of **Hossea Kihwelo** (supra) as the learned counsel failed to cite any decision which overruled such decision. He said this court cannot depart from the decision of the Court of Appeal as it was held in the case of **Johnson Amir Garuma v. The Attorney General and 2 Others** (Civil Appeal 206 of 2018) [2023] TZCA 116 (15 March 2023) Tanzlii.

Furthermore, Mr. Salehe submitted that there must be end in litigations. He said that the respondent had not appealed against the impugned

decision; thus, he was not supposed to benefit from raising objections in the execution proceeding. The issue of illegality of the judgment cannot be challenged in execution. It can only be challenged through appeal or revision. Concerning their prayer to remit the case file to the Ward Tribunal for correction, Mr. Salehe stated that, the learned counsels for the respondents had not said anything. He assumed that they had conceded to it.

On the third ground of appeal, Mr. Salehe clarified that the same had not contested their submission. He prayed their cited case to be confirmed as nothing was cited to contradict it. He reiterated their submission in chief.

In respect of the fourth and fifth grounds of appeal, Mr. Salehe reiterated his submission in chief. Concerning the issue of being prejudiced, Mr. Salehe argued that the same is a mere statement from the bar as it is not in the record. He prayed the same to be disregarded. He emphasised that the respondent was not prejudiced as he had deserted his right unceremoniously. He stated that, no one should benefit from his own wrong. That, the law provides the principle of estoppel where one has waived his right against the decision to complain concerning the outcome of the said decision. He cemented his submission with the case of **Haji**

Shame and Another v. R [1987] TLR 70. He was of the view that the fourth and fifth grounds of appeal have merits based on the overriding objective principle and balance of convenience. Thus, the District Tribunal erred by quashing the decision of the Ward Tribunal and remitting the matter for correction was the best option for both parties. He prayed this matter to be remitted back to the District Tribunal to be determined on merit.

Having gone through the lower Tribunal's records, the grounds of appeal and the parties' detailed submissions, the issue is ***whether this appeal has merit.***

As stated in the introductory part of this judgment, in the application for execution which was placed before the District Tribunal, the judgment debtor raised the objections noted herein above. The learned Chairperson sustained the fifth objection. While addressing the 5th ground of objection, at page 6 of the ruling it was observed that:

"Katika kalenda tarehe 9 Desemba ya kila Mwaka hapa nchini ni sikukuu ya uhuru ambayo ni siku ya mapumziko kitaifa kama mshindwa Hukumu alivyoelezea. Chombo

kama baraza la kata na mahakama zingine haziwezi kufanya kazi siku hiyo kwa maana hiyo Hukumu haiwezi kutolewa siku ya sikukuu.”

At page 7 the learned Chairperson observed further that:

"Chombo chochote cha kutoa haki kinapaswa kiwe na uadilifu ili haki ionekane imetendeka. Katika Shauri la Kata baraza (sic) kumbukumbu zinaonyesha kuwa Hukumu ilisomwa tarehe 9/12/2021. Hapo baraza lilikosa uadilifu liliposoma Hukumu siku ya mapumziko.

Kumbukumbu zinaonyesha kuwa "Na Hukumu ya Shauri hili itasomwa Jumatatu ijayo tarehe 9/12/2021 saa tatu asubuhi" Tarehe 9/12/2021 ilikuwa ni Alhamisi na si Jumatatu kama ilivyoandikwa. Kwa utata huo inafanya mwenendo mzima wa Shauri la kata kuwa batili hivyo sababu hii ina mashiko na inakubalika.”

Finally, at page 9 the Chairperson concluded that:

"Kwa kuwa maamuzi ya Shauri la baraza la kata yanaonekana kufanyika siku ya mapumziko hapakuwa na

uadilifu wa kutosha kwa upande wa baraza kwani siku ya sikukuu si siku ya kazi inakuwaje baraza hilo la kata lifanye shughuli zake. Je kulikuwa na uharaka gani wa kutoa maamuzi siku ya sikukuu ambayo ilikuwa siku ya Alhamisi wakati Ijumaa ilikuwa siku ya kazi.

Pingamizi la tano (5) linabatilisha mwenendo mzima wa Shauri baraza la kata Kifula pamoja na Hukumu na amri zake...”

It is from the above findings that Advocate Salehe for the appellant on the 1st and 2nd ground of appeal argued that the Chairperson treated the application for execution as an appeal or revision. He claimed that the District Tribunal departed from the decision of the Court of Appeal in the case of **Hossea Kihwelo and 5 Others vs Abdallah Ramadhani Mkumba** (supra) which is to the effect that a judgment or ruling cannot be quashed in execution proceedings. There should be an appeal or revision before the higher tribunal.

Mr. Mwakisiki vehemently disputed that assertion. He alleged that the Chairperson invited the objection pursuant to the law. He emphasized that

the act of the Ward Tribunal of delivering judgment on public holiday, raised doubts as to the impartiality of the Ward Tribunal as envisaged under **the Constitution of the United Republic of Tanzania** (supra). He was of the view that the essence of calling for objections is to inform the Court or Tribunal if there is anything which may render the judgment inexecutable and to avoid a party to benefit from an illegal judgment. Mr. Ntungi added that, **regulation 23 of GN No. 174 of 2003** governs executions of decrees and orders whereas the tribunal is empowered to invite parties to raise objections against the execution.

I agree with Mr. Mwakisiki that among the essences of inviting objections in execution proceedings is to see if there is any point of law which may render the judgment inexecutable. Also, I agree with Mr. Ntungi's contention that under **regulation 23 of GN 174 of 2004**, the District Tribunal is empowered to entertain objections against applications for execution.

Much as I agree with their arguments, with due respect to learned advocates, looking at the nature of the raised objection which disposed of the application for execution, the same does not fit their arguments. It is trite law that in applications for execution, the court, including Tribunals

are not allowed to quash the judgment which it is executing. Quashing the judgment is done on appeal or revision as stated in the case of **Hossea Kihwelo** (supra) which was cited by Mr. Salehe for the appellant.

In the present matter, there was no appeal or revision as the District Tribunal was dealing with an application for execution. That is, the District Tribunal was not exercising its jurisdiction in any of the two mentioned remedies. The objection which was raised was challenging the decision sought to be executed. By nullifying the proceedings of the Ward Tribunal, the Chairperson ended up punishing the appellant for an error committed by the Ward Tribunal as rightly stated by Mr. Salehe for the appellant under the 3rd ground of appeal. I am of considered opinion that it was improper for the District Tribunal to assume revisionary powers by nullifying the proceedings and quashing the judgment of the Ward Tribunal.

Mr. Mwakisiki for respondent was of the view that, if the District Tribunal could have allowed execution of the judgment, there would be possibility of the judgment creditor to benefit from an illegal judgment. With due respect to Mr. Mwakisiki, the court/ Tribunal cannot nullify the judgment which is tabled before it for execution. If the respondent was of the

opinion that there was an error in the said decision, he should have raised the same on appeal or revision. Unfortunately, Mr. Mwakisiki failed to distinguish the cited decision of the Court of Appeal in the case of **Hosea Kihwelo**, which squarely fits the circumstances of this case.

In the event, I am satisfied that this appeal has merit. I therefore quash the entire proceedings conducted at the District Tribunal and set aside the ruling and orders dated 14/06/2023. Hence, I allow this appeal with costs. The matter should be remitted back to the District Tribunal for execution before another Chairperson. Appeal allowed with no order as to costs.

It is so ordered.

Dated and delivered at Moshi this 13th day of December, 2023.



X

S. H. SIMFUKWE

JUDGE

Signed by: S. H. SIMFUKWE

13/12/2023