

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
ARUSHA SUB REGISTRY  
AT ARUSHA**

**LAND REVIEW APPLICATION NO 2 OF 2023**

*(C/f the Land Revision No 06 of 2021 before the High Court at Arusha, originating from Application for execution No 75/2007 and Appeal No 61 of 2012 at the District Land and Housing Tribunal of Arusha and Application No 44 of 2007 at Mateves Ward Tribunal)*

**LONGUTUTI METISHOOKI .....APPLICANT**

**VERSUS**

**GODFREY MELAMI .....RESPONDENT**

**RULING**

02<sup>nd</sup> October & 11<sup>th</sup> December, 2023

**KAMUZORA, J.**

The Applicant Longututi Metishooki instituted this application seeking this court to review its own decision in Land Revision No. 06 of 2021 which was delivered on 25<sup>th</sup> July, 2022. The purpose of this application as depicted under the memorandum of review is for this court to review its decision to make it tally with the prayers sought by the Applicant in the Chamber application as the omission include an order of evicting the Respondent from the suit land.

The relevance and essence of this application is premised on the background of matter back in 2007 at Mateves Ward tribunal in Application No 44 of 2007 where the Applicant sued the Respondent and the judgment and decree were entered in favour of the Applicant herein. The Applicant made an application for the execution before the DLHT and the Respondent applied for a stay of execution. However, application for stay of execution was overruled and Majembe Auction Mary & Debt Collectors were appointed to execute the order of the Ward tribunal. The court broker filed its report on 30/04/2009 but it is unfortunate that the tribunal in the execution process did not comply to the requirement of law under regulation 30 of the Land Disputes Courts (the District Land and housing tribunal) regulations, 2002 GN. No 174 of 2003 but assessing the execution and satisfy itself if the same was well effected.

The marathon in the corridors of courts and tribunals never stopped as Respondent herein also filed an appeal against the decision of Ward tribunal to the District Land and Housing Tribunal for Arusha in Appeal No 61 of 2012. The decision was made directing parties to file revision application the decision which neither party adhered to. It is unfortunate that the district land and Housing tribunal signed an execution order in favour of the Respondent and Lumaliza investment & Court Brokers was

appointed to handle the land to the Respondent contrary to its previous order hence, two conflicting decisions by the same tribunal.

The Applicant again filed a fresh Land Case before this Court claiming the recovery of the same land, the conflicting decisions of the DLHT was noted by this court and directed that the same would be cured by filing the revision application before this court. This made the Applicant herein to lodge before this court Land Revision No. 06 of 2021 faulting the proceedings and decision of the District Land and Housing Tribunal of Arusha at Arusha in Application for Execution No 75 of 2007 and Appeal No 61 of 2012 originating from Application No 44 of 2007 at Mateves Ward Tribunal. The decision of this court was made in favour of the Applicant herein. However, there was misunderstanding as to the order of the court in Revision application No. 6 of 2021 and that triggered the current review application in which the Applicant is seeking this before this court for an order that the Respondent be evicted from the Disputed land.

When the matter was called for hearing, Ms. Frida Magesa appeared for the Applicant but the Respondent appeared in person. In her submission in support of the Application, Ms. Magesa argued that, this court's decision quashed the decision of the DLHT in Appeal No 61

of 2021 and the execution thereon thus there was a need for this court to order for eviction of the Respondent from the disputed area. She contended that after this court gave its decision, she approached the DLHT to proceed with execution by evicting the Respondent but the DLHT was refrained on account that there were no directives to that effect.

The counsel for the Applicant was of the view that since Appeal No 61 of 2012 before the DLHT was quashed and set aside, the Respondent had no rights to continue occupying the disputed property. It is the Applicant's prayer that this court be pleased to order the eviction of the Respondent from the disputed property so as required by Regulation 30 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation, 2002 GN. No 174 of 2003.

In reply, the Respondent submitted that in Revision No 6 of 2021 he was represented by Mrs. Aziza Shakale who forgot to submit some of the exhibits in relation to Land case No. 61 of 201. It is the Respondent's submission that, he is in occupation of the suit property after being handled the same with the court broker. The Respondent claimed to have appealed to the Court of Appeal against the decision of this court in Land Revision No. 6 of 2021 and the said appeal is

registered as Appeal No. 111 of 2022. It is thus the Respondent's prayer that this application be stayed pending the determination of the appeal by the Court of Appeal.

In her rejoinder, Ms. Magesa submitted that if there was any missing document it was within the knowledge of the Respondent's advocate and the same would have been submitted before this court. On the claim that there is pending matter before the court of appeal, she responded that the same is not true. The Applicants counsel insisted that, there is no any decision that gave the Respondent any right over the disputed property.

The counsel for the Applicant also disputed the Respondent's allegation that there is a pending appeal before the court of appeal. She submitted that the case registered as number 111 of 2022 is an application for leave filed before this court whose decision is yet to be made and not an appeal before the court of appeal as alleged by the Respondent.

The powers of this court to review its orders is governed by section 78 (l)(a)(b) read together with Order XLII, Rule 1(1)(a)(b) of CPC Cap 33 R.E 2019. For easy of reference Order XLII Rule 1 states,

*"Rule 1.- (1) "Any person considering himself aggrieved -*

*(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or*  
*(b) by a decree or order from which no appeal is allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order"*

In the case of **East African Development Bank vs Blueline Enterprises Limited** (Civil Application 47 of 2010) [2011] TZCA 53 Tanzlii, the Court cited with approval the case of **Peter Ng'homangi Vs.Gerson A. K. Mwanga and another**, Civil Application No 33 of 2002 where it was held that,

*"It is no gainsaying that no judgment, however elaborate it may be can satisfy each of the parties involved to the full extent. There may be errors or inadequacies here and there in the judgment. But these errors would only justify a review of the Court's judgment if it is shown that the errors are obvious and patent."*

Subscribing to the reasoning in the above cited case and applying the same principle in the current case, I agree with the Applicant that

the decision of this court in Land Revision No 06 of 2021 was made in favour of the Applicant herein. Upon this court quashing and setting aside Appeal No. 61 of 2012 and its execution process thereto, it is apparent that the occupation of suit property by the Respondent could not stand thus, he lacks legal basis for his continuing occupation and possession of the disputed property.

This court further directed the compliance of Regulation 30 of the Land Disputes Courts (The DLHT) Regulations, 2002 GN No. 174 of 2003. The said Regulation prescribes for execution action to be taken by the tribunal upon receipt of execution report from the appointed tribunal broker. The Tribunal never concluded all execution stages for anyone to conclude that the execution in favour of the Applicant herein was completed. Thus, it was the duty of the trial tribunal upon receiving the brokers report, to assess if the judgment debtor was in occupation of the suit property and issue eviction order thereto. That was not so done and that was the essence of this court decision in Revision No 6 of 2021 that the provision of Regulation 30 of the Land Disputes Courts (The DLHT) Regulations, 2002 GN No. 174 of 2003 be complied with. In the same spirit, and for avoidance of doubt, I direct the District Land and Housing Tribunal of Arusha to complete the execution process by issuing


an order for eviction against the Respondent herein who is claimed to be in illegal occupation of the suit property.

In the upshot, the application is allowed with no order as to costs in considering that, what prompted the current application cannot be faulted on parties.

Order accordingly.

**DATED** at **ARUSHA** this 11<sup>th</sup> day of December, 2023.



  
**D.C. KAMUZORA**  
**JUDGE**