

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA

LAND REVISION NO. 06 OF 2023

*(Arising from Execution order of Application for execution No. 677 of 2021 in the District Land and Housing Tribunal
for Mwanza, arising from Appeal No. 12/2017 of the District Land and Housing Tribunal at Mwanza)*

ROBERT MALIMI.....	1st APPLICANT
JUSTINE MAENNGO CHACHA.....	2nd APPLICANT
NAOLI BOAZ.....	3rd APPLICANT
GIVEN NYOTA MNYOMB.....	4th APPLICANT
SAYI MCHENYA SHAMDA.....	5th APPLICANT
MARIA MATIKO.....	6th APPLICANT
MIHAYO LUDAMILA.....	7th APPLICANT
LUKAS MORIS MULAHULA.....	8th APPLICANT
CHACHA MARWA.....	9th APPLICANT
CHACHA MKAMI.....	10th APPLICANT
LAURENT THOMAS.....	11st APPLICANT
JENIVA JOSEPHAT.....	12nd APPLICANT
JUMA NYAMANYI WAKIBARA.....	13rd APPLICANT
BINAGI CHACHA.....	14th APPLICANT
JOSEPH KISIRI.....	16th APPLICANT
SAMWEL KATEKERO MURUMBE.....	17th APPLICANT
KOLODINA PASCAL.....	18th APPLICANT
CHACHA NYAICHORI.....	19th APPLICANT
PASCHAL BALIMPAKA MJORERA.....	20th APPLICANT
JOSHUA ODHIAMBO.....	21st APPLICANT
LARI MAZWA MAZOZO.....	22nd APPLICANT
VANDAME ELIA SEVERINO.....	23rd APPLICANT
ESTHER PAUL KITULO.....	24th APPLICANT
JOSHUA LEONARD NDALABA.....	25th APPLICANT
NYANSOHO NYAISAWA.....	26th APPLICANT
MWITA MARWA RULAGE.....	27th APPLICANT
MARTIN ZACHARIA ELISHA.....	28th APPLICANT
SHABANI SAID SHAMDA.....	29th APPLICANT
ASHERI ARON.....	30th APPLICANT
ZEPHANIA MTONGORI.....	31st APPLICANT
ALLY ATHUMAN.....	32nd APPLICANT

VERSUS

TEREZIA HENERIKO GWAPE.....	1st RESPONDENT
LAURENSIA MASHAURI GWAPE.....	2nd RESPONDENT

RULING

12th October & 12th December 2023.

ITEMBA, J.

This is an application for revision against the execution order issued on 13/12/2021 by the District Land and Housing Tribunal for Mwanza (herein the DLHT), in execution application no. 677 of 2021. It is made under section 43(1)(a) and (b) of **The Land Disputes Courts Act** [CAP. 216 R.E. 2019.

The brief facts leading to this application are that, the 1st respondent sued the 2nd respondent before Mahina Ward Tribunal in Land Application No. 89 of 2016, for selling a family land which part of it was allocated as clan graveyard since 1952. After hearing the case, the trial Tribunal decided in favour of the 2nd respondent holding that the latter was not liable of selling the family land. The trial tribunal further declared the land to be the property of Lucia Mshabaha (the 2nd respondent's mother) who rightly sold part of it to some other persons. The 1st respondent was aggrieved by the trial tribunal Judgement. He appealed to the DLHT through Land Appeal No. 12 of 2017 with seven grounds *inter alia* that the

ward tribunal erred by deciding the matter in absence of necessary parties, and that it erred by giving judgement in favour of a stranger who was not a party. In the end, the DLHT decided in favour of the 1st respondent. It founded the 2nd respondent to be time barred to claim the land under adverse possession and that she (the 2nd respondent) had no *locus standi* to institute the suit.

The 2nd respondent's application for extension of time to appeal against the judgement of the DLHT was refused vide **Misc. Land Application No. 52 of 2022**. The victory by the 1st respondent led to **Execution No. 677 of 2021**. The DLHT granted an application for execution. The Rock City Takers Ltd Brokers were appointed to evict the 2nd respondent and her agents from the suit property. The said execution was to be carried against the applicants herein. After an order extending the time, the 32 applicants have now filed this revision application claiming that they have interest in the disputed plot, so they ought to be joined as parties and be heard. Their application is supported by the affidavit of the applicant's counsel named Godfrey Daniel Goyayi. The 1st respondent filed the counter affidavit while the 2nd respondent filed no affidavit.

The application was heard by way of written submissions. The applicant's submissions were filed by Advocate Geoffrey Daniel Goyayi; Mr. Joseph John Mange learned Advocate filed the submissions of the 1st respondent whereas the 2nd respondent filed no submission. For the application, Mr. Goyayi submitted that the applicants were not accorded the right to be heard. That, the executed order of the DLHT affects the applicant's right of ownership and the application does not disclose descriptions of the land. That the sale agreements attached on the affidavit proves that the applicants own their parts of land within the disputed land. That, the law requires every person to be heard before being affected by the court's judgement, ruling or orders in accordance with Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 (the constitution). On the same accords; further reference was made to the case of **Danny Shasha vs Samson Masoro and others**, Civil Appeal No. 298 of 2020 (unreported).

In reply, it was submitted by Mr. Mange for the 1st respondent that, the applicants were not part to original proceedings leading to execution because they invaded the nearby disputed land. That only one person (Joseph Muhoni) had been on the disputed land and he was warned from

making developments. That, the sale agreements in favour of the applicants were not witnessed by local authorities. Therefore, no applicant's right was deprived. That, right to be heard is not absolute. One need to have interest on the disputed land. I was referred to the case of **Wambele Mtumwa Shahame vs Mohamed Hamis**, Civil Reference No. 8 of 2016 (unreported). That the order of the DLHT describes properly the land subject to execution to be the 1st respondent's property measured at 5 acres located at Igelegele street, Mahina ward, Mwanza

I have considered the submissions. It is from records of the trial tribunal that the 1st respondent was claiming that the 2nd respondent sold the family land to other persons. The 2nd respondent in her part, denied to have sold the same but Lucia Mshabaha her mother, admitted to have sold the same. Therefore, it was very clear from trial court that there are other persons who have purchased the land in dispute from either the 2nd respondent or her mother. It is the law that in suits for recovery of land sold to a third party, the buyer must be sued with the seller. See the case of **Juma B. Kadala vs. Laurent Mnkande** [1983] TLR 103. In my view, failure to include the applicants in proceedings was fatal especially for those who bought the land before proceedings in trial tribunal.

I have also gone through sale agreements attached at paragraph 3 of the affidavit supporting the application. They establish *prima facie* case that the applicants have interest on the disputed land. In all sale agreements the seller (vendor) is Lucia Mashabaha. It is also in record that, some applicants bought the land from Lucia Mashabaha before the judgement of the trial tribunal. For instance; The 2nd applicant bought the land on 20/1/2016; the 5th applicant bought the land on 19/7/2016; the 7th Applicant bought the land on 13/9/2015; the 10th respondent bought the land on 26/12/2012; the 12th applicant bought the land on 4/11/2016; the 16th applicant bought the land on 2/11/2016; the 19th respondent bought the land on 31/8/2016; the 24th applicant bought the land on 15/2/2015; the 27th applicant bought the land on 20/1/2015; the 28th respondent bought the land on 24/10/2016 and the 30th applicant bought the land on 15/1/2015. Therefore, their right to defend their interests pre-existed the trial tribunal proceedings. I have noted that the 1st respondent's counsel has argued that the said sale agreements were not witnessed by the relevant local authority, however, that aspect could not summarily deny the applicants the said right to defend.

In appeal No. 12 of 2017, the counsel for the 1st applicant raised the same concern in the grounds of appeal that the matter was heard in the trial tribunal without involving necessary parties. At page 2 of the 1st applicant's submission at the DLHT it was submitted that;

"Your Honour, coming to the question of necessary parties the plots have been sold to non-clan members as evidenced but those buyers were never joined in a suit, an act that contravene the right to be heard and defend their interest. In evidence adduced by DW18 and DW19 admit to have sold parts of the plots but those buyers have never been joined as parties despite of this evidence, the trial tribunal went on confirm their sale to be lawful without directing itself to them who are necessary parties."

The judgement of the DLHT in appeal, neither discussed the grounds of appeal nor considered the submissions of the parties thereof. At page 6 of the DLHT's judgement it reads;

"Thus, from the analysis above I hereby allow the appeal and set aside the decision of the ward tribunal for the reason that the respondent is time barred to claim ownership over the disputed land appellant is declared the lawful owner of the suit land. Respondent had no locus standi to institute the suit..."

Therefore, the DLHT, went on to declare the 1st respondent as a lawful owner while her claim was based on the family land. She never claimed to be the owner she was victorious for the reliefs not prayed. The DLHT further condemned the 2nd respondent for lacking *locus standi* to sue while in fact the 2nd respondent was sued. She was a respondent during trial not the applicant. Further, the issue regarding the rights of the appellants (alleged buyers of land) as raised in appeal were never discussed by the DLHT. Therefore, I agree with the counsel for the applicants that the appellants were condemned unheard during trial, appeal and execution proceedings.

It is a cardinal principle of the law that, a decision reached without affording parties right to be heard is a nullity. Read the case of of **Alisum Properties Limited v Salum Selenda Msangi (administrator of the estate of the late Selenda Ramadhani Msangi**, Civil Appeal No. 39 of 2018; **The Registered Trustees of Arusha Muslim Union v the Registered Trustees of National Muslim of Tanzania @ BAKWATA**, Civil Appeal No. 300 of 2017; and **Kumbwandumi Ndemfoo Ndossi v Mtei Bus Services Limited**, Civil Appeal No. 257 of 2018 (all unreported).

Moreover, I have gone through the proceedings leading to the impugned execution order, and what I have noted is that, since the time when the dispute was heard at the trial tribunal, there was no proper description of the land in dispute. The trial court judgement described it as:

*'Bi Terezia Henerico gwape (46) alileta malalamiko yake... akimlalamikia Bi. Laurensia Mashauri Gwape **kwa kuuza maeneo ya nyumbani kwao ambayo kiasili yalikuwa kwa babu yao marehemu Gwape Ngambakabhi ambaye alifariki dunia mwaka 1952 na alieleza kwamba babu yao huyo alipofariki aliacha eneo lenye ekari tano (5).**'* (emphasis supplied).

This can be paraphrased as Terezia Henerico Gwape sued Laurensia Mashauri Gwape for selling a family property which belonged to their grandfather who died in 1952 and left a land measuring 5 acres. This was the only description of the disputed land. There is no location, no borders no special marks, which manifest the description of the disputed vague and unpredictable. The DHLT, maintained the same description. I believe this type of description was the one which led to challenges in execution of the courts' order. It was important for the parties to demonstrate which was the disputed land and more important for the

trial tribunal to visit the *locus in quo* in order to appreciate the status of the suit property and issue orders which reflect the real situation.

That being said; with regards to the applicants, I find the trial tribunal proceedings in Land Application No. 89 of 2016; the appeal proceedings in the DLHT in Appeal No. 12 of 2017 and Execution No. 677 of 2021 to be nullity *ab initio*. I therefore, quash the proceedings, judgements and orders of two tribunals below. Parties are at liberty to refile a fresh suit in competent forum in accordance with the law. For the reason that the dispute between parties has not been finalized I order no cost. It is so ordered and right of appeal is fully explained to parties.

DATED at **MWANZA** this **12th** of December, 2023.



L. J. ITEMBA
JUDGE

Ruling delivered under my hand and seal this 12th Day of December 2023, in the presence of Joshua Leonard the 24th applicant, the 1st and 2nd respondents and Ms. G. Mnjari, RMA.

A handwritten signature in blue ink, appearing to read 'L. J. Itemba', with a stylized, cursive script.

**L. J. ITEMBA
JUDGE.**