

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

**REVISION APPLICATION NO. 06 OF 2023**

*(C/F Extended Land Appeal No. 4 of 2022 High Court of the United Republic of Tanzania at Arusha,  
Original Land Application No. 24 of 2018, Misc. Land Application 35 of 2022 & Misc. Application No. 26  
of 2022 District Land and Housing Tribunal of Karatu at Karatu)*

**AZANIA BANK LIMITED ..... APPLICANT**

**VERSUS**

**PETER MUHALE LOLO ..... 1<sup>ST</sup> RESPONDENT**

**MANGWEMBE 2011 CO. LTD ..... 2<sup>ND</sup> RESPONDENT**

**WILFRED JOHN** (The Administrator of the  
Estate of the Late **Fredrick Wilfred**) ..... **3<sup>RD</sup> RESPONDENT**

**ROCK CITY TAKERS LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

20<sup>th</sup> & 30<sup>th</sup> November, 2023

**TIGANGA, J.**

This revision was triggered by the complaint filed by Azania Bank Ltd, the judgment debtor in Execution Application No. 26 of 2022 before the District Land and Housing Tribunal of Karatu at Karatu (DLHT). The complaint was by way of an administrative letter dated 23<sup>rd</sup> May 2023 addressed to the Judge in charge in which she gave background information of what led to the complaint.

According to the letter, the history behind, leading to the complaint is to the effect that, the 1<sup>st</sup> respondent herein secured a one-year term loan to the

tune of Tshs. 5,000,000/= from the applicant. He in turn surrendered his Customary Tittle No. 3/KTR/14 situated at Bashay-Qurus within Karatu District. Unfortunately, the 1<sup>st</sup> respondent failed to pay off the loan leading to the sale of his mortgaged property. Eventually, the 1<sup>st</sup> respondent filed **Civil Application No. 24 of 2018** before the DLHT.

His main grievance was the fact that the sale of his mortgaged property was done without compliance with section 127 (1) and (2) of the **Land Act**, Cap 113 R.E. 2019 which requires the issuance of sixty (60) days statutory notice to the mortgagor before disposing of the mortgaged property. He prayed that the DLHT declared a sale a nullity and he also claimed to be paid Tshs. 80,000,000/= as damages for the disturbances caused. The DLHT decided in his favour, and among other prayers, declared the sale a nullity and awarded him Tshs.80,000,000/= as prayed.

Aggrieved, the applicant herein filed Extended Jurisdiction Land Appeal No. 04 of 2022 before this Court, the same was dismissed for want of merits. She also filed Misc. Land Application No. 13 of 2023 praying to file the Notice of Appeal as well as leave to appeal to the Court of Appeal. However, the same was also dismissed for want of merit. Consequently, the 1<sup>st</sup> respondent filed Execution Application No. 26 of 2022 which was heard and determined *exparte* on the ground that, all of the judgment debtors refused to sign

notices when they were summoned for the execution proceedings. In the circumstances, DLHT ordered the attachment of three (3) Motor Vehicles Land Cruiser with Registration Nos. T135 DNP, T514 DEB, and T503 DEB to enforce the Decree issued.

Another complaint that prompted this revision is concerning Application No. 35 of 2022 filed by the 1<sup>st</sup> respondent on 14<sup>th</sup> March 2022 which was an application for an extension of time to file a Bill of Cost out of time, the same was stayed on 11<sup>th</sup> May 2022 pending the final determination of the appeal. On 25<sup>th</sup> April 2023, the 1<sup>st</sup> respondent filed an Application for Bill of Cost No. 29 of 2023, and the same was scheduled for mention on 16<sup>th</sup> May 2023, and on that day, the applicant filed a Preliminary Objection (PO) challenging the Bill of Cost for being time-barred and the 1<sup>st</sup> respondent conceded to the fact that he forgot to initiate the application for extension of time to file Bill of Cost. However, the DLHT proceeded with the hearing and granting of the extension of time on a date fixed for mention and without affording the applicant the right to be heard on the PO. According to the applicant, these irregularities are what triggered this complaint with the following five (5) grounds as summarised hereunder;

1. The Application for Execution was restored without any sort of application filed and/or presented in the Tribunal;
2. The purported summons was never served to the Respondent and it was only one summons issued by the Tribunal;
3. The Tribunal proceeded with hearing the Application for Execution while the case was called for mention and without having the Original File from the High Court after the Completion of the Appeal;
4. The Tribunal had no territorial jurisdiction to order OCD Arusha to supervise the whole execution process of attaching and selling the abovementioned motor vehicles; and
5. The Tribunal failed to call for a valuation report to ascertain the value of the attached properties as only one vehicle would have been enough to satisfy the Decree.

During the hearing, the applicant was represented by Mr. Martin Wanyancha whereas the 1<sup>st</sup> respondent was represented by Mr. Patrick Maligana, both learned Advocates. Other respondents did not bother to file their submissions.

Supporting the application, Mr. Wanyancha submitted on the first ground that, Application for Execution No. 26 of 2022 was dealt with by the DLHT without any sort of application filed and/or presented in the Tribunal to restore the same after it was stayed. More so, no summons were ever served to the applicant to make her aware in respect of the restoration of

the said application. According to the learned counsel, failure to do so, jeopardized the applicant's interest in challenging the application since the Applicant raised an objection, which was supposed to be heard first before determination of the Application for Execution.

On the second ground, the learned counsel further submitted that the purported summons alleged to have been issued to the applicant herein were never served but rather it was fraudulently sworn by the purported process server to make the DLHT believe that, the summons was duly served but she refused to sign which is not true. That being the case, the signed affidavit declaring that the applicant refused to sign the summons neither disclosed who refused to sign nor which branch the summons was served. He urged the Court to inquire about more truth from the Advocate who attested in the purported affidavits, to ascertain if at all the said process server was before that Advocate.

As to the third complaint, the learned counsel contended that the DLHT proceeded with the hearing of execution while the case was only called for mention and without having an original file from the High Court after the conclusion of the appeal. He argued that, on 5<sup>th</sup> April 2023 the case was called for mention and it was on that day, the 1<sup>st</sup> Respondent/the Decree

Holder was required to inform the DLHT whether the summons was properly served to the applicant herein. However, the record shows that, on the particular date, the 1<sup>st</sup> respondent prayed to proceed *ex-parte* against the applicant herein, and instead of fixing a date for the hearing he proceeded with the hearing on the very same date which is a procedural illegality that need to be addressed by this Court.

It was the learned counsel's further submission that, on 21<sup>st</sup> March, 2022, the applicant filed an affidavit to show cause as to why execution should not take place, and if DLHT thought that, the execution was inevitable, the same would have been done in accordance to the procedure laid down in the Government Proceedings Act. In his view, it is settled law that, when the judgment debtor is a government ministry, local government authority, independent department, executive agency, public corporation parastatal organization, or a public company established under any written law to which the Government is a majority shareholder, the procedure for execution shall be as provided for under section 16 of the **Government Proceedings Act**, Cap. 5 R.E. 2019 (the Government Proceedings Act) as amended by the Written Laws (Miscellaneous Amendments) Act, 2020. In his view, it was illegal for the trial chairman to proceed with execution

without first giving the chance for the parties to address the raised issue and determine it accordingly.

Regarding the fourth ground of complaint, it was learned counsel's submission that, according to section 22 of the **Courts (Land Disputes Settlement) Act**, 2002, the trial chairman had no territorial jurisdiction to order O.C.D Arusha District to supervise the whole execution process of attachment and sale of the mentioned motor vehicles in Karatu District. That, according to this section, the territorial jurisdiction of the trial tribunal is only in the area where the same is established.

As to the last complaint, the learned Advocate asserted that the trial tribunal failed to call for valuation reports to ascertain the values of the immovable properties subject to attachment. According to him, the value of one vehicle is more than Tshs. 120,000,000/=, which makes a total of Tshs. 360,000,000/= for the three vehicles which is over and above the decretal sum. He argued that had the execution procedure been properly followed, only one motor vehicle would have been enough to pay the purported general damages and incidental costs so awarded. Therefore, the attachment and sale of the applicant's three movable properties as

mentioned in the DLHT's ruling is neither realistic, reasonable nor justifiable, thus, the trial tribunal did not guide itself properly.

Regarding Application No.35 of 2022, learned counsel submitted that the application for extension of time to file Bill of Costs out of time filed by the 1<sup>st</sup> respondent was called for mention on 05<sup>th</sup> April, 2023, and on the same day it proceeded and granted *ex parte* against the Applicant. That, the same was heard without giving good reason or accounting for days of delay. The learned counsel prayed that, this Court revise the decision in the applicant for extension of time as well as execution as the same was illegally granted and without following proper procedures required by law.

In reply, Mr. Maligana submitted that the applicant is merely buying time to delay the execution on the ground that, the Government owns a bigger share of the company and hence ought to have been joined as a party. He contended that the claim that, the Government needs to be party to this case is a mere afterthought and the applicant ought to have raised it earlier when the case was initially instituted. He insisted that, parties should be bound by their pleadings and since this was never raised before, the tribunal's decision should not be altered.



As to the notice of execution proceedings, learned counsel submitted that the applicant as well as other respondents were well notified by the process server one Zakaria Meleya, but on their own volition chose not to enter appearance thus, the hearing proceeded *ex parte*. In his view, the execution proceedings were thoroughly followed hence the orders issued were legal. He referred the Court to the case of **Semeni Issa vs. The Republic**, Criminal Appeal No. 156 of 2019, and argued that, since the stay of execution had already been struck out and the application for extension of time to file notice and leave to Appeal to the Court was dismissed for want of merit, there is nothing for this Court to revise.

He also cited the case of **The AG & Registrar of Companies vs. Dhirajilal Walji Landwa & 4 Others**, Civil Application No. 640/16 of 2023, CAT at Dae es Salaam which held *inter alia* that, a party who has instituted Notice of Appeal to signal his intention to Appeal to the Court of Appeal cannot ride a second horse by preferring another form of challenging such decision.

The learned counsel maintained that this application is misconceived in law and prayed for the same to be dismissed with cost and let the execution proceedings proceed. There was no rejoinder.

Having gone through the parties' affidavit, the lower tribunal's records as well as parties' submissions made in this court, this Court now proceeds to determine the application guided by the following issue;

***1. Whether the applicant herein was properly notified in execution proceedings in Misc. Application No. 26 of 2022.***

***2. Whether the DLHT was justified to extend time in Misc. Application No. 35 of 2022.***

Starting with the 1<sup>st</sup> issue which will cover the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> grounds of revision. It is an undisputed fact that, immediately after the DLHT initially decided in favour of the 1<sup>st</sup> respondent in Civil Application No. 24 of 2018 now, he filed Misc. Application No. 26 of 2022 to execute the decree. The same was stayed on 11<sup>th</sup> May 2022 following the appeal filed in this Court, that is Land Appeal No. 4 of 2022, which was finally determined on 30<sup>th</sup> January 2023. Going through the DLHT file record, on 22<sup>nd</sup> March, 2023, the 1<sup>st</sup> respondent made an appearance before the DLHT and prayed to proceed with the execution, a prayer which was granted. The matter was scheduled for 29<sup>th</sup> March and 5<sup>th</sup> April 2023 with orders that summons be issued to the applicants herein and other respondents. As argued by the 1<sup>st</sup> respondent's counsel, on both dates the summons were issued, the applicant

herein refused to sign the same hence the matter proceeded *ex parte* against her and determined on 05<sup>th</sup> April, 2023.

Going through the said summons, they were allegedly served by a process server one Zakaria Meleiya who in return swore an affidavit that all the recipients refused to sign. Rule 5 (2) of the **Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules, 2017** provides for criteria of a process server to the effect that he must have a business license for the same. Also, Rule 5 (3) of the same law provided for groups of people not eligible to be process servers. Under rule 5 (3) (c), the law provides that;

*(3) Notwithstanding subrule (1) and (2), a person shall not be eligible for the appointment as a court broker or a process server under these Rules if that person-*

- (a) n/a;*
- (b) n/a;*
- (c) is a judge or magistrate in office or is employed in any capacity as an executive or **officer of the court**;*
- (d) n/a; or*
- (e) n/a*

It should be noted that the said Zakaria Meleiya is a Court Officer employed by the Judiciary of Tanzania hence not eligible under the above law to serve summons to any parties of the case. More so, be as it may,

there is no proof by the 1<sup>st</sup> respondent that the said Zakaria Meleya was a qualified court process server nor is he among the list of the Court Process Servers licensed to practice in Tanzania.

This brings me to the point that the applicant herein was not properly served to appear in the execution proceedings as required by the law pursuant to Order XXI Rule 20 (1) of the **Civil Procedure Code**, Cap 33, R.E. 2019 which requires notice to be issued to the judgment debtor before issuing executing orders.

In the circumstances, she was denied the right to be heard, which is a constitutional right and an epitome of the rules of natural justice. In the case of **Abbas Sherally and Another vs. Abdul Fazalboy**, Civil Application No. 33 of 2002 the Court of Appeal emphasised that;

*"The right of a party to be heard before adverse action or decision is taken against such party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice."*

In lieu of the above, the first issue is answered in the affirmative, that the applicant was not properly served with notice to appear in the Misc. Civil Application No. 26 of 2022 against her. Consequently, all the proceedings

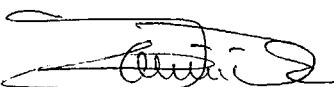
and execution orders issued on 05<sup>th</sup> April 2023 are hereby declared a nullity. The file has to be remitted back to the trial tribunal for the parties to be heard interparte and on merit.

This brings me to the 2<sup>nd</sup> issue which will not detain me much. Having found that, the said Zakaria Meleya is not a qualified Court Process Server, the same consequences face the Misc. Application No. 35 of 2022. The proceedings from 05<sup>th</sup> April 2023 are hereby declared nullity, and all the consequential orders followed thereto are declared invalid. The file record be remitted back to the DLHT for the parties to be heard on merit. Costs to follow the events.

It is so ordered.

**DATED** and delivered at **KARATU** this 30<sup>th</sup> day of November 2023



  
**J.C. TIGANGA**  
**JUDGE**