

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB - REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**LAND APPEAL NO. 80 OF 2022**

**GATA BULUGU.....APPELLANT**

**VERSUS**

**KASWAHILI GITIGAM (*Administrator***

***of the estate of the late Gitigani Bagi*) .....RESPONDENT**

**[Appeal from the decision of the District Land and Housing Tribunal of  
Maswa]**

**(Hon. J.T. Kaare, Chairman.)**

**dated the 19<sup>th</sup> day of October, 2022**

**in**

**Misc. Land Application No. 854 of 2022**

**JUDGMENT**

*5<sup>th</sup> October & 28<sup>th</sup> December, 2023.*

**S.M. KULITA, J.**

This is an appeal from the District Land and Housing Tribunal of Maswa. The story behind this appeal in a nut shell is that, the appellant and respondent had a land dispute over 20 (twenty) acres located at Mwantimba Village in Bariadi. The same was held in the said District Land and Housing Tribunal through Land Application No. 85 of 2021. The decision was for the respondent.

After being declared victorious, the respondent herein applied for execution of the decree via Misc. Land Application No. 854 of 2022 before the same tribunal.

When the said application was called on for hearing at the District Land and Housing Tribunal, the appellant herein raised objection that, execution should stop for the reason that the land application that gave out to the said execution was heard *ex-parte*. The appellant gave the reasons that he lives at Kibiti in Coast Region and that he was there while the matter was heard by the trial Tribunal. In challenging the said application for execution, the Appellant herein also averred before the tribunal that, he had a pending application for extension of time to challenge its (tribunal's) *ex-parte* decision that gave rise to the said execution. The appellant insisted that, his side had great chance of winning the said pending application for extension of time apply for setting aside the *ex-parte* judgment.

On that note, the trial tribunal passed through the records and found out that the appellant's alleged pending application for extension of time to challenge the decision that gave rise to the execution, had already been determined and consequently dismissed. Thus, the tribunal granted the respondent's application for execution.

That decision aggrieved the appellant, hence, this appeal with three grounds as follows; **one**, that the tribunal erred in fact and in law for disregarding the reasons alluded by the appellant, **two**, the Chairman of the tribunal erred to refuse granting the appellant's application without assigning reasons and **three**, that the tribunal's Chairman grossly erred for denying the appellant's right to be heard.

On the 28<sup>th</sup> day of August, 2023 the matter was scheduled for hearing. Both parties appeared in person, unrepresented.

Submitting in support of the appeal the appellant stated that, he was not served with summons as he lives at Kibiti in Coast Region. This was a reason for the case to be heard *ex-parte* as against him. He thus prayed for his right to be heard to be considered.

In reply to that said argument, the respondent submitted that, he has been serving the appellant but refused to appear to the tribunal that is why the trial tribunal proceeded with the case *ex-parte*. The Respondent added that, the appellant became serious after being served with the summons for execution of the decree.

In rejoinder the appellant stated that, the respondent could not have served him as by that time he was at Kibiti.

That was the end of both parties' submissions in the current appeal.

I have earnestly gone through the parties' submissions and the record of the trial tribunal. In my perusal over the record, I have noticed that, the appellant herein has appealed on the Execution Application No. 854 of 2022 whose decision is dated the 19<sup>th</sup> October, 2022. But, the grounds of appeal and the submissions by the appellant show diversion from this fact, instead they tend to fault the decisions which has not been appealed against. On that account, I will concentrate only on testing the grounds of appeal in connection with the impugned decision in the Execution Application No. 854 of 2022 delivered on 19<sup>th</sup> October, 2022.

On the first ground that the Chairman disregarded the appellant's reason without justification, this ground has no merits at all. The record transpires that, in its decision, the tribunal's chairman gave reason that execution should proceed as the appellant's application for extension of time to challenge the decision which gave rise to the execution, had been dismissed. Thus, there was no ground for the execution to stay.

Concerning the third ground of appeal that the appellant was denied of his right to be heard, the same lacks merit as well. The reason being that, during the execution proceedings at the tribunal, the appellant had been represented by Mr. Emmanuel Lugunduga, Advocate who was given

a chance to address the tribunal on that issue of execution, particularly to show cause as to why execution should not proceed as prayed by the Decree Holder, the Respondent herein. That is when the appellant was heard posing his reasons objecting the execution. Thus, the tribunal did not violate the Appellant's right to be heard.

On the second ground of appeal, the same is misplaced. The reason being that, the application which is appealed was filed by the respondent seeking for execution. The tribunal did not refuse to grant it. If it was not granted, it was upon the respondent to claim against, not the appellant.

All said and done, as all grounds of appeal have failed, I see no point to fault the decision of the trial tribunal. I thus proceed to **dismiss** the appeal for being unmeritorious. Appellant to beat the costs.



**S.M. KULITA**  
**JUDGE**  
**28/12/2023**



**DATED** at **SHINYANGA** this 28<sup>th</sup> day of December, 2023.



**S.M. KULITA**  
**JUDGE**  
**28/12/2023**

