

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

**MISC. LAND APPEAL NO. 15 OF 2023**

*(c/f Arusha District Land and Housing Tribunal Misc. Application No. 81 of 2021 origin  
Sekei Ward Tribunal Application No. 1 of 2020)*

**SAID ALLY MOLLEL .....APPELLANT**

**VERSUS**

**GRACE ZABLON LIZA (Administrator of the Estate of the late Ernest  
Zablon) ..... RESPONDENT**

**JUDGMENT**

**23/11/2023 & 21/12/2023**

**GWAE, J**

The parties' dispute centers on the order made by the District Land and Housing Tribunal of Arusha at Arusha in the course of executing decree of the ward tribunal vide Misc. Application No. 61 of 2021. The impugned order was made 17<sup>th</sup> April 2023 when the decree was nullified on the ground that, the ward tribunal had no jurisdiction to deal with any dispute relating to the land registered under Land Registration Act, Cap 334, Revised Edition, 2019.

According the learned executing tribunal's chairperson, section 99 (1) of the Act provides that, any registered piece land may be rectified by

the Registrar of Titles after an order of the High Court, which was not the case in matter at hand. It is in that understanding, the application for execution of decree emanating from Application No. 1 of 2020 in the Sekei Ward Tribunal was struck out and the proceedings and decision thereof of the application were equally nullified.

The order of the Chairperson of the District Land and Housing Tribunal for Arusha at Arusha (DLHT) aggrieved the appellant. Thus, he has filed this appeal armed with the following grounds;

1. That, the executing tribunal chairman erred in law and fact when it nullified the decree of the ward tribunal which is beyond its jurisdiction
2. That, the trial tribunal erred in law and in fact when it received new evidence which was never tendered before the ward tribunal and proceeded to act it upon it contrary to the law
3. That, the trial tribunal erred in law and fact when it failed to consider the gross contradictions in the respondent's evidence with her witness thus arrived at a wrong decision.
4. That, the trial tribunal erred in law and fact when it failed to note that the matter before it was time barred

Before the court, Ms. Sara lawena, the learned advocate and Mr. Peter Njau, both the learned advocates respectively the appellant and respondent. Hearing of appeal was ordered to proceed by way of written submission. Subsequent to the court order, the parties' learned advocates

filed their respective written submissions for and against the appeal. However, the appellant's counsel rightly abandoned grounds 3 and 4 of appeal. I am saying "rightly" simply because the 3<sup>rd</sup> and 4<sup>th</sup> ground have been set as if they intended to challenge the decision of the trial tribunal, which should not be so, since the appeal is aimed at challenging the order of DLHT in the course of execution of the decree.

Arguing the 1<sup>st</sup> ground of appeal on the jurisdiction of the executing tribunal, Ms. Lawena quantified that, an executing tribunal cannot sit and decide on the merit of the dispute rather to enforce the decree unless there is an issue peculiar to the decree. She went on arguing that, the powers of executing tribunal are limited as per Regulation 23 (5) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation GN. No. 174 of 2003. She then urged this court to refer to the decision of this court (**Mkwizu, J**) in **Mihayo Maziku** (Administrator of the estate of the late Mziku Misana) **vs. Abdallah Mashiba Nzigila** (unreported). She also cited the decision of the Court of Appeal in **Nkwabi Shing'oma Lume vs. General Secretary, Chama Cha Mapinduzi**, Civil Appeal No. 2017 (unreported) whose rationale being that, the executing court cannot act or review as the decree is final.

Submitting on the 2<sup>nd</sup> ground, the learned counsel for the appellant stated that, the executing was not entitled to receive new evidence in the course of enforcing decree. As doing so, would be prejudicial, as the parties shall have no right to be heard.

In his response to the appellant's submission, the learned counsel for the respondent submitted that, the appellant's grounds of have no merit since the impugned ruling was made due to the questionable trial tribunal's jurisdiction. His supplementary argument is to the effect that, the executing tribunal correctly acted as the trial tribunal had knowledge that, the suit land is registered. He then invited the court to the decision of **Nkwabi** (supra) the Court of Appeal had an opportunity of discussing the requirement of ascertainment of jurisdiction of court at the earliest opportunity, it had these to say;

*"It is settled law that the issue of jurisdiction of any court is so basic as it goes to the root of authority of the court to adjudicate upon cases of different nature, and this must always be ascertained at the commencement of any proceeding....."*

*The Court of Appeal went on stating that*

*"We would conclude that the RM's Court's proceedings and decision thereon are a nullity to the extent that, the learned Resident Magistrate strayed and reviewed*

*without jurisdiction the Board's decision to determine its legality."*

Responding to the appellant's submission in respect of the 2<sup>nd</sup> ground of appeal, the respondent's learned advocate stated that, the suit land between the parties was surveyed as it was even confirmed by the trial tribunal through its decision.

Now to the Court's determination *in the 1<sup>st</sup> ground of appeal* on the complained lack of the requisite jurisdiction by the executing tribunal. This ground of appeal should need not to detain me much as I am guided by the decision of the Court of Appeal in **Nkwabi's** case (supra). Looking at the respectful submissions by the respondent's counsel before the executing tribunal, the respondent is found to have principally challenged the decision of the Ward Tribunal pertaining its jurisdiction on suit land, a surveyed piece of land.

Conversely, in the executing tribunal (DLHT) where the appellant had filed an application for execution of the trial tribunal's decree and it is the also the appellate or revisional tribunal. However, at that stage of execution of a decree emanating from ward tribunal, the executing DLHT has very limited power unlike when sitting as appellate tribunal. It follows therefore, the judgment debtor now respondent through his counsel

instead of applying for the stay of the application of the intended execution or opposing it through other grounds like attachment of the property not belonging to the judgment debtor or the wall intended to be demolished is not the one subject of the intended execution and the like. Apparently, the arguments advanced by the respondent before the executing tribunal were based in faulting the Ward tribunal's decision, which essentially ought to have been raised on appeal or revision before DLHT, and not in execution stage.

The appellant might have legal reasons to challenge the award procured by the ward tribunal, but such ground ought to have been raised in an appeal or revision before DLHT or review by the trial tribunal, which issued the decree. I duly subscribe to the decision of the Court of Appeal of Tanzania in the case of **Hossea Kihwelo & 5 others vs. Abdallah Ramadhani Mkumba and another**, Civil Revision No. 347/17 of 2018 (unreported) where it was stated that;

*"A judgment of a Court cannot be quashed in an execution proceeding. There should be an appeal or revision before the higher tribunal."*

See also the courts' decisions in **Mihayo Maziku** (Administrator of the estate of the late Mziku Misana) **vs. Abdallah Mashiba Nzigila** (supra) **Nkwabi Shing'oma Lume vs. General Secretary, Chama**

**Cha Mapinduzi** (supra) and **Andrew Ndewario vs. Registered Trustee of Apostles and two other**, Land Revision No. 30 of 2020, this court at Arusha (unreported)

Being guided by the above-cited precedent, I find that the learned executing chairperson misdirected herself by converting herself in the appellate tribunal chairperson or revisional tribunal chairperson instead of executing tribunal as moved the respondent. I would like to add that, if this trend is allowed to continue there is high possibility of decisions of the courts or quasi-judicial bodies and their awards or decrees or orders be altered or rectified during execution stage. That trend or power cannot be permitted to continue as the same may likely be abused by executing officers.

In the present matter, the learned DLHT's chairperson through her respectively ruling wrongly assumed the power, which the statute does not vest to her while sitting as an executing officer unlike when sitting on appeal or an application for revision. If the learned counsel had in his mind of the issue of jurisdiction of the ward tribunal in respect of the registered piece of land, he ought to have filed an appeal or revision. By doing so, he would properly move the District Land and Housing Tribunal. The 1stt ground is thus merited.

***As to the 2<sup>nd</sup> ground***, I am not convinced if the executing tribunal collected or received new evidence during execution of a decree stage. I am decidedly of that view simply because there is no record to that effect except the attachments to the respondent's written submission and **not** in the affidavit. More so, I have not been able to find if the trial tribunal was aware that the suit land was a surveyed one as purportedly alleged by the respondent's counsel.

From the above discussions, this court is satisfied that, the appeal at hand is not without merit. Consequently, the appeal is allowed with costs.

It is so ordered.

**DATED at ARUSHA** this 21<sup>st</sup> October 2023



  
**MOHAMED R. GWAE**  
**JUDGE**