

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

AT DODOMA

MISC. LAND CASE APPEAL NO. 8 OF 2023

*(Originating from the Misc Land Application No. 438 of 2021, Misc Land Application
No. 318 of 2022, Land Case No. 23 of 2021 at Mbabala Ward Tribunal)*

SOFIA EMILIAPPELLANT

VERSUS

MICHAEL MTUKA RESPONDENT

JUDGMENT

Date of last order: 8/6/2023

Date of judgment: 8/9/2023

KHALFAN, J.

Being aggrieved with the decision of the District Land and Housing Tribunal for Dodoma (hereinafter referred to as DLHT), the appellant has preferred the instant appeal on the following grounds:

- 1. That, the District land and Housing Tribunal erred in law and in fact in invoking jurisdiction to quash the proceedings on execution without being properly moved.*
- 2. That, the District land and Housing Tribunal erred in law and in fact by deciding the review as the appeal in disguise, without being moved and without jurisdiction.*



3. *That, the District Land and Housing Tribunal erred in law in deciding the Land Case No. 23 of 2021 which was never appealed against and uncalled for.*
4. *That, the District Land and Housing Tribunal was functus officio to hear and decide on the review of the execution and order retrial without appeal.*
5. *That, the District Land and Housing Tribunal should not have ordered re-trial but allowed the Appellant to enjoy her fruit of justice.*

The appellant prayed for an order that this appeal be allowed with costs, an order that the proceedings, judgment and the decree of the DLHT be quashed, an order that the decision in Land Case No. 23 of 2021 at Mbabala Ward tribunal (hereinafter referred to as the trial tribunal), be allowed to stand.

When the appeal was called on for hearing on 8th June 2023, the appellant was represented by Mr. Mcharo Samuel, learned advocate whereas the respondent was represented by Ms. Maria Ntui, learned advocate.

In his submission in support of the appeal, Mr. Mcharo maintained that, the DLHT, erred in law to quash the proceedings of the execution without being properly moved. He added that the instant matter arose



from Misc. Land Application, No. 438 of 2021 which was an application of the execution decree which originated from Land Case No. 23 of 2021 of the trial tribunal.

He submitted that, the decision of DLHT which was appealed against was the decision on review, where the DLHT, reviewed the execution and quashed it for the reason that the trial tribunal had no jurisdiction. He argued that the DLHT, in quashing the decision for execution, it acted without jurisdiction. He maintained that the decision of the trial tribunal had never been appealed against, hence the appellant applied for execution. He argued that the DLHT was *functus officio* to hear and decide on the review of the execution and order retrial without appeal.

To buttress his arguments, Mr. Mcharo cited the case of **Chandrakanji Joshubah Patel v. Republic** [2004] 218 TLR, which stated that:

"... took the view that the application did not meet any of the conditions for review but was an appeal in disguise."

Mr. Mcharo submitted that, according to The Written Laws (Miscellaneous Amendments) (No. 3) Act, 2021 came into force on 11/10/2021, and it amended section 45 of the Land Dispute Court Act, CAP. 216, R.E 2019 (hereinafter referred to as the LDCA) which reads:



"Section 45(4) Notwithstanding subsection (1), the District Land and Housing Tribunal shall not hear any proceeding affecting the title to or any interest in land unless the ward tribunal has certified that it has failed to settle the matter amicably: Provided that, where the ward tribunal fails to settle a land dispute within thirty days from the date the matter was instituted, the aggrieved party may proceed to institute the land dispute without the certificate from the ward tribunal.

He argued that, the matter before the trial tribunal was filed on 19/8/2021, hence the amendments of the law stated above could not operate retrospectively.

Mr. Mcharo concluded his fifth ground, by contending that the DLHT should not have ordered a retrial but allowed the appellant to enjoy her fruit of justice. He argued that, there must be an end to litigation hence, the execution was already granted, and there was no objection to the execution proceedings. He maintained that all other procedures were over taken by event.

He urged the court to allow this appeal and order that the decision and proceedings of the DLHT be quashed and the decision of the trial tribunal be restored.

In reply, Ms. Ntui maintained that, there has never been a lawful judgment which was given by the trial tribunal. She submitted that, it



was true that the matter was heard before the amendment where the trial tribunal had jurisdiction to give decision. But she was of the view that, the last proceedings of the trial tribunal ended on 12/11/2021 with the following words:

"Tumeamua kuahirisha kesi hii kwa sababu mlalamikiwa kutokufika tutasikiliza tarehe 19-11-2021, saa 3:00 Asubuhi."

Ms. Ntui averred that they never received any judgment from the trial tribunal and the appellant never mentioned the date of the judgment. She argued that, the respondent was served only a certificate on mediation which was issued on 23/11/2021. She insisted that there was no decision to be appealed against from the trial tribunal.

On further submission, Ms. Ntui contended that, if there was a lawful decision, parties should not have been provided with the certificate on mediation of the same matter.

She stated that, the respondent was called before the DLHT for the execution of decree, vide Misc. Application No. 438 of 2021. Regarding this, she argued that, there was no judgment subject to execution since there was only a certificate for mediation from the trial tribunal.



She further argued that, the decision of the review was lawful, because it was just to both sides. She submitted that the amendments of the laws referred to could operate retrospectively as they touched on procedure. She referred to the case of **Lala Wino v. Karatu District Council**, Civil Appeal No. 132/02/2018, CAT at Arusha (Unreported) where the court observed thus:

"When a new enactment deals with rights of action, unless it is so expressed in the Act, an existing right of action is not taken away, but when it deals with procedure only, unless the contrary is expressed, the enactment applies to all actions, whether commenced before or after the passing of the Act."[Emphasis added]

She further referred to the case of **Gasper Peter v. Mtwara Urban Water Supply Authority (MTUWASA)**, Civil Appeal No. 35 of 2017, CAT at Mtwara, (unreported) in which the court referred to the case of **S. S Makongoro v. Severine Consiglio** [2005] 1 EA 247 observed thus:

"The general rule is that unless there is a clear indication either from the subject matter or from the working of the Parliament, that Act should not be given a retrospective construction. One of the rules of construction that a court uses to ascertain the intention behind the legislation is that if the legislation affects substantive rights, it will not be



*construed to have retrospective operation, unless a clear intention to that effect is manifested, whereas **if it affects procedure only, prima facie it operates retrospectively unless there is good reason to the contrary.*** [Emphasis added].

She reiterated her stance that, there was no decision to be executed. She concurred with the decision of the DLHT due to the errors that were explained.

In rejoinder, Mr. Mcharo essentially reiterated his submission in chief. He added that, there was a judgment delivered by the trial tribunal and the said decision had never been appealed against. He argued that, the DLHT, would not have allowed to grant execution without a decision by the trial tribunal.

Having considered the grounds of appeal, submissions of both parties against and in support of the appeal and the records; this court finds only one issue which requires to be determined; that is, "whether the amendment to section 13 of LDCA brought by The Written Laws (Miscellaneous Amendments) (No. 3) Act, 2021 should be applied retrospectively."

This court is mindful of the position of the law that when an amendment of the law affects a procedural step or matter only, it acts



retrospectively, unless good reason to the contrary is shown. This position of law was underscored in the case of **S.S Makorongo v. Severine Consiglio** [2005] 1 EA 247, the court stated that:

"The general rule is that unless there is a clear indication either from the subject matter or from the working of the Parliament, that Act should not be given a retrospective construction. One of the rules of construction that a court uses to ascertain the intention behind the legislation is that if the legislation affects substantive rights, it will not be construed to have retrospective operation, unless a clear intention to that effect is manifested, whereas if it affects procedure only, prima facie it operates retrospectively unless there is good reason to the contrary."

Other decisions of the Court which gave effect to this rule include:

Felix H. Masha and Another v Exim Bank Limited, Civil Reference 12 of 2017, CAT at Dar es Salaam; **The Director of Public Prosecutions v. Jackson Sifael Mtares and Three Others**, Criminal Appeal No. 2 of 2018, **Gasper Peter v. Mtwara Urban Water Supply Authority (MTUWASA)**, Civil Appeal No. 35 of 2017 and **Lala Wino v. Karatu District Council**, Civil Application No. 132/02 of 2018 (all unreported).



However, in the case of **Felix H. Masha and Another v. Exim Bank Limited** (supra), the Court considered different opinions in the said application, and one of the opinions is that:

"...the amendment could only apply if by the time of coming into operation no decision had been made on the application."

Before the amendment, the ward tribunals in this country had powers of adjudication of land disputes. However, following the amendments, the ward tribunals were stripped of powers of adjudication and they were mainly tasked to mediate the parties effectively from the 11/10/2021 following the publication of the said amendments.

The appellant's advocate maintained that, the trial tribunal inquired and heard land dispute between the parties herein and delivered its decision on 19th November, 2021 being one month after coming into operation of the said amendments on 11th October, 2021.

Mr. Mcharo argued that the matter before the trial tribunal commenced before the said amendments.



With respect, with the commencement of the amendments of the LDCA on 11th of October, 2021 all ward tribunals ceased to have jurisdiction to hear and determine land matters but retained mediation

jurisdiction only. Adjudication mandates ceased and were vested to the District Land and Housing Tribunal. Although the present dispute commenced before the commencement of the said amendment, the proceedings subsequent to the amendments were being entertained by the trial tribunal without jurisdiction. See the case of **Slyvester Magwila v. Shomari Shabani**, Land Appeal No. 125 of 2022, TZHC at Morogoro.

Therefore, the decision of the trial tribunal and the subsequent execution before the DLHT are nothing but a nullity. Therefore, the DLHT was right to quash the decision arising from the trial tribunal since the latter acted without jurisdiction. As such, this appeal has no leg to stand on. Consequently, it stands dismissed with no order as to costs.

It is so ordered.

Dated at Dodoma this 8th September 2023.

 
F. R. KHALFAN
JUDGE