

**IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB-REGISTRY)
AT MOROGORO**

MISCELLANEOUS CIVIL APPLICATION No. 49 of 2023
(Arising from the District Land and Housing Tribunal for Morogoro Misc. Application No.2025 of 2022 for execution of Judgement of Land Dispute No. 12 of 2008 of DLHT for Morogoro)

RAMADHANI A.J LUMASHILA..... 1st APPLICANT

ZAITUNI A.J LUMASHILA.....2nd APPLICANT

VERSUS

ZENAS TADEI..... RESPONDENT

RULING

28th of March 2024
MANSOOR, J.

Through the legal representation of Mr. Fredy Julius Sanga, the applicants' advocate, the Applicants Ramadhani A.J Lumashila and Zaituni A.J Lumashila, preferred the instant application by way of chamber summons made under Section 43(1)(a) & (b) of the Land Dispute Courts Act, (Cap 216 R.E 2019) and Section 79(1)(a)(b) &(c), section 95 of the Civil Procedure Code [Cap 33 R.E 2019] seeking orders as hereunder:

1. That this Honourable Court be pleased to call for the records of the proceedings of the District Land and Housing Tribunal for Morogoro in Misc. Application No. 2025 of 2022 and examine the same as to the legality and/ or propriety of the said proceedings and on finding



any illegality and or impropriety of the said proceedings then revise the same.

2. Costs of the application be borne by the respondent.
3. Any other order or relief(s) this Honourable Court may deem fit to grant.

With the leave of the Court, the hearing of the application was canvassed by way of written submission by the order of this Court dated 14th of February, 2024. Both parties were legally represented, whereas the applicants were represented by Mr. Fredy Julius Sanga the learned advocate, the respondent on his part enjoyed the representation of Deckrine Dominic Kweka the learned counsel.

According to the court's scheduled orders, the applicants were supposed to file their written submission in chief on or before 22/02/2024, whereas the respondent had to file his reply to written submission in chief on or before 01/03/2023 and rejoinder (if any) had to be filed on or before 07/03/2024. The records reveal that, the applicants through their learned counsel drew their written submission in support of the application and filed the same on 22/02/2024 as ordered by the court, however, it is on record that, the respondent filed their reply to submission on 08/03/2024

to the registry however the said reply to written submission was accompanied with payment receipt with Bill Reference No. JUD2024022988415 which shows that the payment was done on 03/03/2024. Hence, since the payment for filing the reply to written submission was done on 03/03/2024 there is no doubt that, the respondent reply to written submission was thus, legally filed on 03/03/2024 contrary to the court order. (See: Judicature and Application of Laws (Electronic Filing) Rules, 2018; GN. No. 148 published on 13/04/2018).

For the purpose of saving the precious time of this Court, I find no need of reproducing the submissions by respondent as it is a settled stance of law that, when the court orders the matter to be disposed of by way of written submissions and a party default to comply with such orders, the omission is tantamount to failure to prosecute the same. This position was underlined in the case of **P3525 LT Idahya Maganga Gregory Vs. The Judge Advocate General, Court Martial**, Criminal Appeal No. 2 of 2002 (unreported) in which the Court observed: -

"It is now settled in our jurisprudence that the practice of filling written submissions is tantamount to a hearing and;

therefore, failure to file the submission as ordered is equivalent to nonappearance at a hearing or want of prosecution. The attendant consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend as the case may be."

In view of the above authority, it suffices to hold that, the respondent's learned counsel, one Deckrine Dominick Kweka who was physically present before this Court when it made its scheduling orders, intentionally disobeyed the same. This court cannot condone such an act as it was observed in the case of **Olan, Tanzania Limited Vs. Halawa Kwilabya, DC. Civil Appeal No. 17 of 1999**, which was cited with approval in the case of **Famari Investment T. Ltd Vs. Abdallah Selemani Komba**, (Misc. Civil Application 41 of 2018) [2020] TZHC 386 (11 March 2020), where this court held that: -

"Now what is the effect of a court order that carries Instructions which are to be carried out within a predetermined period? Obviously, such an order is binding. Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of Justice will

grind to a halt or if will be so chaotic that everyone will decide to do only that which is conversant to them. In addition, an order for filing submission is part of hearing. **So, if a party fails to act within prescribed time, he will be guilty of in diligence in like measure as if he defaulted to appear.....** This should not be allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos". [Emphasis is mine].

With that being observed as such, I hold that, as the respondent's written submissions were filed out of time and without the leave of the court, the same is tantamount to respondent's failure to appear on the date of hearing to defend his case, it follows therefore that, I will neither reproduce nor consider his reply submissions filed on 3rd of March 2024. As a consequence, the matter will proceed ex parte against him as if he did not appear at the hearing.

Now reverting back to the applicants written submission in support of the application, Mr. Fredy adopted a joint affidavit filed in support to the chamber summons to support his submission. Attacking Misc. Application No. 2025 of 2022, the application for execution of the judgement in Land

Dispute No.12 of 2008 before the DLHT, the learned counsel submitted that, the proceedings and orders emanated therefrom were tainted with illegalities. He reasoned that, the impugned application was time barred. He referred this court to the dates upon which the judgement of the main case was delivered and the date when the impugned application was filed and he submitted that the judgement on land Application No. 12 of 2008 was delivered on 21/10/2022 while the application for execution was filed on 30/10/2022. According to him the impugned application was filed after expiry of 13 years and 2 months contrary to law. He insisted further that the application was time barred and was supposed to be dismissed by the tribunal.

Counsel Fredy cited regulation 23(1) of the Land Dispute Courts (The District Land and Housing Tribunal) Regulation, 2003, the law which regulates the proceedings in the DHLT and explained that the provision does not provide the time within which to file an application for execution it just says "as soon as practicable" after the pronouncement of the judgement and ruling, the decree holder may apply for execution. He resorted to Item 20 of part III of the schedule to the Law of Limitation Act (Cap 89 R.E 2019) which prescribe twelve years to be time limitation for enforcement of judgement and decree of any court where the period of limitation is not provided and concluded that the application for

execution of a judgement in respect of Land Application No. 12 of 2008 was completely filed out of the prescribed time limit of twelve years.

Basing on the above authority, the Counsel for the Applicant insisted that the application was filed out of time and without the leave of the court and thus it was supposed to be dismissed by the tribunal. He fortified his reasoning with the provision of section 3(1) of the Law of Limitation Act (Cap 89 R.E 2019). Insisting on the anomaly, the Counsel for the Applicants was of the view that the DLHT had no jurisdiction to entertain the impugned application as it was preferred out of time and he was of the view that by entertaining the same it rendered the whole proceedings and execution order of DHLT a nullity. He was fortified by the principle underscored in the cases of **Backlays Bank(T) Limited v. Jacob Muro**, Civil Appeal No. 357 of 2019, CAT at Mbeya (Unreported) and **John Barnabas v. Hadija Shomari**, Civil Appeal No. 195 of 2013 CAT at Dodoma.

Justifying as to why he has applied for revision instead of other reliefs, the applicant counsel was of the view that the pointed irregularity can be cured only by way revision and not appeal. He was fortified with the case of **Samson Njarai & Another v. Jacob Mesorivo**, Civil Appeal No. 98

of 2015 CAT at Arusha, **Awadhi Idd Kajas v. Mayfair Investment Limited**, Civil Application No. 281/17 of 2017 CAT at Dar es Salaam(Unreported) and **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017 CAT at Mbeya (Unreported) where it was observed that no competent appeal can lie from the nullity proceedings, decision or order. The learned counsel explains another reason why he opted for revision, he said that, execution orders cannot be appealed. He cited the provision of Regulation 24 of the Land Dispute Courts (The District Land and Housing Tribunal) Regulation,2003 and section 41 of the Land Dispute Courts Act which deals with appeals against the execution order from the DHLT and submitted that the provision suggest the appeals to be subject to the condition prescribed by the Civil Procedure Code (Cap 33 R.E 2019).

The learned counsel considered the provisions of the Civil Procedure Code which regulates appeals to the High Court, he submitted that neither section 74 nor Order XL of the Code mentions an execution order as an appealable order and he concluded that the execution order is not appealable. To support his stance, he referred this court to the cases of **Kalebu Kuboja Mjinja v. Shadrack Daniel Tembe**, Civil Appeal No. 24 of 2020 HCT at Musoma and **Sambaru Samwaja Nyalandu v.**

Gidasanga Gidahenek Heda, Misc. Land Application No. 18 of 2022, HCT at Arusha where it was observed that execution orders are not among the orders to be appealed listed under section 74 and Order XL of the Civil Procedure Code (supra).

At the end the counsel for the applicants urged this court to grant instant application and revise the proceedings and orders of the tribunal and quash them and he rested his submission.

Having carefully considered the submissions of the counsel for the Applicants as well as the pleadings and court records, I shall determine the application for Revision as hereunder.

To begin with, I have examined the relevant provision under which this application has been taken by the applicants, to wit, the provisions of Section 43(1) of the Land Dispute Courts Act, (Cap. 216 R. E, 2019) and section 79(1)(a), (b) and (c) of the Civil Procedure Code, (Cap.216 R. E 2019) and section 95 of the Civil Procedure Code (supra). C

The provisions read: -

43 (1) In addition to any other powers in that behalf conferred upon the High Court, the High: -

- (a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;
- (b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional Jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit.

Section 79. -(1) The High Court may call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies thereto, and if such subordinate court appears-

- (a) to have exercised jurisdiction not vested in it by law;
- (b) to have failed to exercise jurisdiction so vested; or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

The provisions empower this court to call for records of the lower tribunals in any case in which no appeal lies, if such subordinate tribunals appear to have acted in the exercise of their respective jurisdiction illegally or with material irregularities or if they have failed to exercise jurisdiction so vested and also if it has acted in the exercise of its jurisdiction illegally. The learned counsel for the applicants invited this court to invoke its revisional powers basing on the two reason; One, the DHLT for Morogoro lacked jurisdiction to entertain Misc. Land Application No. 2025 of 2022 for being time barred and Two, the execution orders are not appealable. The records reveal further that the learned counsel resorted to Item 20 of part III of the schedule of the Law of Limitation Act (Cap 89 R. E 2019) to establish that the impugned application was time barred and the provision of section 74 and Order XL of the CPC to conclude that the impugned application cannot be appealed.

Item 20 of Part III of the Schedule to the Law of Limitation(supra) clearly provides for twelve (12) years as the time to enforce a court judgement, decree or order (See the cases of **Suzana Mwanja v. Ally Namsa and Six Others** PC Civil Appeal No.06 of 2023 (HC), Morogoro and **Zuleia Katunzi and Others v. Tanzania Ports/Habours Authority** Civil Appeal No. 123 of 123 of 2019 (HC) at Dar es Salaam). Gleaned from the above cited provision of law and authorities, it is without doubt that, the law demands all proceedings instituted after the period of limitation be dismissed.

Reverting back to the DHLT records it is revealed that judgement of the Land Application No.12/2008 from which the Application for execution originated was delivered on 21/10/2009 and Misc. Application No. 2025/2022 was filed on 30/12/2022, counting from the date the main suit was determined to a date when the impugned application was filed makes a total of 13 years. The respondent application was therefore out of time. Regarding the nature of the instant application it is undisputable that the applicants herein seek to challenge the execution orders emanated from the impugned application. It is settled law and this court has said in numerous time that the proper recourse against the execution order is to file an application for revision of the execution proceedings, litigate the

questions relating to execution under section 38 of the CPC or filing reference to this Court under Order XLI, Rule 1 of the CPC. The case of **Ignasio Ignas vs Rose Hanselem Mpangala and Another**, Civil Appeal No. 65 of 2017, HCT at Dar es Salaam (unreported) is one among many. The court held as follows:

"The remedies available to a person aggrieved by the execution order or proceedings include, applying for revision of the execution proceedings, litigate the questions relating to execution under section 38 of the CPC or make use of Order XLI, Rule 1 of the CPC."

In the light of the foresaid position of law, I agree with Mr. Fredy that the present application seeks to challenge an execution order which is not listed under section 74 and Order XL, Rule 1 of the CPC. In the case of **Abdu Hassan vs. Mohamed Ahmed** (1989) TLR 181, Hon. Katiti J (as he then was) held that;

"the High Court Revisional Powers under Section 79(1) of the CPC are limited to cases where no appeal lies and issues such as whether the subordinate courts has exercised jurisdiction not vested or, if vested, whether it has failed to exercise the same or has acted illegally

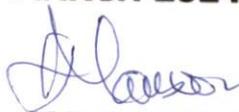
or with material irregularity.

That being observed I find the orders sought to be challenged by the applicants cannot be challenged by way of appeal and I am satisfied at this juncture that the DHLT exercised jurisdiction not vested into by entertaining the Misc.Appl.No.2025 of 2022 while it was time barred.

On the basis of the foregoing, I invoke revisional powers vested in this Court under section 79(1) of the Civil Procedure Code, Cap 33 R.E 2019 (2) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 and hereby nullify the entire proceedings, quash the decision and set aside the subsequent order issued by the District Land and Housing Tribunal for Morogoro on the Misc. Application No. 2025 of 2022 as they emanated from nullity proceedings.

It is so ordered.

**DATED AND DELIVERED AT MOROGORO THIS 28TH DAY OF
MARCH 2024**


**(L. MANSOOR, J.)
JUDGE
28.03.2024**

