

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

**MISCELLANEOUS LAND APPEAL NO. 107 OF 2023**

(Arising from the District Land and Housing Tribunal for Dodoma in Miscellaneous  
Application No. 108 of 2021)

**ELIAS LEMGOHA..... FIRST APPELLANT  
AIDAN MLOA.....SECOND APPELLANT**

**Versus**

**CHABU MISHWARO .....RESPONDENT**

**JUDGMENT**

Date of Last Order: 04<sup>th</sup> April 2024.

Date of Judgment: 30<sup>th</sup> April 2024.

**MASABO, J:-**

The appellants herein were applicants in Land Dispute No. MBK/001/28/01/2020 before Mnadani Ward Tribunal (trial tribunal). The dispute was resolved in their favour after they were declared lawful owners of the suit land. The respondent did not appeal against the decision. As a result, they instituted an application for execution vide Miscellaneous Application No. 108 of 2021 before the District Land and Housing Tribunal for Dodoma (the execution tribunal) in which they prayed for an order of eviction, demolitions and permanent vacant possession against the judgment debtor (the respondent herein), her agents, assignee and any person acting under his instructions. Things did not turn out well as their application was dismissed on the ground that their decree was not executable as the subject matter was not described. Aggrieved, they have come to this court with an appeal based the following grounds: -

1. That, the decision of the District Land and Housing Tribunal of Dodoma at Dodoma erred in law and facts to enter decision without taking into account that the land in dispute belong to the Appellants.
2. That, the decision of the District Land and Housing Tribunal for Dodoma at Dodoma erred in law and facts by pronouncing judgment while failed totally to evaluate the evidence clearly thereof.
3. That the decision of the District Land and Housing Tribunal erred in law and facts to enter a decision without taking into account that the appellant herein won the case before the trial court and the tribunal was supposed only to provide execution.
4. That the decision of the District Land and Housing Tribunal erred in law and facts by pronouncing judgment against the Appellant without considering the weight and relevant evidences adduced by Appellants' side and considered the weak evidences adduced by the respondent's side thereto.
5. That, the decision of the District Land and Housing Tribunal erred in law and facts by pronouncing judgment against the appellant without considering the principle of natural justice.
6. That, the decision of the District Land and Housing Tribunal of Dodoma at Dodoma erred in law and facts by pronouncing irrational judgment thereto.

The appeal was heard by way of written submissions. Both parties complied with the scheduling order. The appellants were not represented.

They fended for themselves whereas the submission by the respondent was drawn and filed by Mr. Mohamed Chondo, learned Advocate.

Submitting in support of the appeal the appellants stated that they proved their ownership of the disputed land which they acquired by clearing a virgin land in 1989 and later developed it by cultivating on it until to 2009 without any interruptions. Thus, they are the owners of the suit land. They bolstered their submission by citing the case of the **Registered Trustee of Holy Spirit Sisters Tanzania vs. January Kamil Shayo and 136 Others**, Civil Appeal No. 193 of 2016 [2016] 365 TZCA TanzLII.

Arguing in support of the second ground of appeal, they submitted that the tribunal failed to evaluate the evidence adduced by both parties. It considered the evidence adduced by the respondent only which is contrary to the established principle that it must consider the evidence of each witness as held in the case of **Paulina Samson Ndawavya vs. Theresia Thomasi Madaha**, Civil Appeal No. 45 of 2017 [2019] TZCA 453 TanzLII.

On the third and fourth grounds of appeal, it was submitted that the refusal by the tribunal to execute the decree issued by the trial tribunal was against the rules of natural justice as it proceeded without affording the parties the right to be heard. The appellants' right to be heard was therefore jeopardized when the tribunal proceeded contrary to the established principle of the law that the court is required to accord the parties a full hearing before deciding the matter in dispute and before

pronouncing any adverse decision as stated in **Bhai vs. Siara** Civil Revision No. 25 of 2014 [2016] TZCA 35 TanzLII.

Submitting on the 5<sup>th</sup> and 6<sup>th</sup> ground, the appellants reiterated their submission in support of the second ground of appeal that the tribunal did not consider the evidence they adduced before the trial tribunal, and in fortification they cited the case of **Pendo Masasi vs. The Minister for Labour and Youth Development and Others**, Civil Appeal No. 34 of 2019 [2021] TZCA 331 TanzLII. In conclusion, they prayed the court to allow their appeal with costs.

In reply, Mr. Chondo submitting on the first, second, third, fourth and fifth grounds argued that the execution tribunal did not err in its decision as the appellants did not establish their case in preponderance of probability contrary to the requirement of section 3(2)(b) of the Evidence Act Cap. 6 R.E 2022. He argued that the law requires a person who alleges to prove and this is well stated under sections 110 and 111 of the Evidence Act, Cap. 6. And in the case of **Antony Masanga vs. Penina (Mama Ngesi) and Lucia (Mama Anna)** Civil Appeal NO. 118 of 2014 [2015] TZCA 556 TanzLII, **Hemedi Said vs. Mohamedi Mbilu** [1984] TLR 113 and **Constantine vs. Imperial Smelting Corporation Ltd** [1942] AC 154.

It was Mr. Chondo's submission in the present case that, this was not done as the appellants did not specify the disputed property in their claims. Thus, they offended the principle stated in the case of **The Board of Trustees of the F.P.T.C Church vs. The Board of Trustees Pentecostal Church**, Miscellaneous Land Appeal No. 3 of 2016 [2018]

2066 TZHC TanzLII and in the case of **Agast Green Mwamanda (suing as the Administrator of the estate of the late Abel Mwamanda vs. Jena Martin**, Misc. Land Appeal No. 40 of 2019 [2020] TZHC 2478 TanzLII.

On the sixth ground of appeal, he submitted that the DLHT acted correctly in pronouncing that the decree was not executable as the description of the suit property was missing. The decision, he argued was in line with the provision of rule 4 of Order XX of the civil Procedure Code Cap. 33 R.E 20219.

In rejoinder, the appellant reiterated their submission in chief and added that according to regulation 23(d) of the Land Disputes Courts (The District Land and Housing Tribunal) Rules GN No. 174 of 2003 once the judgment is in favor of the decree holder then the decree holder has the right to file for execution and the executing court is bound by the terms of that decree and cannot go beyond them. Supporting their submission, they cited the case of in **Maharaj Kumar Mahmud Hassan khan VS. Moti lai Banker** AIR 1961 ALL 1.

I have carefully considered the grounds of appeal and the parties submissions in the light of the records of the two tribunals which I have thoroughly read. Before I proceed further, I wish to state at the outset that, much as there are six grounds of appeal, I will confine my determination to only one ground. The reason is straight and not hard to find. The present appeal emanates from the execution tribunal's refusal to execute the decree. Thus, it would be a lucid misdirection for this court

to entertain and determine issues related to the evaluation of evidence and the real owner of the suit land. Such issues could have been relevant had the appeal been challenging the finding of the trial tribunal or the appellate tribunal on points of credibility and weight of evidence brought by each party in proof of their interest in the suit land. Inversely, as alluded earlier on, in the present case the decision of the trial tribunal by which the appellants were declared owners of the suit land was challenged neither by way of appeal nor revision. Thus, it has remained intact.

What appears to be relevant on the grounds of appeal and the submissions thereto, is the third ground of appeal in which the appellants have questioned whether the execution court had the mandate to question the decree and whether it was proper for it to refuse to execute the decree. The word "execution" is defined neither in the Civil Procedure Code nor in the Dispute Courts Act Cap. 216 and its Rules but it simply means the process of putting into effect, carrying out or enforcing a decree or court order (See Black's Law Dictionary, 8<sup>th</sup> Edn at page 609). In our jurisdiction, the execution of land decrees and orders is regulated by the Land Disputes Courts (The District Land and Housing Tribunal) Rules, GN No 174 of 2003 which in Regulation 23 states that:-

23 - (1) A decree holder may, as soon as practicable after the pronouncement of the judgment or ruling, apply for execution of the decree or order as the case may be.

(2) An application for execution of orders and decrees under sub-regulation (1) shall be made in the

appropriate forms prescribed in the second schedule to these Regulations; and shall indicate the mode in which the execution is sought to be carried out.

(3) The Chairman shall, upon receipt of the application, make an order required a judgment debtor to comply with the decree or order to be execution within the period of 14 days.

(4) Where after the expiration of 14 days there is no objection or response from the judgment debtor, the Chairman shall make execution orders as he thinks fit.

(5) The Chairman shall, where there are objections from the **judgment debtor consider the objection and make such orders as may be appropriate.**

**Provided that hearing of objections under this sub regulation shall be limited to the subject matter of the objections.**"(Emphasis added).

Under the provision above, the power of the executing tribunal is strictly limited to the extent that, unless there is an objection, it cannot refuse to execute the decree filed before it and in the event of an objection, confine itself to the question raised in such objection not otherwise. The rationale behind this provision is not far-fetched because, by its definition, a decree means:-

"a formal expression of an adjudication which, so far as regards the Court expressing it, **conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit.....**" (see section 3 of the Civil Procedure Code).

Therefore, when a decree is issued in a certain dispute it presupposes the end of the dispute between the parties unless it has been reversed by a

superior court or revision. Allowing the execution tribunal/court to question the decree would have defeated the principle of finality of litigation and would have certainly put the decree holders in jeopardy. Thus, the trite law that a decree cannot be anyhow altered during execution except by a superior court acting on appeal or in revision or by the court passing it on review. As held in the Indian case of **Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker** (supra):-

".....a Court executing a decree is bound by the terms of that decree and cannot go behind them. It is equally true as a general proposition that such Court can neither add to such a decree nor vary its terms."

The same position was stated in another Indian case of **The Lahore Bank, Limited, In Liquidation v. Ghulam Jilani**, (1924) I.L.R. V Lah. 54 where it was held that the executing court has no jurisdiction to criticize or go beyond the decree. All that concerns it is the execution of the respective decree. If the decree should be annulled, that is not the function of the executing court. In yet another Indian case of **V. Ramaswami Ayyangar and Others vs T.N.V. Kailasa Thevar** 1951 AIR 189, the court while commenting on the role of the executing judges, it held that:

"The learned Judges appear to have overlooked the fact that they were sitting only as an executing court and their duty was to give effect to the terms of the decree that was already passed and beyond which they could not go. It is true that they were to interpret the decree, but under the guise of interpretation they could not make a new decree for the parties."



The DLHT was not oblivious to this position. As per its record, before arriving at its decision, it cited the case of **Fortunata Edga Kaungua vs George Hassan Kumburu**, Misc. Civil Application No. 71 of 2019 [2020] TZHC 2069 TanzLII in which, while dealing with a similar issue, I cited the Indian cases above and concluded that:

"It can safely be concluded that the role of the execution court is to finalize the case, that is, to deal with the orders and decrees as decided by the trial court."

However, having cited this case, the tribunal observed that much as this is the position of the law, the application before it was distinguishable as no description of the suit land was provided. In fortification, it cited the decision of this court in **Agast Green Mwamanda vs Jena Martin** (Misc. Land Appeal 40 of 2019) [2020] TZHC 2478 TanzLII in which this court dealt with the issue of the description of the subject matter and held that, it was mandatory else, the court order will be inexecutable. This was a lucid misdirection because **Agast Green Mwamanda vs Jena Martin** (supra) was an appeal and one of the grounds which this court was called upon to determine concerned the description of the suit property. Thus in that case, the court was sitting as an appellate court and not an execution court.

Needless to emphasize, the respondent/judgment debtor had the right to challenge the judgment by preferring an appeal against the decree but as stated, he waived it which presupposes that he was satisfied by the judgment and the decree thereto and the execution court had no justification to usurp the appellate or revisional powers.

Based on these accounts, I have found merit in this appeal and I allow it. The decision of the execution tribunal is hereby quashed and set aside. I subsequently invoke the revision powers vested in this court by section 43(2) of the Land Disputes Court Act Cap. 216 and order that the case file be remitted to the execution tribunal for execution of the trial tribunal's decree.

**DATED** at **DODOMA** this 30<sup>th</sup> day of April, 2024.



A handwritten signature in blue ink, consisting of stylized, overlapping loops and lines.

**J. L. MASABO**  
**JUDGE**