

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT

(MUSOMA SUB REGISTRY AT MUSOMA)

LAND APPEAL No. 60 O F 2023

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in
Misc. Application [Execution Proceedings] No. 192 of 2022)*

TANZANIA POSTAL BANK APPELLANT

Versus

SELEMANI WANTAHE RESPONDENT

JUDGMENT

22.04.2024 & 22.04.2024

Mtulya, J.:

Mr. Selemani Wantahe (the respondent) had a land dispute with **Tanzania Postal Bank** (the appellant) registered in **Land Application No. 95 of 2017** (the application) before the **District Land and Housing Tribunal of Mara at Musoma** (the district tribunal) and the district tribunal had resolved in favor of the respondent. Subsequent to the district tribunal's decision, the respondent had lodged **Misc. Application No. 192 of 2022** (the execution proceedings) before the same tribunal against the Government entity, the appellant praying for the execution of the decision in the application.

After full hearing of the execution proceeding, the district tribunal had ordered the appellant to return the title deed to the respondent and pay costs of Tanzania Shillings Five Million (5,000,000/=Tshs). In the application, the second order on payment of the indicated amount

had aggrieved the appellant hence approached this court complaining that the district tribunal had no power to do so.

The appellant's learned counsel **Mr. Samwel Marwa** was summoned today morning to appear and explain the reason of appeal and briefly stated that the district tribunal had breached section 16 (1) & (2) of the **Government Proceedings Act [Cap 5 R.E 2019]** (the Act) and precedent of the Court of Appeal in **Karata Ernest & Others v. The Attorney General**, Civil Revision No. 10 of 2010. In his opinion there is special procedure to be followed when execution against government entities takes its course, but the respondent had declined to abide with the same. Finally, Mr. Marwa prayed for the decision of the district tribunal in the execution to be nullified and proceedings set aside for want of the law in section 16 (1) & (2) of the Act.

The submission and prayer of Mr. Marwa was not protested by the respondent's learned counsel, **Mr. Baraka Makowe**, who briefly stated that he had an opportunity to read the cited section and precedent and was persuaded to believe on the position stated by Mr. Marwa and submitted that there is no need to protest the submission and cited authorities. Mr. Makowe also supported the move of nullification of the decision and setting aside of the proceedings of the execution proceedings for the respondent to follow proper procedure enacted by the law.

I have scanned the present record of appeal and found that the respondent had sued the government entity for execution of costs emanated in the application without abiding with the law enacted in section 16 (1) & (2) of the Act and precedent in **Karata Ernest & Others v. The Attorney General** (supra) and the district tribunal had issued the execution order against the appellant.

The law in section 16 (1) of the Act provides, in brief that: in any civil proceedings against the Government, any order to costs made against the Government, the proper officer of the court shall issue to the person [entitled to costs] a certificate containing particulars of the order. Sub section 2 of the section on the other hand, was enacted, in brief, the following words: If the order provides for payment of money by way of damages or other reliefs or of costs, the certificate shall state the amount so payable and the Permanent Secretary to the Treasury shall pay to the person entitled.

The provisions had received an interpretation of the Court of Appeal decision in **Karata Ernest & Others v. The Attorney General** (supra) and the Court thinks, at pages 4, 5, 15, 16 and 17 of the Ruling that:

Ordinarily, execution of decrees is governed by sections 31 to 55 and Order XXI of the Code. However, in suits involving the government, the application of Order XXI has been expressly disallowed in execution of decrees against it, by Rule 2A of the same Order. Instead, the execution

process is governed by Section 16 of the Government Proceedings Act, Cap 5 R.E. 2002. The law directs that any decree-holder desiring to execute a decree in his favour against the government, must apply to the court, which of course issued the decree, under section 16 (1) of the Act, instead of following the processes under Order XXI of the Code, for a certificate. Such an application, from our plain reading of this provision, as is the case under Order XXI, Rule 9 of the Code, need not necessarily be a formal one, that is by chamber summons supported by affidavits. A written request or even an informal request in court, since there are no special forms specified for the purpose, would in our settled minds, suffice to meet the just ends of the application...With those observations in mind, we have to quickly point out that section 16 (1) of the Act imposes a mandatory duty on the proper officer to issue a certificate of the court order or decree against the government.


The reason of the Court in favor of the interpretation of section 16 of the Act is displayed t page 16 of the Ruling, that: *the process under Chapter 5 is a more simplified one than the one provided under Order XXI of Chapter 33 for the benefit of the decree holders.* This court is inferior to the Court and bound by interpretations brought by the Court, even if it has good reasons to depart from the interpretation of the Court. It will follow the interpretation without any reservations.

Having noted of the fault produced in the execution proceedings by the respondent and support of the district tribunal in the execution proceedings, I am moved by the indicated authorities in enactment and

precedent to allow the appeal and move further to quash the decision and set aside proceedings of the district tribunal for want of the law and practice of the Court. I do so under the mandate of this court enacted under section 43 (1) (b) of the **Land Disputes Act [Cap. 216 R.E. 2016]**. I award no costs in the appeal as the fault was caused by the respondent but blessed by the district tribunal. If the respondent so wishes, to initiate fresh execution, he may do so in accordance to the law regulating executions against Government entities.

It is so ordered.





F. H. Mtulya

Judge

22.04.2024

This judgment was delivered in Chambers Under the Seal of this Court in the presence of **Mr. Samwel Mwita**, learned counsel for the appellant and **Mr. Baraka Makowe**, learned counsel for the respondent.



F. H. Mtulya

Judge

22.04.2024