

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**LAND APPEAL NO.57 OF 2023**

*(Arising from Execution order in Misc. Land Application NO. 96 of 2023 the District Land and Housing Tribunal for Mwanza at Mwanza dated 30<sup>th</sup> June, 2023 and Originating from High Court Land Appeal No. 73 of 2015 dated 17<sup>th</sup> March, 2016)*

**DAUDI KULWA..... APPELLANT**

**Versus**

**MARCO PETRO.....1<sup>st</sup> RESPONDENT**

**PETER NDILA.....2<sup>nd</sup> RESPONDENT**

**LEAH MASHILI.....3<sup>rd</sup> RESPONDENT**

**JUDGMENT**

*16<sup>th</sup> & 23<sup>rd</sup> February, 2024*

**ITEMBA, J.**

The appellant above, challenges the decision of the District Land and Housing Tribunal for Mwanza (the Tribunal) in Misc. Application No. 96 of 2023. The appeal is pegged on three grounds of appeal that, the trial tribunal erred in law for failure to find out that the decree of the High Court in Land appeal No. 73/2015 was not executable as it does not specify and state precisely the description of the suit land in location and boundaries; that, it erred by issuing an eviction order beyond the scope of the decree; and that, the tribunal erred in law to base its eviction order on a new set of the decree holder's evidence and facts contrary to legal requirement.

Briefly, records reveal that, the dispute commenced with Application No. 270 of 2009 before the Tribunal where the appellant was declared to

be the lawful owner of the suit land which is seven (7) acres of un-surveyed land at Mwandula Village, Kisesa Ward at Magu District. Being dissatisfied by the decision of the tribunal, the respondents herein lodged Land Appeal No. 73 of 2015 before this court. On 17/3/2016 the appeal was decided in favour of the respondents herein who were declared to be the lawful owner of the suit property. This court issued a decree which *inter alia* states that

*"the appellant(s) are the legal owners/occupiers of the disputed land and the respondents should forthwith give vacant possession of the same"*

The appellant preferred an appeal to the Court of Appeal vide Civil Appeal No. 220 of 2017. The appeal was however struck out for being incompetent. The appellant did not surrender, he initiated proceedings for extension of time to file another notice of appeal vide Misc. Land Application No. 193 of 2018 which was granted. The appellant further made a series of endeavors to lodge his appeal which was yet to be filed to the Court of Appeal until the respondents herein applied for execution of the decree of this court vide Misc. Application No. 96 of 2023. Through Misc. Application No. 155 of 2023, the appellant herein unsuccessfully applied for stay of execution before the tribunal. At the same time, before the ruling of the tribunal on 3/5/2023 the appellant filed objection to

execution vide Regulation no. 23(5) of GN No 174 of 2003 challenging execution of a decree for reason *inter alia* that the decree is not executable for failure to specify the size and boundaries of the disputed land. The trial tribunal dismissed the objection on ground that there is no appeal filed before the Court of Appeal and ordered the appellant and/or his agents to vacate from the suit property. Henceforth, this appeal emanates from that latest decision of the tribunal

When the appeal was tabled for hearing Messrs. Mashaka Tuguta and Dionis John appeared for the appellant and respondents respectively. For the appeal, it was the submission of Mr. Tuguta that, the decree is the one which determine parties' rights in a case finally and conclusively, it should be self-content and self-explanatory in order for it to be executable without making reference to any documents. He supported his submission by **Mulla in Civil Procedure, 16<sup>th</sup> Ed** Vol. 2-page 2372 that:

*'decrees should be drawn up in such a way as to make them self-contained and capable of execution without referring to any other document'*

He went on stating that, the High Court decree of 17/3/2016 which the respondent sought to execute vide Misc. Application No. 96 of 2023 before the Tribunal was not self-contained as it did not give the description of the landed property subject of execution. That, the failure contravened order **XX rule 9 of the CPC** which applies to matters

originating from land tribunal in terms of **section 51(2) of the Land D Court Act Cap 216 R.E 2019.**

That, Order XX rule 9 is coached in mandatory terms where the subject matter is immovable, the decree must contain the description sufficient to identify the same. That, there is no description of either, location or boundaries or the neighbors of the property. He further relied in the case of **NCL International Limited v alliance Finance Corporation Ltd** Civil reference No.6 of 2021 (unreported) which says at page 11 that, the execution officer should execute the decree as it is. To him, the executing tribunal had nothing before it capable of being executed.

Regarding the second ground of appeal, he submitted that, the eviction order is at fault because it was entered and issued beyond the scope of the decree issued in Land Appeal. That, at page 2 of the High Court decree, the said decree was issued in respect of the appellant against the three respondents. That, the order of the executing tribunal had to be issued in respect of only those who were parties to the Appeal No. 73/2015. To the contrary, the ruling of executing Tribunal especially at page 4, involves 86 others whose names are not disclosed in the said ruling. Therefore, he was of the view that, the executing tribunal went beyond the scope of the decree and violated the law.

Regarding the last ground of appeal, Mr. Tuguta submitted that, the decree does not specify the location in terms of the street, suburb, district or region nor does it state the size of the disputed property. But, at page 2 of the ruling, the counsel for respondent pleaded the executing Tribunal to order and give vacant possession of the landed property measuring 7 acres at Mwandulu village, Kisesa, Magu, Mwanza. To him, this was a new set of evidence instead of giving evidence to the terms of the decree. Eventually, the executing Tribunal issued the order in respect of 7 acres, as prayed for. That, the tribunal went further and ordered demolition of 86 houses alleged to have been built therein despite the fact that this court's decree states nothing in respect of 86 houses. He accordingly prayed for the appeal to be allowed with cost.

Submitting on the first ground of appeal, Mr. Dioniz said, the appellant, Daudi Kulwa, was the applicant in original proceedings before the tribunal. He was complaining of the 7-acre located at Mwandula village, Kisesa, Magu. Later, the respondent won the appeal before the High Court (Hon. Ebrahim, J). So, it is not true that there was no description. That, the appellant in his Appeal No. 220/2017 before the Court of Appeal had no complaint about the boundaries or location of the suit property. That, the appellant is the one who prepared an application in the first place before the Land Tribunal. Further, to him, Order XX rule 9, is irrelevant because it does not refer to decrees in appeal but Order

XXXIX rule 35 CPC and Order XXXIX which does not give those requirements.

Regarding the second and third grounds of appeal, he submitted that, it is not true that the executing tribunal went beyond the scope. That, the executing tribunal has power under Regulation 23(5) of GN 24/1973 to make appropriate orders if any objection arises. That, before the tribunal, there was an objection for the tribunal to make orders. That, the tribunal issued apposite orders because the 7 acres were already sold to other people, more than 86, who have built in the disputed land. To him, the order issued were appropriate and there was no new evidence produced. As usual, he prayed for the appeal to be dismissed with costs.

In rejoinder, Mr. Tuguta reinstated his submission in chief with addition that, sub rule 2 of O. XXXIX rule 35 supports the appeal because it requires the decree in appeal to contain among others a clear specification of the reliefs granted. By clear specifications the size and location of land should be made.

In line with contentious arguments from the parties, I will decide the grounds of appeal whether they have merit. To start with, I have noted that, Tribunal entertained only one ground of appeal out of three which were raised. Therefore, the issue of proper description of the suit property was not dealt with. This being the first appellate court, I will step into the

shoes of the Executing Tribunal and determine the same. According to the appellant, the decree of the High Court in Land Appeal No. 73/2015 was not executable as it does not specify and state precisely the description of the suit land. To the respondent the decree was in respect of the 7-acre located at Mwandula village, Kisesa, Magu as stated originally by the appellant in his application before the tribunal. In the first ground, before I decide on whether the decree of this court was capable of being executed or not, I thought it is necessary to state the definition of execution. In the famous case of **Re Overseas Aviation Engineering (GB) Ltd** [1967]1 Ch. 24,39, execution was defined by Lord Denning M.R to mean;

*"Execution means, quite simply the process for **enforcing or giving effect to the judgement of the court**: and it is completed when the judgement creditor gets the money or other thing awarded to him by the judgement" (emphasis added)*

Therefore, by executing a decree, a decree holder is enforcing or realizing the proceeds of court's judgement. I quite agree with Mr. Tuguta that, the decree is the one which determine parties' rights in a case finally and conclusively, and that, it should be self-content and self-explanatory in order for it to be executable without making reference to any documents. For stance in the case of **Allan Duller vs the Republic**,

Criminal Appeal No. 367 of 2019 (unreported); the court of appeal stated at page 46 of the judgement that:

*"...judges and magistrates [have] to ensure that the final orders they give are **free from any ambiguity** lest they may create a confusion in the execution process. We need not overemphasize on the need to be careful on that." (emphasis supplied).*

The question remains as to whether the decree of this court is ambiguous to the extent of not being capable of being executed. As I have stated herein above, the decree *inter alia* stated that, the respondents are the legal owners/occupiers of the disputed land and that, the respondents should forthwith give vacant possession of the same.

As correctly submitted by Mr. Dioniz, decrees in appeal are governed by order XXXIX Rule 35 of the Civil Procedure Code, Cap 33 R.E 2022. In particular sub rule 2 requires for the same to contain the number of the appeal, the names and descriptions of the appellant and respondent and a clear specification of the relief granted or other adjudication made. reading the decree of this court by Hon. Ebrahim J., specifications of the reliefs granted were that the respondents herein are lawful owners of the land in dispute and the appellant shall handle vacant possessions of the same.



The law is settled that, the decree shall agree with the judgement (See: Order XX rule 6(1) CPC). The duty of the executing court is to execute the decree as it is. It cannot entertain any question as to the validity of the said decree. In the case of **National Insurance Corporation of Tanzania Limited vs Steven Zakaria Kiteu and 3 others**, Civil Reference No. 7 of 2020, this court stated at page 6 that;

*"An executing court has no power to entertain an objection or validity of the decree or as to legality or correctness of the decree. Rationale for the above rule being that, although a decree may not be in accordance with the law, however it is binding and conclusive as between the parties to the suit unless it is set aside in an appeal or revision by appellate or revisional court".*

Further, as I have clearly stated herein, execution means to enforce the judgement. Therefore, reading the decree and the judgement the disputed land is seven (7) acres of un-surveyed land at Mwandula Village, Kisesa Ward at Magu district belonging to the late Mzurilulyeho. The counsel for the appellant was enjoined to show whether there is confusion in identifying the disputed land. Nothing was said as to whether the late Mzurilulyeho had another land measuring 7 acres as the same Mwandula village. I find this decree agrees with the judgment. Moreover, as correctly submitted for the respondent, the main application subject to this appeal was filed at the Tribunal by the appellant herein. He was the one who described the land in dispute as such. Denying his exertion at this time that the land was not well described in terms of boundaries and neighbors

is an afterthought. If I can use the words of my brother Hon. Morris, J in **Juma Deresu Malunga vs Susan Daniel Mwendu**, Civil Appeal No. 12 of 2023 (unreported), the appellant, sew his own web which nets him squarely. If that is not enough, the appellant, after winning his case before the tribunal, he did not complain anywhere about his decree not being executable. If he had been aggrieved, the appellant would have registered his complaints or cross appealed on that aspect. Yet, he relaxed. Bringing that argument at this stage is nothing but an afterthought. Therefore, in my view, the decree is not ambiguous to the extent of being non executable. The first ground of appeal thus lacks merit.

Regarding the second ground of appeal, it was the submission for the appellant that the Tribunal while executing the decree in Appeal No. 73/2015, it involves 86 others whose names are not disclosed in the said ruling. Therefore, the execution order was beyond the scope of decree. To the respondent, the trial tribunal was justified because, the 7 acres were already sold to those other people who have built on the disputed land.

I totally agree with the appellant that, the executing tribunal cannot alter or go beyond the scope of the decree as also stated in the case of **NCL International Limited v alliance Finance Corporation Ltd** (supra). However, as I have stated hereinabove this court in Appeal No.

73/2015 ordered *inter alia* that, the appellant herein should give vacant possession of the land in dispute. In exact words, the executing Tribunal said at page 4 of the ruling;

*'Mshindwa tuzo **pamoja na mawakala wake na watu wote aliowauzia eneo la mgogoro** wakati wa kesi inaendelea wanapewa amri ya kuondoka kwenye ardhi ya washinda tuzo yenye ukubwa wa hekari 7 na kubomoa nyumba zao zote 86 ambazo zipo ndani ya eneo la washindwa tuzo' (emphasis supplied).*

As I agree with the appellant that the tribunal went beyond the scope of the decree to mention parties which were not subject of the appeal, I will not fault the tribunal for doing so for the following reasons, **One**; the order was given in respect of the land in dispute that it 7 acres at Mwandula village, Kisesa, Magu, Mwanza not more; **Two**, the appellant is not affected by the said order as he was the one liable by the order of this court to handle vacant possession as he is the judgement debtor. Should other people be affected by the order (if any) the door is open for them to file objection proceedings or revision against that order. The appellant has no *locus stand* to speak on their behalf; he cannot be allowed to be an ambulance chaser on others' rights. **Three**, it is the law that, no decision of the tribunal shall be altered on appeal on account or

errors, omission or irregularity which does not occasioned failure of justice. Section 45 of Cap 216 Provides;

Therefore, in respect of the appellant herein, no failure of justice has been occasioned as the execution order was in respect of 7 acres adjudicated by this court in favor of the respondents herein. Therefore, I dismiss the second ground of appeal too.

As to the last ground of appeal, it is the contention of Mr. Tuguta that, the suit property was not described in the decree to be 7 acres at Mwandula village, Kisesa, Magu, Mwanza. I think this should not detain me as to some extent, it relates to the 1<sup>st</sup> ground. I have stated that the description of the land in dispute is clear and it came from the application by the applicant filed before the trial tribunal. Again, the same descriptions were stated by Hon. Ebrahim J. in the judgement. Therefore, I will not agree with the appellant that the decision of the trial tribunal was based on a new set of the decree holder's evidence and facts. The third ground of appeal also lacks merit.

Consequently, the appeal is hereby dismissed for being barren of merit. The appellant shall pay cost of this appeal. It is so ordered. Right of Appeal fully explained to the parties.

DATED at **MWANZA** this **23<sup>rd</sup> February**, 2024.



Judgment delivered under my hand and seal this 23<sup>rd</sup> Day of February 2024, in the presence of all the parties, Mr. Chacha Mniko and Ms. Neema Karumuna learned counsels for the respondent and Ms. Eliza Marco, RMA.

**L. J. ITEMBA**  
**JUDGE**