

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(KIGOMA SUB-REGISTRY)

AT KIGOMA

CIVIL REFERENCE NO. 2 OF 2023

(Arising from the decision of Kasulu District Land and Housing Tribunal at Kasulu in
Miscellaneous Land Application No. 48 of 2022)

THOMAS NKAYAMBA APPLICANT

VERSUS

HAILENI NAHAYA RESPONDENT

RULING

Date: 02/05 & 10/06/2024

NKWABI, J.:

It is clear, in the affidavit in support of this reference, as eggs is eggs that the applicant is aggrieved by the decision of the learned Chairman of the District Land and Housing Tribunal for Kasulu, dated 20th April 2023 in Miscellaneous Land Application No. 48 of 2022. He is now, under the provisions of Order XLI Rule (1) (20), section 38(1) and 95 of the Civil Procedure Code, Cap 33 R. E. 2022 aspiring a reference in this Court against that decision of the District Land and Housing Tribunal.

In the application in the District Land and Housing tribunal, the respondent pushed towards an order for execution in the decision of the Ward Tribunal for Mwayaya in Land Case No. 5 of 2020. The application was accordingly granted.

This reference application encountered a preliminary objection on a point of law raised by Mr. Method Kabuguzi, learned counsel for the respondent to the effect that:

This Honourable Court is being wrongly moved by the applicant to grant the orders as they are sought in chamber summons in terms of Order XLI Rule (1) (2), section 38(1) and 95 of the Civil Procedure Code, Cap. 33 R. E. 2019 since such powers are exclusively conferred upon the court which may entertain reasonable doubts when hearing the suit or appeal or executing the decree.

The hearing of the application was carried out by way of oral submissions. During the hearing, the applicant was represented by Mr. Michael Mwangati, learned counsel and the respondent was represented by Mr. Method Kabuguzi, also learned counsel. I am thankful for their submissions.

It was pointed out by Mr. Kabuguzi, in submission in chief, that they have an objection to the effect that the applicant is moving this Court wrongly. He stated that the application is for reference under Order XLI Rule 1 and 2 and section 38 (1) and 95 of the Civil Procedure Code. He strongly contended that the applicant has no any mandate to bring the application. He pointed out that that mandate is on the tribunal which would ask the superior court (the High Court) to it to have a look at the decision and

decide. Mr. Kabuguzi elaborated that it was the District Land and Housing Tribunal which ought to have brought this application for reference. He prayed that this reference be struck out, as it is incompetent, with costs to the respondent.

In reply submission, Mr. Mwangati strenuously argued that, the objection is misconceived and prayed it be dismissed. He took the stance that this is the only avenue the applicant has when aggrieved by the execution order by the District Land and Housing Tribunal for Kigoma. He further stated that the applicant was aggrieved by the decision, the applicant has no any other avenue to challenge the decision save for reference.

Mr. Mwangati added that the provision of Order XLI permits the party to bring the reference in the High Court. He also referred me to Order XLI Rule 5, for the Court to order amendment, or set aside the decree, through the reference. He finally prayed that the reference be heard on merit while the preliminary objection be overruled with costs.

Mr. Kabuguzi, in rejoinder submission, reiterate his submission in chief and beefed up that the applicant ought to have asked the district land and housing tribunal to issue the reference. He stressed that the reference is incompetent.

The determination of this preliminary shall not be prolonged. With wholeheartedly respect to Mr. Mwangati, it occurs to me that when Mr. Mwangati was drawing up the documents regarding this reference, had not seen the provisions of Regulation 24 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, G.N. 174 of 2003 which regulation is found in Part V that deals with execution of decrees and orders. Regulation 24 provides that:

"Any party who is aggrieved by the decision of the Tribunal shall subject to the provisions of the Act, have the right to appeal to the High Court (Land Division)."

So, the contention maintained by Mr. Mwangati that the applicant has no any other avenue to challenge the impugned execution order does not hold water and it is disapproved.

Meanwhile, could the applicant be allowed to prosecute this reference despite there being an avenue of appeal against the decision of the District Land and Housing Tribunal? The answer is not far fetched, and by way of analogy it could be seen in the decision in **Salim O. Kabora v. TANESCO Ltd & 2 Others**, Civil Appeal No. 55 of 2014 CAT (unreported) where it was underscored that:

"The import of the above quoted excerpt is that where a certain law provides for a specific forum to first deal with a certain dispute, a resort to it first is imperative before one seeks recourse to court. Where that is not observed, the attendant court's decision is rendered a nullity."

In addition, one could see also **Bank of Tanzania v. Vallambia**, Civil Appeal No. 15 of 2002 (unreported) CAT where it was stated that:

"... it is abundantly clear to me that there is no right of appeal to the court once an objection to the attachment has been adjudicated upon. The remedy open to the objector is to file a suit to establish the objection to the claim of the property in dispute."

The above said and done, I agree with Mr. Kabuguzi that this application is incompetent on the ground that there is an avenue to address the grievances of the applicant that is provided by the law. Briefly to conclude, I strike out this reference with costs.

It is so ordered.

DATED at **KIGOMA** this 10th day of June, 2024.




J. F. NKWABI
JUDGE