

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

LAND APPEAL NO. 6818 OF 2024

*(Arising from the Ruling and orders of the District Land and Housing Tribunal of
Maswa at Maswa in Land Application
No. 210 of 2021)*

LUHENDE YAGEGESA..... APPELLANT

VERSUS

MINZA ZENGO RESPONDENT

JUDGMENT

11th & 19th June, 2024.

MASSAM J.

In this appeal, the respondent before the District Land and Housing Tribunal of Maswa at Maswa in Land Application No. 210 of 2021, filed an application for the execution of the orders made by the Ward Tribunal of Mwabaratulu in Land Case No. 04/2021, which declared the respondent to be the lawfully owner of the disputed land located at Mwabaratulu village within Mwabaratulu ward in Maswa District, measured 31 acres with the boundaries in the North, Makigo Bundala, South Charles Goha, East John Wise and in the west there is Gaga River.

Equally, the respondent prayed before the tribunal for the appellant be evicted from the said disputed land, and a declaration that the respondent is the lawfully owner and the disputed land be handed over to the respondent.

The trial tribunal heard the application for execution inter parties against the appellant and ruled out in favour of the respondent by asserting that, the disputed land property be handed over to the respondent and the appellant should immediately vacate from that land property.

Being distressed by the orders of the trial tribunal, the appellant appealed to this court based on one ground of appeal that,

- 1. The tribunal erred in law and facts for granting the execution while there were no orders to be executed and prayed to this court to allowed this appeal, the judgment of the tribunal be dismissed, and any other relief (s) as this court may deem fit and just to grant.*

When the matter was called for hearing, it was argued orally whereas the appellant was represented by Daudi Masunga learned Advocate, and Mr. Mshomari Counsel appeared for the respondent.

Succumbing in support of the submitted ground of appeal, the learned counsel for the appellant claimed that, the Tribunal was erroneous to grant the orders for execution while there were no orders to be executed, since the orders for execution which had been claimed to be emanated from land case No. 04 of 2021 before Mwabaratulu Ward is not existing.

The counsel went on argued that, for the orders to be executed there must be an order or decree hence it was wrong for the tribunal to execute what was not existing and therefore the orders given by the tribunal was invalid and that the proceedings and orders given thereto be nullified and the Judgment and orders be set aside.

On his side, the counsel for the respondent conceded the submission by the counsel for the appellant and prayed to this court to allow this appeal without costs due to the irregularities done by the tribunal.

This court has carefully considered the conceding arguments of both parties and get satisfied that there was a gross mishandling of the application by the trial Tribunal. This is due to the reasons that, the Civil Procedure Code has provides for various modes of execution, while Order XXI, rule 9 provides for application to the court that;

"When the holder of a decree desires to execute it, he shall apply to the court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions herein before contained to another court, then to such court or to the proper officer thereof"

From the above provisions it is wisely that, the decree-holder will resort to an application to the court only where the judgment debtor does not comply with the decree. With regard to possession of land, the position is clearly provided for under Order XXI, Rule 33 (1) that;

"Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged or to such person as he may appoint to receive delivery on his behalf and, if necessary, by removing any person bound by the decree who refuses to vacate the property"

Subsequently, the decree-holder does not have to jump in to Order. 21, rule 9 unless peaceful delivery is not forthcoming. Besides, the meaning of execution was defined in numerous cases including the famous case of **Shell and BP Tanzania Ltd Vs University of Dar es**

Salaam, Civil Application No. 68 of 1999 CAT, at Dar es Salaam, Page 7-8 where the court stated that, according to Lord Denning K.R., In re Overseas Aviation Engineering (G.B.) Ltd., [1963] in Chap. 24, 39,

"Execution- means, quite simply, the process for enforcing or giving effect to the judgment of the court, and it is completed when the judgment creditor gets the money or other thing awarded to him by the judgment"

The illustrations were emphasized from Rastill Termes de la Ley, **"that valuable old book"**, where it is was stated;

"Execution is, where judgment is given in any action, that the plaintiff shall recover the land, debt, or damages, as the case is; and when any writ is awarded to put him in possession or to do any it her thing whereby the plaintiff should the better be satisfied his debt or damages, that is called a writ of execution; and when he hath the possession of the land, or is paid the debt or damages, or hath the body of the defendant awarded to prison, then he hath execution". **Emphasis is mine.**

According to the above decisions, it is therefore clear that execution is the final act, that is, the satisfaction of the judgment, and it can be with

the aid of an agent of the court or, in the case of possession of land, by the entry of the plaintiff, and sometimes the nature of the subject matter would dictate the mode of execution.

In the instance case, this court has to ascertain as to whether or not there was a competent matter for the tribunal to entertain the application for execution. After painstakingly perusal of the records of the Tribunal's proceedings, It does not indicate what transpired at the Ward tribunal of Mwabaratulu, neither its judgment, decree or orders were availed before the tribunal after the respondent had filled the application for execution, in order for the tribunal to be satisfied that, the matter was passively heard and ruled out in favour of the respondent. Consequently, the application for execution was incompetent since there was no any existing judgment, decree or orders for the tribunal to entertain the application.

Again, incompetence of judgment, orders, decree, proceedings etc may takes many forms, it may arise out of non-**existence of judgment**, wrongly institution of a suit or a suit being instituted in the wrong court or forum, a competent court being wrongly moved, citing a wrong number of the case in which the challenged decision emanates, etc. See for instance the case of **Director of Publication Prosecutions vs ACP**

Abdallah Zombe & Others (Criminal Appeal No. 254 of 2009) [2013]

TZCA 497 (8 May 2013) at Page 10.

All being said and done, this court has found itself constrained to hold that as long as there was no judgment for the tribunal to entertain the application for execution, the prayers granted was null ab initio and cannot by any stretch of imagination being entertained. In the results, this court is hereby nullifying the entire proceedings and quash the ruling and orders of the trial tribunal made in application No. 210 of 2021. And order that If parties are still interested are at liberty to institute a fresh matter in competent court with competent jurisdiction.

Accordingly, this appeal is allowed, to the extent explained above. No orders as to costs regarding the nature of this matter.

It so ordered.

DATED at SHINYANGA this 19th day of June, 2024.



A handwritten signature in blue ink, appearing to read "R. B. Massam".

**R. B. Massam,
JUDGE**