

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

REVISION APPLICATION NO. 25530 OF 2023

(Arising from the Decision and Order of the District Land and Housing Tribunal for Mwanza at Mwanza before (Hon. Murirya, Chairperson) in Misc. Application No. 199 of 2023, dated 23rd June 2023, Misc. Application No. 280 of 2023 & Land Application No. 398 of 2020.)

NMB BANK PLC APPLICANT

VERSUS

PAUL JOSEPH MGENI RESPONDENT

RULING

8th & 15th March, 2024

CHUMA, J.

In this application, I am called upon to call, revise and set aside the ruling in application No. 280 of 2023 of the District Land and Housing Tribunal for Mwanza at Mwanza (DLHT), issued by Murirya chairperson dated 27th day of October, 2023.

The Court is moved under the provisions of Section 41 (1) and 43 (1) & (2) of the Land Disputes Courts Act, 2002, Cap. 216 R.E. 2019, Section 79 (1) (a) and (c) and Section 95 of the Civil Procedure Code (CPC), Cap 33 R.E 2019 which enable this court to supervise the jurisdiction of the DLHT and see if indeed it delivered the justice. Supporting the application are the affidavits sworn by Ms. Tumaini Sanga and Mr. Dotto Alex Makota, who

represented the applicant in Misc. application No. 199 of 2023, serving as the applicant's branch manager, respectively. These sworn depositions set out grounds on which the prayer for this application is based.

In the supporting depositions, the applicant gives a detailed account of how the proceedings that precipitated this application were bungled. Of significance in these depositions is the fact that the order granted by the DLHT in Misc. application No. 398 of 2020, led to an order in Misc. application No. 199 of 2023, which was illegal in the face of justice. Concerning the order that committed the applicant's branch manager as a civil prisoner to satisfy the unlawful withdrawal order, the applicant contends that the same was issued against the law which bars executions from withdrawal orders as it is neither a judgment nor decree. In this case, the order was issued in defiance of the law.

In the twin depositions sworn in reply to the applicants' supporting affidavits, the respondent supported the stance taken by the DLHT. He averred that the DLHT issued an order which was according to the law. In such circumstances, it was inevitable that an order to commit the applicant's branch manager as a civil prisoner should be issued with a view of having the offenders cited for contempt.

Before me for Hearing Dr. Mwaisondola, learned counsel represented the applicant, and Mr. Paulo Joseph Mgeni appeared in person.

Learned Counsel for the applicant. Dr. Mwaisondola, submitting in support of the application, prayed for chamber summon and affidavits to be part of his submission, he contended that there was no dispute that the respondent secured a loan from the applicant and failed to pay as per the agreement, that the respondent even asked the applicant's advocate office that he was willing to pay the remained debt to the tune of TZS. 4,000,000/= (Four Million) and the reason for his failure was due to the outbreak of COVID-19.

He submitted further that, after that, the respondent prayed to withdraw application no. 398 of 2020 because he has completed paying his debt to the applicant, and the applicant did not object as it was the respondent who filed the said application. So, the matter was marked withdrawn on 22. 2.2023. When the respondent executed the said order dispute the applicant prayed to stay the execution but the application was struck out. Prayed for this court to supervise the proceeding of the DLHT for its illegality and irregularity. To aid his cause, he cited the decision of the Court in the case of **General Tyre East Africa Ltd Vs. Hsbc Bank PLC**

Misc. Civil Application No 35 of 2005 on page 12, the court stated that "*DLHT does not have jurisdiction to extend time in paying loan*".

The learned counsel contended further that the issue of illegality and irregularity appeared in the face of the withdrawn order specifically in the last three lines as the order turned to be a consent judgment instead of a withdrawn order which is not proper as the said order was not even in the respondent's prayer (reliefs) in the chamber summon and affidavit. Nevertheless, Dr. Mwaisondola contended that a withdrawn order cannot be executed as it is neither a judgment nor a decree. The applicant's advocate urged the Court to revise the DLHT proceedings and decision of the withdrawn order and set aside the execution with cost.

When called upon to reply to the submission in chief Mr. Mgeni urged the court to let him submit in writing being a layperson he could not understand and follow what submitted by Dr. Mwaisondola Advocate a prayer which was not objected to by the applicant's advocate who stated that he will not file any rejoinder. His prayer was granted regardless that he was explained about that even before the hearing but replied that he was ready to proceed with the hearing orally.

Mr. Mgeni in his rebuttal submission was equally admirable for his terse, he asserted that he paid all his dues as what they had agreed upon consulted the applicant's advocate office and they were on the same view before the tribunal when he prayed to withdraw because he has settled his loan and prayed for his title deed to be returned by the applicant. The tribunal recorded the admission as per Order X Rule 1 of the CPC.

He further stated that, if the applicant was aggrieved by the decision of the tribunal, then he was supposed to appeal, that as this matter is about revision then the applicant has filed his matter out of time as the order, and he is not happy with the decision which was delivered on 22.2.2023 and the present application filed out of 60 days, as the law provides for matter filed as revision. Arguing in respect of Misc. application No. 199 of 2023 stated that the said application is appealable so it has no business in here.

He finally contended that as the applicant's submission in chief did not dispute what was stated in the respondent's counter affidavit in opposing the application there is no important point of law worth consideration of this court. He urged the Court to dismiss the matter with cost.

Having considered the tribunal's record and respective rival submissions by both parties the profound question to be resolved is whether the DLHT order is shrouded in any of the pointed irregularities. Before resolving the instant application on merit, I find it prudent to say a word regarding appeals and revision.

Part V of the Land Disputes Courts (The District Land and Housing Tribunal) Rules, GN No 174 of 2003 regulates the Execution of decrees and orders by the DLHT. In essence, the applicant is challenging execution issues before this court. According to Regulation 24 of the cited GN, the aggrieved party by the decision of the tribunal may appeal to the High Court. In this matter then though no one raised such concern but I have asked myself why the applicant who has been privy to the matter at the tribunal opted to challenge the tribunals' findings via revision despite the existence of the above-cited regulation. In the case of **Transport Equipment Ltd V. Darram Vallambia** [1995] TLR 161 and also in **Gapco Tanzania Ltd V Sherif Mansoo** [2002] TLR 99 it was held that;

"Where there is a right of appeal, a party aggrieved can not go by way of revision".

I was about to end the matter through this issue raised by this court however in the interest of justice and considering the circumstances of this matter I will determine the application on merit.

Reverting to the nitty gritty of the application, one of the applicant's areas of contention is that the DLHT was wrong to execute a non-executable order as it was just a withdrawn order that existed after the respondent prayed before the tribunal, it was neither a judgment, ruling or decree. The applicant in chamber summons is challenging the trial tribunal's decision in application No 280/2023 on the stay of execution which was rejected. In such denial the trial tribunal based on a withdrawal order dated 22.2.2023 in which the record reveals the non-existence of a debt in dispute as the same reported paid. For clarity, I think it is necessary to extract from the impugned order which reads "...Nimeangalia maombi hayo kwa makini na kuangalia amri ya kuondoa shauri ambayo inasema kwamba";

"Kwa vile mdai amemaliza deni lake na wakili Tumaini Sanga kakili kuwa ni kweli deni limekwisha hivyo basi, shauri hili limetamatika na mdaiwa arudishiwe hati miliki ya nyumba iliyopo kwenye kiwanja Na. 36, Kitalu "B" Nyamhongolo iliyokuwa imewekwa rehani irudishwe kwa mdai mara moja"

The above order resulted from the party's submission before the trial tribunal on 22.2.2023 in which the record reads;

T. Sanga

Mhe. Mdaiwa amemaliza deni hivyo hadaiwi deni lolote hivyo tunaomba shauri liondolewe bila gharama.

Mdaiwa.

Ni kweli nimemaliza kila mtu abebe gharama zake na nipewe nyaraka zangu (hati yangu)

T. Sanga

Mhe, suala la kupewa hati halina mjadala hivyo atapewa na pia benki wamekwishajiridhisha kuwa mdai amemaliza deni.

It is beyond doubt that the respondent on 22.2.2023 not only requested to withdraw the matter rather went further requesting a return of his title which was granted. From the record, the applicant via Ms. Sanga admitted completion of payment by the respondent and two never objected to the respondent's prayer for a return of the title. It is that order which the applicant later applied for its execution. Hence, I am inclined to side with the submission of Dr. Mwaisondola that the very order is not executable. It should be noted that orders from bodies that discharge adjudicatory functions once issued have to be executed unless there is tangible reason

not executing it. It is unjustifiable for the applicant to challenge the fact that they were well involved as per the record.

Given the foregoing and in my considered view I think the impugned order and the record generally, as explained above speaks for itself, I have no difficulty in finding no merit in this application, and accordingly, I dismiss it with costs.

Order accordingly.

DATED at **MWANZA** this 15th day of March 2024.




W.M. CHUMA
JUDGE

Ruling delivered in court before Ms. Tumaini Sanga, advocate for the applicant and Mr. Paul Joseph Mgeni, the respondent this 15th day of March 2024.


W.M. CHUMA
JUDGE