

**IN THE HIGH COURT OF TANZANIA
TANGA SUB-REGISTRY
AT TANGA**

LAND REVISION NO. 2 OF 2023

(Arising from Land Execution Application No. 152 of 2021 from the District Land and Housing Tribunal of Korogwe at Korogwe in Land Dispute No. 3 of 2020 of Magamba Kwalukonge Ward Tribunal in Korogwe District)

SERIKALI YA KIJIKI MAKOLE.....APPELLANT

VERSUS


BAKARI MHANDO SWANGA.....RESPONDENT

JUDGMENT

K. R. Mteule, J

15th February 2024 and 18th March 2024

The Applicant filed this Application under **Section 43 (1) (a) and (b) and (2) of the Land Disputes Courts Act [Cap 216 RE 2019]** praying for this Court to call for the records of the lower Tribunals with respect to **Land Execution Application No. 152 of 2021** of the District Land and Housing Tribunal for Korogwe at Korogwe originating from **Land Dispute No. 03 of 2020** of Magamba Kwalukonge Ward Tribunal in Korogwe District and exercise its revisional jurisdiction to ensure correctness, appropriateness and accuracy in compliance with court's procedures.



The Application was supported by an affidavit of one KEVIN SIMON an employee of the Applicant herein and the Supplementary Affidavit of Mr. Rashid Mohamed Said, State Attorney for the Applicant. In the sworn statements contained in both the affidavit and supplementary affidavit, the Applicant claims to have been denied right to be heard in Land Dispute No. 3 of 2020 of Magamba Kwalukonge Ward Tribunal as the Applicant was not the party to that matter and never summoned to appear to defend the matter. That the Applicant challenged the decision of the Ward Tribunal vide Land Appeal No 4 of 2021 but later withdrew it basing on the fact that the Applicant was not a party in the Ward Tribunal. According to the affidavit, the Ward Tribunal judgment was said to have been amended by including the applicant as a party leading to **Execution Application No. 152 of 2021** which was determined without information to the applicant. This conduct aggrieved the Applicant who decided to pursue this Application for revision.

In opposing the Application, the Respondent filed a Counter Affidavit asserting that non-appearance of the applicant in the matter was by choice as nothing was done in a hide.

The background of the Application is that the Respondent instituted the Land Case No. 3 of 2020 at Magamba Kwalukonge Ward Tribunal



against the parties namely Mwenyekiti Serikali ya Kijiji Makole and one Nuku Kawogo claiming to be declared the owner of 32 acres of the disputed land. Hearing of the matter was conducted and upon final determination, the suit was decided in favour of the Respondent. Subsequently thereto, the Respondent filed an application for execution at the District Land and Housing Tribunal for Korogwe at Korogwe vide **Miscellaneous Application No. 3 of 2021**. This application was struck out on the ground that the Application could not be executed against the Applicant (the Judgment Debtor) since the Judgment Debtor was not a party in **Land Case No. 3 of 2023**.


Consequently, the Respondent appeared at the trial Ward Tribunal of Kwalukonge for rectifications and successfully amended the name of Mwenyekiti wa Serikali ya Kijiji Makole and substituted it with Serikali ya Kijiji Makole. It was when he filed an **Application for Execution No. 152 of 2021**. Still the Application was not executable hence he further applied before the District Land and Housing Tribunal for Korogwe for amendment of the name of the parties vide **Miscellaneous Application No. 29 of 2022** to the District Land and Housing Tribunal for Korogwe. The District Land and Housing Tribunal ordered that the names of the 1st Judgment Debtor in **Application for Execution No. 152 of 2021** before the District Land and Housing Tribunal and Land

Dispute No. 3 of 2022 of Magamba Kwalukonge Ward Tribunal to be read as Makole Village Council in lieu of Serikali ya Kijiji Makole. The amendments necessitated pronouncement of an execution order by the District Land and Housing Tribunal against the Applicant. The Applicant is dissatisfied with the decisions of the lower Tribunals hence this Application.

Submitting for the Applicant, Mr. Keffa Anase, State Attorney, adopted the contents of the Affidavits filed in Court to form part of the submission and argued that there were material irregularity and illegality in compliance with Court's procedures in **Land Dispute No. 3 of 2020** before Magamba Kwalukonge Ward Tribunal and **Execution No. 152 of 2021** of Korogwe District Land and Housing Tribunal. The Applicant was not a party in **Land Dispute No. 3 of 2020** and that Application for Execution No. 03 of 2021 was struck out on the ground that the Applicant was not a party to Land Dispute No. 3 of 2020. The learned Sate Attorney referred the case of **Jaluma General Supplies Ltd vs Stanbic Bank (T) Ltd, Civil Appeal No. 34 of 2020, CAT at Dar es Salaam(unreported)** at page 5 insisting that names of the parties should appear as they are in the pleadings. He continued to argue that the amendment of the name of Mwenyekiti Serikali ya Kijiji to Serikali ya Kijiji Makole in the judgment of Land Dispute No. 3/2020 vitiated the

whole proceedings conducted before the Ward Tribunal since the legal identity of the parties during the trial were not the same as those appearing on the rectified Judgment. He added that the right to be heard was infringed and therefore it was contrary to the principle of natural justice.

The learned State Attorney further argued that, when the Judgment Debtor entered appearance in Application for **Execution No. 152 of 2021** to show cause as to why the Judgment and Decree should not be executed against her, an objection was raised that Serikali ya Kijiji Makole was not among the parties in that matter and that the illegality was supposed to be addressed by the Chairman in accordance with **Regulation 23(5) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, GN. No. 174 of 2003**. In his view, the act of the Respondent to file **Miscellaneous Application No. 29 of 2022** at the Korogwe District Land and Housing Tribunal to rectify the name of Serikali ya Kijiji Makole and substitute it with the name of Makole Village Council was improper. In his opinion it is the trial Court (Magamba Kwalukonge Ward Tribunal) that passed the judgment that had such power and not the executing Court (Korogwe District Land and Housing Tribunal).



The counsel further interpreted **Section 96 of the Civil Procedure Code [Cap 33 RE 2019]** which is in *pari materia* with Section 152 of the **Indian Civil Procedure (Mulla the Code of Civil Procedure, Sixteenth Edition, at page 654-655)** which states;

"The object behind allowing the amendment of judgments, decrees and orders under this section is to provide a remedy in cases of casual omissions or negligence by the ministerial staff of a court in preparing the records or even by the court and to give effect to the meaning and intention of court."

The learned State Attorney argued that the District Land and Housing Tribunal misdirected itself by amending the names since there was no clerical error or arithmetical error attributed by the Tribunal Officials and that the amendment of the name of the party to a case was no longer intended to give meaning and intention of the Tribunal Judgment, but rather to safeguard the Respondent's interest.

The learned State Attorney also referred to the case of **NCL International Limited versus Alliance Corporation Limited**, Civil Reference No. 6 of 2021, High Court of Tanzania at Bukoba (Unreported) at page 14 where the Court referred to the persuasive



case of India which was also referred and quoted in the case of Joseph Geoffrey Jimbika vs Elizabeth James, Civil Revision No 14 of 2020, HC TZ Dar es Salaam (Unreported). In this case, the duty of the executing court was emphasized to be giving effect to the terms of the decree and not to go beyond the terms.

In reply, the Respondent challenged the tenability of this application when the execution application challenged is already determined and the said execution already implemented. In his view, there is nothing to change. He referred to the case of **Paskali Nina vs Andrea Karera (Civil Appeal No. 325 of 2020 (2023) TZCA 35.**

Furthermore, the respondent asserted in his submission that the change of the name of the Applicant was legally done in the Tribunal since the Applicant defaulted appearance. The respondent shares views on the principles in the cases cited by the Applicant, that is the case of **Jaluma General** and that **NCL International Limited** supra, but he maintained that the applicant refused to appear to challenge the decision of the Tribunal.

I have gone through the parties' submissions. In fact, it is not disputed that the name of the Judgment Debtor in the Ward Tribunal was different from the name that appears in the execution proceedings in



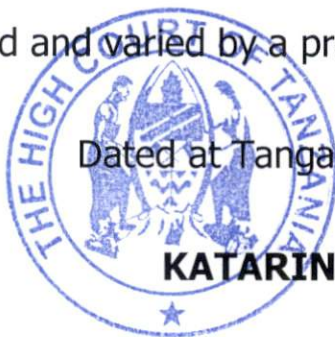
the DLHT. It is apparent on the record that the Judgment Debtor in the Ward Tribunal was "Mwenyekiti Serikali ya Kijiji Makole" which changed to Serikali ya Kijiji Makole (the instant Applicant) and later during the execution, changed further to Makole Village Council. It is further not disputed that the Applicant was not a party in all the proceedings in both Tribunals. The Respondent claimed that the Applicant was aware of the application for execution.

I have studied the entire scenario and noted some confusions in terms of who is the actual judgment debtor against whom the execution ought to have been done. In the Ward Tribunal, the Judgment Debtor was "Mwenyekiti Serikali ya Kijiji Makole". This was the party against whom the decree ought to have been executed. The executing Court issued order against this party but later changed the name to Halmashauri ya Kijiji cha Makole (Makole Village Council). In my view, the execution court does not have any power to change the name of the judgment debtor. If the decree holder sued and obtained a decree against a wrong party, it is upon him to sue the right party and not to attempt to change the pleadings at the stage of execution. This is the position in **NCL International cited** supra by the Applicant to which I subscribe. Therefore, the DLHT was wrong in making alterations in the name of the Judgment Debtor in Misc. Application No. 29 of 2022. Since the name in

Application for execution No. 152 of 2021 appears in the decree issued in the Ward Tribunal, then the same name should have remained.

I have considered the Respondent's argument that since the decree is already executed, then the applicant cannot challenge it. Illegality will always remain to be illegality. If something is illegal, such illegality cannot be converted to legality by finalising the matter. It is upon the court to declare the illegality if sought to be so, and it will do so regardless of at what stage the illegal proceedings have arrived. Therefore, the argument of the Respondent does not hold water.

From the above, I find the Application to have merits. Consequently, the Application is allowed. In exercise of revisional powers, I nullify the order issued in **Misc. Application No. 29 of 2022** in the District Land and Housing Tribunal of Korogwe to vary the name of the judgment debtor in **Application for execution No. 152 of 2021** in the same Tribunal. The name against whom the decree shall be executed shall be the one which appears in the decree issued by the Ward Tribunal unless challenged and varied by a proper procedure. It is so ordered.



Dated at Tanga this 18th Day of March 2024.

A handwritten signature in blue ink, appearing to read "Katarina Revocati Mteule".

KATARINA REVOCATI MTEULE

JUDGE

18/3/2024