

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND APPEAL NO. 198 OF 2020**

*(From the Decision of District and Housing Tribunal of KINONDONI District at In Land  
Case No. 160 of 2018)*

**DR. NGILA MWASE .....APPELLANT**

**VERSUS**

**QEEN MALEKO .....RESPONDENT**

**JUDGMENT ON APPEAL.**

**S.M. MAGHIMBI, J:**

At the Kinondoni District Land and Housing Tribunal ("The Tribunal"), the respondent herein had lodged a Misc. Application No. 160 of 2018 seeking for execution of a decision passed by the Goba Ward Tribunal in case that has no number. On the 26/08/2020, the tribunal granted the application by ordering the appellant herein to comply with the decision of the Ward Tribunal within 14 days of the ruling failure of which the execution will proceed without further notice pursuant to Regulation 23(4) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003, G.N No. 174/2003. Aggrieved by the said decision, the appellant has lodged this appeal on the following grounds:

1. That the Hon. Chairman erred in law and in fact by failure to note that there was no proper application for execution before the honorable Tribunal as the decree holder/applicant in her application

for execution prayed for the tribunal for declaration that she was the rightful owner of the suit land at Kulangwa at Goba and also prayed for order restraining the appellant herein above from interfering with the respondent's land, which orders ought to be prayed in the ward Tribunal and not at the stage of execution.

2. That the Hon. Chairman erred in law and in fact for failure to note that neither the judgment nor the application for execution specified where the house is and no specific location and exact measurements are shown as per the requirements of the law.
3. That the Hon. Chairman erred in law and in fact for failure to note that in the judgment the suit land is shown to be at Madale, Wazo ward while in the application for execution the suit land is shown to be at Kulangwa at Goba hence an empty decree not executable.
4. That the Hon. Chairman erred in law and in fact in entertaining a serious anomaly of granting prayer of execution while knowing it is impossible for the suit house subject for demolition to be in two different locations.
5. That the honorable Chairman erred in law and in fact by failure to note that demolition is a serious action which touches one's settlement and right of accommodation and requires accuracy.
6. That the honorable Chairman erred in law and in fact by failure to advise the decree holder to first appeal in order to get a corrected decree which specifically identifies the disputed land before issuing the execution order of demolition.

The Appellant prays to this Honorable Court that:

- a. The Appeal be allowed and the decision of the Trial Tribunal be quashed and set aside.
- b. Costs of the Appeal be provided for
- c. Any other relief(s) this honorable court deems fit and just to grant.

The appeal was disposed by way of written submission; the appellant was represented by Mr. Kyara, learned advocate while the respondent was represented by Mr. Heriel Munisi, learned advocate.

In his submission to support the appeal, Mr. Kyara submitted the Hon. Chairman failed to note there was no proper application for execution filed before the Honourable Tribunal. His argument was that the decree holder who is now the respondent prayed for declaration that she was the rightful owner of the suit land located at Kulangwa at Goba and also prayed for order restraining the appellant herein above from interfering with the respondent's land, which order ought to be prayed in the Ward Tribunal and not at the stage of execution. That for the Tribunal to make such orders, the respondent had to bring witnesses to be heard in order to determine the respondent's prayers. He argued that these were and still are wrong prayers at the stage of execution.

He submitted further that at the stage of execution, it is not a stage for hearing, determining and making declarations or hearing cases on merit. It is a stage for the Judgment debtor to show cause why execution should not take place. Further that it is a stage in which the tribunal deal with a mode in which the decree holder need the Court to assist in execution. That the respondent prayer for an Order that the tribunal be pleased to declare the respondent then applicant, rightful owner of the disputed land

at Kulangwa Goba were wrong prayers before the Tribunal and thus making it improper application for execution before the District Tribunal. That these orders ought to be prayed in the Ward Tribunal hence there was no proper application before the tribunal.

In reply, Mr. Munisi first challenged the propriety of the Appellant's appeal against the execution order. He argued that the order for execution can not be subjected to appeal before this Honourable Court but rather the Appellant was required to opt for available remedies to a person aggrieved by the execution order or proceedings which are applying for revision of the execution order, or filing an objection proceeding. He supported his argument by citing the case of **Kalebu Kuboja Mjinja Vs. Shadrack Daniel Tembe; Civil Appeal Number 24 of 2020** (unreported).

In the alternative, Mr. Munisi's reply submission to the substance of the appeal was that the Respondent herein filed the proper application for execution before the Tribunal and the Appellant herein did not raise that issues before the Tribunal nor filed a notice of preliminary objection, he is therefore barred from raising it at this stage. He submitted further that the Respondent's Application for the execution is of Judgment of the Goba Ward Tribunal in which Appellant did not appeal/challenged the said decision. That in its decision in the Miscellaneous Application Number 160 of 2018, the Tribunal as an executing Tribunal did not issue or order anything to the contrary to the Goba Ward Tribunal's Judgment, even though the Respondent prayed for more orders. He therefore argued that the Appeal has no merits.

On the Appellant's argument that in its decision, the Tribunal did not comply with Regulation 3(2)(b) of the Land Dispute Courts (The District Land and Housing Tribunal) Regulations, 2003, Mr. Munisi's reply was that the arguments has no merits because, firstly, the provision of the law cited by the Counsel for the Appellant does not apply in our circumstance. That after all, an Application for the execution of the Decree (Miscellaneous Application Number 160 of 2018) emanated from the decision of the Goba Ward Tribunal and in its judgment contained the particular of the suit property well stated. Further that the Appellant attended the case himself at Goba Ward Tribunal.

Secondly, argued Mr. Munisi, if the case at Goba Ward Tribunal does not disclose the location of the suit property, why did the Appellant attend the matter. His third point was that Regulations 3(2)(b) of the Land Dispute Courts (the District Land and Housing Tribunal) Regulations, 2003 cited by the appellant is applied in a situation when any person wants to file a case at the District land and Housing Tribunal. That he/she ought to fill the particulars as prescribed in Regulation 3 before his or her case be admitted in the District land and Housing Tribunal. He argued that this is not the circumstance of our matter in which the respondent prayed for the execution of an order of Goba Ward Tribunal in Misc. Application Number 160 of 2018, and granted based on the order of the Goba Ward tribunal.

On the Appellant's argument that the decision never specified where the house subject to demolition, Mr. Munisi's reply is that in the Goba Ward Tribunal's proceeding, the disputed suit property is well specified and the Appellant did appear and did not complain that the disputed suit property

is not specified. Further that the Appellant did not Appeal against the said decision regarding the said issues. Further that the Applicant's Application is an afterthought because if the execution could proceed as ordered by the Tribunal in Miscellaneous Application Number 160 of 2018, and another property demolished other than the one which was in dispute between the parties in the Ward Tribunal, he has the right of instituting a case against those parties who are responsible.

He then distinguished the **Daniel Kagala's** case (supra) cited by Mr. Kyara on the ground that it in the case on main application at the Tribunal they were disputing the ownership of the suit property and not challenging the execution of the Tribunal after the judgment has been delivered by the Ward Tribunal and none of the parties did appeal. Secondly, it was a second Appeal emanating from the decision of the District Land and Housing Tribunal and not an Appeal against an application for execution of the decision of the Ward Tribunal. Further that in the entire submission in chief, Mr. Kyara not submit as to the way he prefers appeal and no other remedies available and he did not argue on the context of the decision he was challenging before this Honourable Court.

In rejoinder; Mr. Kyara reiterated his submission that the decree appealed from is erroneous defective and contains irregularities. That the suit land is unsurveyed land and there are no specifications and the order must be descriptive to identify it from other plots around it. Further that in our instant matter, the decree has grave irregularities which need attention of the Court before it is executed the purpose for this Appeal.

On the respondent's argument that the appellant did not raise eye brows at the Tribunal that there was no proper application before the honorable Chairman, he argued that it leaves much to be desired as it is crystal clear at para 2 page 2 of the typed Ruling of the Tribunal by S.H. Wambili Chairman that the issue was raised.

I have gone through the parties submissions for and against the appeal. I will start with the point raised by Mr. Munisi that the order for execution cannot be subjected to appeal before this Honourable Court. He argued that the Appellant was required to opt for available remedies to a person aggrieved by the execution order or proceedings, remedies which are applying for revision of the execution order or filing an objection proceeding. He did not cite any law to support his argument. On the other hand, I have noted apart from distinguishing the case cited by Mr. Munisi to support his argument, Mr. Kyra did not make any substantive reply. He just argued that the appeal is lodged under Section 75 of the Civil Procedure Code, Cap. 33 R.E 2019, arguing that the decree appealed from is erroneous, defective and contains irregularities.

Before I make a decision on whether the present appeal was the proper remedy on the part of the applicant, I find it necessary that I define the essence of both appeal and revision. The remedy of appeal has been provided to an aggrieved party so as to have a second/third chance whereby his case may be heard again, evidence re-evaluated and a decision is made on the rights of the parties therein. An appeal is basically a continuation of a suit, and the entire proceedings are opened and left to

re-evaluation and consideration by an appellate court with power to review the whole evidence subject to any statutory limitations.

A revision on the other hand is done by a higher court for the purpose of ensuring that proper legal actions/procedures were followed in arriving at a decision. A revision application may be lodged where there is an assumption or allegation that a certain decision was made illegally, or the lower court/tribunal did not exercise or exercised its jurisdiction irregularly. In such cases therefore, a higher court re-examines the decisions made by a lower court to know whether all the legal actions were exercised or procedures were followed.

The main purpose of a revision is to make sure that justice has been administered properly and also to correct any errors that could have led to improper justice. In the end, if the higher court finds that the legal procedures were properly followed to arrive at a decision, then no changes/alterations to the decisions are made no matter how unreasonable the decision may appear. A higher court sitting in revision has no power to re-evaluate the evidence.

Looking at the application at hand, the appellant is challenging the decision of the tribunal in an execution application on the ground that one; there are no specifications where the house is and no specific location and exact measurements are shown as per the requirements of the law. Two that in the judgment the suit land is shown to be at Madale, Wazo ward while in the application for execution the suit land is shown to be at Kulangwa at Goba hence an empty decree not executable and that in entertaining a serious anomaly of granting prayer of execution while knowing it is



impossible for the suit house subject for demolition to be in two different locations. It is obvious to me that what the appellant moves the court to do here is to re-evaluate the evidence and determine the location, size and ownership of the suit property.

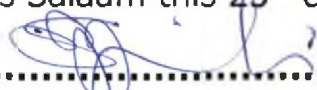
The appellant also pushes for court's sympathy that that demolition is a serious action which touches one's settlement and right of accommodation and requires accuracy. This is also a matter of evidence because it is undisputed that the decision to be executed is a decision of the Ward Tribunal in which the appellant was a party. The disputed property was known and it cannot be challenged at this point on the ground of accuracy.

In execution proceedings, the party is only supposed to challenge the legality and propriety of the proceedings that the decision was arrived to. It is not a point which a party can move the court for determination of rights of the party like what the applicant seeks to move the court to do by beating around the bushes on the accuracy of the description of the suit property. The suit property was a subject of dispute at the ward tribunal and ownership had been determined. The tribunal is only executing the decision of the Ward Tribunal and if the appellant thinks the description is not accurate, then he should wait and see whether the demolition will be done at the wrong house which is not the one that was at dispute at the Ward Tribunal. That is when the appellant may challenge the description of the suit property.

As for this case, all I am seeing is that the appellant is attempting to have the right of ownership determined at the stage of execution by challenging

what is in the decision and that which is to be demolished. Since this is not the point and time for the court to do so, I agree with Mr. Munisi that had the appellant intended to challenge the legality of the execution proceedings, he should have so done by way of revision and not the appeal like the case in hand. It is on those findings that this appeal is found to be lacking merits both in substance and form. It is hereby dismissed.

Dated at Dar es Salaam this 23<sup>rd</sup> day of July, 2021



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**S.M. MAGHIMBI**  
**JUDGE**

