

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

**REVISION NO. 38 OF 2020**

(Arising from the Order of District Land and Housing Tribunal for Kinondoni in at  
Mwananyamala in Misc. Application No.85 of 2018)

**OMARY C. CHAMSHAMA..... APPLICANT**

**VERSUS**

**FATUMA A. TUNU.....RESPONDENT**

Date of Last Order: 30.09.2021  
Date of Ruling: 08.11.2021

**RULING**

**V.L. MAKANI, J**

The applicant OMARY C. CHAMSHAMA is seeking for the following orders:

- 1. That this Honourable Court be pleased to declare that the acts of the respondent to execute the Court Order without applying to the Tribunal is unlawful and amounts to abuse of the Tribunal process*
- 2. That this Honourable Court be pleased to set aside execution of the Order issued on 04/08/2020 by Kinondoni District Land and Housing Tribunal in Miscellaneous Application No. 85 of 2018 to the extent of item 2 and 4 (ii) of the application for execution.*

3. *That in case a subsequent order for sale of the properties to be attached is issued or made, let this honourable Court order to restore the same to the applicant*
4. *Any other reliefs this Honourable Court may deem fit and just to grant*
5. *Costs of this application.*

The application proceeded by way of written submissions. Mr. Symphorian Kitare, Advocate drew and filed submission on behalf of the applicant. The respondent did not file a counter affidavit nor did she file submissions in reply. The application therefore proceeded in her absence.

In his submission, Mr. Kitare said that, failure by the respondent to file counter affidavit amounts to admission of the allegations in the affidavit. He added that on 14/01/2015 the applicant filed against respondent, a suit at the District Land and Housing Tribunal for Kinondoni (**The Tribunal**). That the applicant was claiming for refund of his construction fees for two rooms, commonly known as frames (the **suit premises**). That on 28/09/2017 the suit was decided in favour of the respondent. That the applicant appealed to the High Court and he was unsuccessful for being time barred. He said on 16/01/2018, the respondent without the court's order invaded

and vandalized the applicant's photography equipment in the suit premises. That the respondent rented the suit premises to another person who has commenced business. He said on 23/02/2018 the respondent filed an application for Execution No.85 of 2018 at the Tribunal and that the applicant unsuccessfully filed a preliminary objection due to the fact that respondent executed the decree without applying for the court's order that the property be attached. Counsel said that the respondent's act was contrary to section 23 of the Land Disputes Courts (The Land and Housing Tribunal) Regulations, 2003 which requires a decree holder to apply for execution. Counsel added that the applicant is applying to set aside the Execution Order issued on 04/08/2020 and that the grant of the prayer will not deny ownership of the suit premises to the respondent. That the applicant disputes the remaining orders requiring him to pay rent arrears, general damages, and costs since vandalization by the respondent denied him income to settle the decree. He said the execution order of 14/07/2020 was to the effect that the applicant should pay decretal sum within 14 days which ended on 17/08/2020. That the fact that applicant's business was vandalized on 16/01/2018 means that the applicant was denied 3

years and 8 months to operate his business. Counsel prayed for the application to be granted.

The main issue for consideration is whether this application has merit. Mr. Kitare said that since the respondent did not file a counter affidavit then it was apparent that she conceded to the application. I think this is a misconception because the applicant is required to prove his application accordingly.

Supervisory and revisionary powers of this court are found under section 43(1) (a) (b) and (2) of the Land Disputes Courts Act CAP 216 RE 2019. The said provision states:

*"(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court:*

*(a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;*

*(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the*

*proceedings and make such decision or order therein as it may think fit.*

*(2) In the exercise of its revisional jurisdiction, the High Court shall have all the powers in the exercise of its appellate jurisdiction."*

From the above provision, the court is empowered on its own motion or upon application to call the record of the Tribunal at any time, conduct inspection and give directions if it considers necessary for the ends of justice.

Initially, in Land Application No.8 of 2015, the applicant prayed among other things for declaration that he is the lawful tenant of the suit premises. The respondent raised a counter claim, praying among other orders, for immediate eviction of the applicant from the suit premises. The applicant's claim was dismissed and the prayers in the counter claim were granted to the extent, that the applicant vacates the suit premises and hand it over to the respondent. It is therefore apparent that, when the respondent filed the application for Execution in Land application No.85 of 2018, there was already an order for the applicant to vacate the suit premises.

In this application for revision, the applicant is complaining that the respondent did execution prior to application for execution. He even raised it by way of preliminary objection in the application for execution. However, the same was overruled and the application was granted. Now, was there any irregularity in the proceedings for execution which occasioned injustice to the applicant?

From the records of the Tribunal, there is no irregularity in the proceedings in respect of the application for Execution. Further, I have noted that, even the preliminary objection raised by the applicant did not qualify to be preliminary objection within the ambit of **Mukisa Biscuit Manufacturing Company Limited vs. West End Distributors Limited (1969) EA 696**. Simply stated once a preliminary is raised it must not attract evidence. Now, in order to establish that execution has been conducted the applicant had to present evidence including photographs; he even called on Tribunal to visit the locus in quo so as to satisfy that execution had been conducted. Obviously, this was not a fit point for preliminary objection notwithstanding that the Tribunal ruled on the same. In fact, there was no irregularity that would have occasioned injustice on the part of the applicant. Further it is the law that he who comes

for the justice must come with the clean hands. The applicant in Land Application No.8 of 2015, was ordered, among other things, to vacate the suit premises. He did not obey the court's order. In case he was not satisfied with the order, he would have filed an appeal and apply for stay of execution. But he did not appeal meaning that he obviously waived his rights to appeal. In other words, he was satisfied with the decision of the Tribunal. In such a situation, how can the applicant complain of the respondent's re-occupation of her suit premises while he is still occupying part of it unlawfully? He should have clean hands before complaining about the execution.

Conclusively, there is nothing like irregularity in the Tribunal's proceedings and no injustice was caused to the applicant. In the result this application for revision is therefore without merit and is hereby dismissed with costs.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**08/11/2021**

