

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**CIVIL REVISION NO. 23 OF 2022**

**AMANDUS KATO ..... APPLICANT**

**VERSUS**

**MASEKE KANYORO ZENGE ..... 1<sup>ST</sup> RESPONDENT**

**MPOYO TRADERS & COURT BROKER..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 29/09/2022*

*Date of Ruling: 07/10/2022*

**KHALFAN, J.**

This application is for revision of the proceedings, and the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Miscellaneous Application No. 323 of 2022 (Original Application No.102 of 2013) dated 29<sup>th</sup> June, 2022 as per Hon. R.L Chenya, Chairman. The applicant alleged that there was an error material to the merits involving injustice.

This application is made under Section 43(1) (a) and (b) of the Land Dispute Courts Act, R.E 2019. It is supported by affidavit of Amandus

Kato, the applicant herein. At the hearing of the application, the applicant was represented by Mr. Sylvester Shayo, learned Counsel. On the other side, the first respondent, appeared in person unrepresented, while the second respondent was absent.

Mr. Shayo submitted that, the decree issued in the main Application No.102 of 2013 was a declaratory one, declaring the respondent as the lawful owner of the disputed property. Mr. Shayo referred the Court to the last paragraph of the judgment of the Tribunal dated 31/10/2019.

He further submitted that, when the application for execution was made, the Tribunal ordered the eviction of the applicant which was an order in excess of the original decree. He also maintained that in the execution proceedings, the Tribunal has no power to make any order beyond the decree. He cited the case of **Mohinder Singh (Dead) through L.Rs vs. Paramjit Singh & Ors**, Civil Appeal No. 10222 of 2017 to support his submission.

In reply to the submission, Mr. Zenge argued generally in relation to his counter affidavit, that the application is unfounded. He added that, the applicant is praying for indulgence of this Court that he may continue to live in the house that was declared to be lawfully owned by him (the

respondent). Mr. Shayo, in his rejoinder, he reiterated his submission in chief.

I have carefully considered the rival submissions by the applicant's learned Counsel and the first respondent in person. The issue to be determined is whether the application has merit. It is apparent that under the general circumstances, the legality or correctness of a decree is not questionable.

The reliefs sought in the Main Application are declaratory in nature as per Annexure "AK1" to the applicant's affidavit. However, Regulation 23(3) of GN. 174 of 2003 which is a replica of Section 38 of the Civil Procedure Code, Cap. 33 R.E. 2019, states thus:

*'23 (3) The Chairman shall, upon receipt of the application, make an order requiring a judgment debtor to comply with the decree or order to be executed within the period of 14 days...'*

The respondent is now seeking to execute the decree in issue by way of eviction. There is no dispute that the decision on which the decree was predicated does not at all provide for the relief sought.

Mr. Shayo submitted to the effect that the relief sought could not have been granted under the decree sought to be executed. Mr. Shayo

referred the Court to an Indian case of **Mohinder Singh (Dead) through L.Rs vs. Paramjit Singh & Ors (supra)**, in which the issue was whether the decree was executable. It was held that:

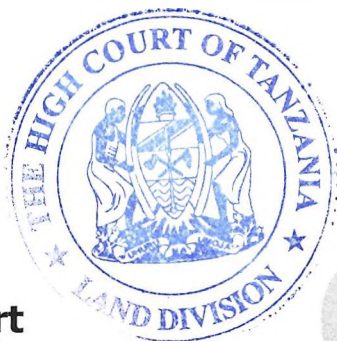
*'...it is abundantly clear that the decree which is sought to be executed is a declaratory one and it ensures to the benefit of the decree-holder after the death of the vendor. The decree-holder can only file a separate suit if so advised for possession of the suit property but the execution is not maintainable. The declaratory decree cannot be executed and the possession of the land in question cannot be granted to the decree-holder in execution of the same. This issue is decided against the decree-holder...'*

I find the legal position in the above cited case persuasive. It is clearly manifested on the face of record that the Trial Chairman in the due course of determination of execution proceedings went beyond the scope of the decree as the execution of the relief was at variance with the decree. I find this to be a miscarriage of justice at the detriment of the applicant.

I find the application to be meritorious. I am thus inclined to allow the application as sought by the applicant.

In the upshot, the application is herein granted. The respondent is at liberty to institute a separate action for the desired relief. In the circumstances I make no order as to costs.

**Dated at Dar es Salaam** this 7<sup>th</sup> day of October, 2022.



**Court**

**F. R. KHALFAN  
JUDGE  
07/10/2022**

Ruling delivered this 7<sup>th</sup> day of October, 2022 in the presence of Mr. Amandus Kato, the applicant.



**F. R. KHALFAN  
JUDGE  
07/10/2022**