

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

LAND REVISION NO. 29 OF 2022

*(Arising from the decision of District Land and Housing Tribunal for Temeke in
Execution No. 383 of 2021 Hon. J. Sillas-Chairperson)*

MAGRETH J. OLAMBOAPPLICANT

VERSUS

AGNESS S. KALUNDWA.....RESPONDENT

Date of order: 28/9/2022

Date of Ruling: 17/10/2022

RULING

KADILU, J.

This is a ruling on application for revision lodged in the Court by the above-named applicant on 28/07/2021 under Section 43 (1) (b) of the Land Disputes Courts Act [CAP 216 R.E 2019], seeking for the following orders:

- 1. That call and examine the correctness and legality of the order issued by Hon. Chairman J. Sillas dated 20th July 2022 on execution No. 383 of 2021 pending in the land and housing tribunal for Temeke District at Temeke.*
- 2. That after examining the order issued by Hon. Chairman J. Sillas dated 20th July 2022 on execution No. 383 of 2021 the court hold that the order is irrational and is in contravention of the laws.*
- 3. Costs of the application.*

4. *Any other orders this Honourable Court may deem fit and just to grant.*

The application has been taken at the instance of **BLUE ICE ATTORNEYS** and it is supported by an affidavit sworn by the applicant. A brief background giving rise to the application at hand is relevant. It is on record that the respondent herein had instituted Land Case No. 32 of 2021 before Kurasini Ward Tribunal against the applicant. The respondent was claiming against the applicant for construction of a wall which obstructed a pathway. The matter before the trial tribunal proceeded in the absence of the applicant herein and it was decided in favour of the respondent.

The applicant was ordered to demolish the wall she had erected within 14 days. The respondent decided to file an application for execution before the District Land and Housing Tribunal for Temeke at Temeke (the DLHT). Initially, the applicant prayed for stay of execution of the trial tribunal's decision before the DLHT so that she could file an application to set aside the ex- parte decision of the trial tribunal. The prayer for stay of execution was granted, but the applicant did not make follow up to the trial tribunal to have its ex-parte decision set aside. The DLHT therefore proceeded with execution and ordered the wall erected by the applicant to be demolished.

This prompted the applicant to lodge the present application. On 28th September 2022, this court ordered the application to be disposed of through written submissions. The applicant was represented by Mr. Herman Kilenzi learned advocate while the respondent appeared in person. In her submission, the applicant faulted the DLHT for proceeding with the execution while there was a pending application before the trial tribunal and there was no proof that the matter before the trial tribunal was dismissed.

The applicant further contended that she was condemned unheard as parties were not given any chance to comment on anything. To fortify her stance, the applicant has referred to the decision of this court in **Abbas Sherelly & another v Abdul S. H. M Fazalboy**, Civil Application No. 33 of 2002 (unreported) on the need to adhere to the right to be heard whereby any decision arrived at without observing right to be heard will be nullified. On reply, the respondent contended that the DLHT rightly ordered execution to proceed because there was no order for stay of execution.

The applicant's application for setting aside the ex-parte decision was left unattended. The respondent submitted further that the order for execution issued by the DLHT was legally valid. On further submission, the respondent cited the decision of the Court of Appeal in **J. Shija v Fortunatus Masha** Civil

Appeal No. 1 of 2020 Court of Appeal of Tanzania at Mwanza (unreported) which requires a successful party in a case not to be unduly denied reaping the fruits of the decree. The respondent prayed for the application to be dismissed with costs.

The applicant did not file a rejoinder to her submission in chief. Having gone through the submission by the learned advocates for the parties, rival and in support of the present application, the sole issue that calls for the court's determination is whether the present application has merit. As stated before, this is an application for revision which has been preferred under section 43 (1) (b) of the Act. The said provision provides:

43.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court: -

(a)...

*(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. [Emphasis added].*

From the foregoing provision of the law, in an application of revision like the present one, the applicant must show that there is an error material to the merits of the case involving injustice. In the matter at hand, the applicant faults the decision of the DLHT in granting execution while there was a pending application before the trial tribunal. Similarly, the applicant has claimed that she was condemned unheard.

I have carefully gone through the entire record of the DLHT. There is no dispute that the respondent had prayed before the DLHT execution to be stayed as there was a pending application before the trial tribunal. The order for stay was passed on 31st January 2022.

On 20th July 2022, the parties herein appeared before the DLTH whereby the respondent prayed for execution to proceed as the applicant had abandoned the application to set aside the ex-parte decision. The applicant appeared through her advocate and when asked to respond to the respondent's claim, the learned advocate readily conceded that there was indeed a stay of execution, but he did not know what transpired later. It follows therefore that, the claim by the applicant in this applicant that the DLHT ordered

execution to proceed while there was a pending application for setting aside the decision of the tribunal lacks merit.


She failed to explain to the DLHT the status of the said application. Even in the affidavit in support of this application, the applicant could not say anything on the status of the said application. The applicant claimed to have been condemned unheard. I agree with the applicant that right to be heard is fundamental and any decision arrived at in violation of the right to be heard is a nullity. In the matter at hand, I am unable to agree with the applicant that she was condemned unheard.

I state so because on 14th July 2022, the DLHT ordered summons to be issued to the applicant and parties duly appeared on 20th July 2022. The applicant was represented by Mr. Herman Kilenzi learned advocate. The respondent gave a brief deliberation and at the end, she prayed for execution of the trial tribunal's decision. It is on record that the applicant's advocate was given chance to respond to the respondent's prayer and he never objected the prayer for execution by the respondent. He simply said he was not aware of what transpired. The DLHT therefore was justified to order execution to proceed. I find the allegations of violation of the right to be heard to have no basis in the present application.

In the final analysis, I hold that the present application lacks merit and it is hereby dismissed in its entirety with costs.

Order accordingly.




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KADILU, M. J.

JUDGE

17.10.2022.

17/10/2022

Coram: Hon. A. Chugulu, DR

For the applicant: Mr. Herman Kilenzi, advocate

For the respondent: present in person

RMA: Christina

COURT: Ruling delivered this on 17th day of October, 2022 in the presence of Mr. Herman Kilenzi, learned advocate for applicant and respondent in person.



A. Chugulu
DEPUTY REGISTRAR
17/10/2022