

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

LAND REVISION NO.20 OF 2022
*(Arising from Mkuranga District Land & Housing Tribunal in
Misc. Land Application No. 63 of 2022)*

RASHID S. MWISONGOAPPLICANT

VERSUS

CHARLES MAPIMA.....RESPONDENT

Date of Last Order: 06.09.2022
Date of Ruling: 31.10.2022

RULING

V.L. MAKANI, J

This is an application by RASHID S. MWISONGO. He is praying for the following orders:

- 1. That the honourable court be pleased to revise and set aside an execution order of the District Land and Housing Tribunal for Mkuranga on Misc. Land Application No. 63 of 2022 delivered on 1st June, 2022 before R.M. Mwakibuja, Chairperson.*
- 2. That the costs of this application be granted to the respondent.*
- 3. Any other relief this court may deem fit to grant.*

The application is made under section 43(1)(b) of the Land Disputes Court Act CAP 216 RE 2019 and is supported by the affidavit of the applicant herein. The respondent filed a counter affidavit to oppose the application.

Hearing proceeded orally and Ms. Salma Mohamed and Mr. Mboje, Advocates appeared on behalf of the applicant. Ms. Mohamed said the main issue before the court is the right of the applicant to be heard which was denied by Mkuranga District Housing and Land Tribunal (the **Tribunal**). She said the right to be heard is a fundamental right according to Article 13(6)(a) of the Constitution of the United Republic of Tanzania. She said the right to be heard is also cited in various cases including **Tanelec Limited vs. Commissioner General Tanzania Revenue Authority (CAT-Dodoma)** (unreported). She said the applicant in paragraph 4 of the affidavit said on 12/05/2022 he was given summons to appear at the Tribunal. The applicant arrived on time and the matter was adjourned to 01/06/2022. On this latter date he found the order of execution being read without his presence and without him being heard as such this was in contravention of the applicant to be heard. She said the applicant did not file his defence within 21 days according to the law. She said 21

days were yet to be completed from 12/05/2022 to 01/06/2022. She said it is apparent that the applicant never had time to respond to the summons received. She prayed for the court to nullify the order of the Tribunal and the matter be returned to the Tribunal for hearing on merit of the application. She also prayed for the costs of the application.

In response, Mr. Mgorano, Advocate for the respondent submitted that he does not dispute that a party has a right to be heard, but according to Article 107(a) and (b) and 107 (B) of the Constitution which states that the right of a person should not be delayed unreasonably. This is also in Regulation 23(1) and (3) of the Land Disputes Courts Regulation, 2003 (GN. 174 of 2003). He said the applicant received summons on 12/05/2022 in respect of execution of 2020 in Land Case No. 159 of 2020 of Vianzi Ward Tribunal. He said there was no appeal that was preferred in respect of the decision of the Ward Tribunal hence the application for execution. He said the applicant appeared on 12/05/2022 and so he was supposed to bring his defence on 01/06/2022 or he would have said something when he found the order being read. He said logically an order cannot be read without the one who it is being implemented against is present. He

said he has not stated which right has been denied and under what law, and so he prayed for the court to go through the proceedings to satisfy itself of what transpired. Mr. Mgorano said the applicant on 01/06/2022 said he was not a party at the Ward Tribunal but later he said he was present, so his demeanour is not proper. Mr. Mgorano prayed for the application to be dismissed with costs.

In rejoinder Mr. Mboje took over on behalf of the applicant. He said though Counsel had argued that speed is important but the right to be heard must also be there. He said since the Tribunal gave a summons, then the procedures according to the summons must be followed that is 21 days for filing a Written Statement of Defence (**WSD**), and hearing before making any decision. The issue that the applicant has delaying tactics should not be relied upon as these are facts given by Counsel or parties, but the court should look at the records. He said what is on the records of the Tribunal will give a good picture of what transpired. He reiterated that the Tribunal's decision be nullified and the application for execution be heard on merit.

The revisionary powers of this court are governed by Section 43 of the Land Dispute Courts Act. In the said provision the court is given

general powers of supervision over all the Tribunals and may inspect records and give directions as it deems fit and in the interest of justice. The court is also guided on how to proceed with execution orders and decree by virtue of Regulation of 23 of the GN. 174 Of 2003 which provides:

23(1) A decree holder may, as soon as practicable after the pronouncement of the judgment or ruling apply for execution of the decree or order as the case may be.

(2) an application for execution of orders and decrees under sub-regulation (1) shall be made in the appropriate form prescribed in the Second Schedule to these Regulations and shall indicate the mode in which the execution is sought to be carried out.

(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.

(4) where after the expiration of 14 days there is no objection or response from the judgment debtor, the Chairman shall make execution orders as he thinks fit.

(5) the Chairman shall, where there are objections from the judgment debtor consider the objection and make such orders as may be appropriate.

Provided that hearing of objections under this sub-regulation shall be limited to the subject matter of the objections.

I have gone through the proceedings of the Tribunal, it is apparent that there was an application for execution that was filed on 21/04/2022 in

respect of the decision of the Vianzi Ward Tribunal in Land Case No. 159 of 2020 dated 19/05/2020. A summons was issued for the applicant to appear on 12/05/2020 but he did not do so. Another summons was issued for him to appear on 01/06/2022 for hearing. He entered appearance and the proceedings of 01/06/2022 are as follows:

Akidi: R. Mwakibuja, M/Kiti

Wajumbe: Mussa & Habibi

Mleta Maombi: Yupo

Mjibu Maombi: Yupo

Baraza: Shauri limepangwa kusikilizwa.

Muombaji: Naomba maombi ya kukazia hukumu yakubaliwe kama ilivyoamriwa na Baraza la Kata.

Mjibu Maombi: Sikubaliani na maombi.

Amri: Maombi ya utekelezaji yamekubaliwa. Mjibu maombi atekeleze amri ya baraza la Kata ndani ya siku 14 kuanzia leo. Akishindwa kutekeleza dalali LEP asaidie utekelezaji baada ya kutoa taarifa ya maandish ya siku 14 na alete taarifa ya naman alivyotekeleza.

(Signed)
R. Mwakibuja
Mwenyekiti
01.06/2022

The proceedings above are clear that after the applicant was summoned and the respondent prayed for the execution of the decision of Vianzi Ward Tribunal dated 18/05/2020, the Tribunal ordered for the applicant to satisfy the decree within 14 days or otherwise LEP Auctioneers were to assist in the execution of the decree. The proceedings are clear that

the respondent was present, and he did not come in later to find the order being read as he intimated in his affidavit and/or as argued in the submissions. In that respect the applicant was given an opportunity to be heard as he objected to the application "*sikubaliani na maombi*". He also had ample time within the 14 days to satisfy the decree as was required by the law (Regulation 23 of GN. No. 174 of 2003). The issue of filing WSD is not provided for in execution proceedings under Regulation 23 fo GN 174 of 2003. After the notice is given the respondent's objection was not found appropriate by the Chairman hence the order for execution to proceed. In view of this, I do not find any fault in the decision of the Tribunal. In any case, there is nothing for this court to revise as execution was duly completed as evidenced by a letter from LEP Auctioneers Company dated 08/07/2022 which was duly received by the Tribunal on 19/07/2022.

For the reasons that have been advanced herein above, this application is hereby dismissed for lack of merit. There shall be no order as to costs. It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
31/10/2022