

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

**REVISION NO. 56 OF 2021**

(Arising from Kibaha District Land and Housing Tribunal in Misc. Application No. 265 of 2018)

**CHAIRMAN, FUKAYOSI VILLAGE.....APPLICANT**

**VERSUS**

**HALFAN SAID** (Administrator of the

Estate of the late SAID SEIF).....**RESPONDENT**

Date of Last Order: 26.09.2022  
Date of Ruling: 10.10.2022

**RULING**

**V.L. MAKANI, J**

This is an application for revision by CHAIRMAN, FUKAYOSI VILLAGE.

The applicant is seeking for the orders of this court as follows:

- 1. That the Honourable Court be pleased to call for and examine the records of Misc. Land Application No.265 of 2018 satisfy itself to the legality, correctness and propriety of the ruling and drawn order made thereon by Hon. Lung'wecha, Chairperson, on 22 November 2021.*
- 2. That, the court be pleased to quash the said ruling and order made in Misc. land application No.265 of 2018 dated 22/11/2021.*
- 3. Cost of this application be provided for by the respondent.*
- 4. Any other relief (s) this court may deem fit and just to grant.*

The application is made under section 43(1) (a) and (b) of the Land Disputes Courts Act Cap 216, RE 2019 and is supported by the affidavit sworn by Hemed Abdallah Malogo, for the applicant.

This application was orally argued. Mr. Hemed Mwalongo, State Attorney represented the applicant, while the respondent was represented by Mr. Robert Rutaiwa, Advocate.

Mr. Mwalongo said that the application is for revision of the proceedings of Kibaha District Land and Housing Tribunal (the **Tribunal**) in Application for Execution No.265 of 2018. That the execution arises from the decision in Land Application No.143 of 2012 dated 12/04/2018. He said that for revision to proceed the applicant must show that an opportunity of appeal is not there. He said that in the main application and execution application the applicant was the Chairman of Fukayosi who according to the law is a mere supervisor of Fukayosi village (the **Village**). That all orders in the main application and execution are contrary to section 26 (1) and (2) of the Local Government District Authority Act Cap 287 RE 2010. That the section gives the autonomy of the Village, and it becomes a corporate body, perpetual succession and capable of suing and

being sued on its own name. He said the Village can also buy or dispose any movable or immovable property. That an order against the Chairman of the Village on the property owned by the village council infringes the rights of the Village Council which is a corporate body capable of being sued on its own name. He relied on the cases of **the District Executive Director Bunda District Council vs. Nyamarelo Mashauri Faraja, Land Revision No.22/2017 (HC-Mwanza)** (unreported) and **Deonatus Mkumbo & Another vs. The District Executive Bariadi District Council, Civil Case No. 14 of 2009 (HC-Tabora)**(unreported). He said these cases explains the autonomous of Village Councils.

He said that the proceedings also show that the execution order was against the Chairman of the Village. That the order is likely to infringe the rights of the applicant as the said Ramadhani Iddi Mwinyikondo was the witness of the Chairman of the Village (respondent in the original application) who turned hostile. He said the witness was again used by the Tribunal to show the boundaries of the suit property and this was not proper because there was no evidence before the Tribunal to prove the 3 acres in dispute. That the Tribunal did not visit the site but relied on evidence of Ramadhani

Mwinyikondo. That to assist the Broker to implement the order of the Tribunal would infringe the rights of the applicant. He said there are authorities that direct the courts to visit the *locus in quo* where the dispute is on boundaries. Among the cases he said is the case of **Said Hassan Shehoza vs the Chairperson CCM Branch & Another, Land Appeal No.147/2019 (HC-Land Division)** (unreported) and **Anthony Kingazi vs. Milka Maiga, Misc. Land Case Appeal No. 84 of 2016 (HC-Land Division)** (unreported). Mr. Mwalongo pointed out that considering the nature of the case, the Tribunal ought to have visited the *locus in quo* instead of relying solely on the evidence of the witness. He argued further that section 23 (2) of the Land Disputes Courts Act requires the Chairman of the Tribunal to take into consideration opinion of assessors before composing the judgment. He said that the Tribunal did not adhere to the requirement of taking into account the assessors' opinion before composing the judgment. He prayed for the court to grant this application.

In reply Mr. Rutaiwa said that Counsel for the applicant has departed from his own pleadings. That a lot has been submitted which are not in the Chamber Summons or affidavit. He said that parties are bound

by their own pleadings and that applicant's Counsel should have confined himself to the legality and propriety of Misc. Application No.265 of 2018. He said the decision in Application No.143 of 2012 was delivered on 12/4/2018 and to date the decision has never been challenged. Surprisingly, the decision is being challenged at execution stage after four years. He said the attacks on Application No.143 of 2012 should be discarded.

Regarding this application Mr. Rutaiwa prayed to adopt the contents of the counter affidavit. He said that the centre for discussion is that the execution order did not describe the boundaries of the suit land. That the order of the Tribunal was perfect as the suit land is known to have 3 acres. That it is not correct to say that the suit land is unknown. That it was only for convenience that the executing officer could be assisted to point the demarcations of the suit land. That if the suit land was unknown then the same would have been indicated in the WSD. He relied on the case of **Yusufu Hamis Hamza vs Juma Ali Abdallah, Civil Appeal No.25/2020 (CAT-Zanzibar)** (unreported) page 11.

Mr. Rutaiwa said that if the area was unknown then it would have been in the WSD. That the suit property was known demarcated and was capable of implementation. He said that it was the applicant's argument that the application at hand has been brought because the appeal process has been blocked but he could not identify which application as such this application is a misconception. He said if there was a complaint then the executing court would have been proper forum in absence of a challenge of the main Application No.143 of 2012. He said that in Application No.143 of 2012 the right of appeal was afforded but the applicant did not utilize the said right and such right cannot be exercised at this stage of revision and it is an apparent afterthought. Regarding the argument that the matter was against the Chairman of Fukayosi Village instead of Fukayosi Village Council he said that the complaint would have been a ground of appeal rather than a challenge at this stage. He relied on Order I Rule 9 and 10 (1) & (2) of the CPC. He said in that provision a suit cannot be defeated by misjoinder or non-joinder. He said that the court discourages site visits because the adjudicator has to receive the request from the parties unless the court is compelled by to do so on exceptional circumstances. That at the stage of execution there would not be any exceptional circumstances warranting site visit. He

distinguished the case of **Anthony Kingazi** (supra) as he said in that case the court was ceased with the facts of the main case unlike in this case which is based on execution, also the size of the suit land was not described unlike in this case where the land is describe to be 3 acres.

Regarding the issue of assessors' opinion Counsel said that it was not raised in the pleadings and thus cannot be raised in this stage of execution. He said that in paragraphs 4 and 5 of the applicant's affidavit states that execution cannot be implemented at as there are public facilities within the area, however he said that it cannot bar execution to proceed. He said that the application is a delaying tactic and ought to be dismissed.

In rejoinder, Mr. Mwalongo reiterated his main submission. He added that one cannot refer to the execution proceedings without considering the main application. He therefore invited the court to look into the irregularities in Misc. Application No.265 of 2018.

Having listened to Counsel for the parties, the main issue for consideration is whether this application has merit.

It is worthy to note that, this is an application for revision and the applicant through his chamber application has invited this court to inspect the records and examine the regularity, propriety and correctness of the ruling in a Misc. Land Application No.265 of 2018 Tribunal. In the supporting affidavit, the applicant's main reasons for this Application for Revision is that the decree issued in the main Application (No.143 of 2012) is inexecutable because of uncertainty in description of the suit land, and that the Tribunal did not visit locus in quo.

Indeed, as correctly submitted by Mr. Rutaiwa parties are bound by their pleadings, and it is long settled that revision is not an alternative to appeal process. However, looking at the proceedings it is also worthy to note that the execution proceedings arise from a decree which is questionable, and this fact cannot be ignored. The decree cannot be executed for the reason that it is against the Chairman of Fukayosi Village which means it is against an individual as opposed to the Village Council which according to the law has the right to sue and be sued. Further, executing against a property which is not owned by the party whom the decree is preferred against is contrary



to the law. Now, as I gather from the records, the intention was for the matter to be against the Village Council and not an individual Chairman. But as it is now, the decree has been preferred against an individual who does not own the property, and presumably that is the reason the decree has not been executed since 2018 when the decision was given. What can be observed that all along there was a misjoinder of the parties and with due respect it was the applicant who knew whom he was claiming against. The basic condition for execution is that it has to be implemented against the party whose decree has been preferred against. In other words, if execution is by attachment of land or an account then the attachment order in respect of the property or the garnishee order in respect of the account has to be that of the judgment debtor and not otherwise. The description of the property and or account has to be provided so that the order for execution does not affect other parties not in the suit/application. In the present case the decree is against the Chairman of the Fukayosi Village who as said is an individual and a mere supervisor of the day to day functions of the village, and so execution cannot be against the village land as the Village Council was not made a party in the application. In my considered view, the decree is not executable because the execution cannot be preferred

against the village land while the decree is against the Chairman in individual capacity.

In the result and by virtue of the revisionary powers envisaged upon the court, this application is granted. The Order in Misc. Application No. 265 of 2018 is quashed and set aside. There shall be no order as to costs.

It is so ordered.



  
**V.L. MAKANI**  
**JUDGE**  
**10/10/2022**