

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

LAND REVISION NO. 48 OF 2022

LIVIN KASABWA..... APPLICANT

VERSUS

HAMISI MOHAMED KIDOLE.....1ST RESPONDENT

JAMALI JUMA MILAJI.....2ND RESPONDENT

RULING

2nd & 29th March, 2023

L. HEMED, J.

Briefly, the application at hand stems from the proceedings of two applications for execution before the District Land and Housing Tribunal for Mkuranga (DLHT). The 1st execution proceedings was *vide* Misc. Application No. 45 of 2021 where one **Hamisi Mohamed Kilole** (the 1st respondent) moved the DLHT to execute the decision of the Ward Tribunal for Tambani in "*SHAURI NA*" 45/2020/2/2019 against the applicant, **Livin Kasabwa** who was found to be the trespasser in the disputed piece of Land.

In the 2nd execution proceedings **Jamali Juma Milaji** (the 2nd respondent in this matter), filed Misc. Land Application No. 46 of 2021 seeking to execute against the applicant herein, (**Livin Kasabwa**), the decision of the Ward Tribunal for Tambani in "*SHAURI NA.*" 1/2019. In which the applicant herein was found to have trespassed into the suit Land.

Both applications for execution, were granted and carried out by the same Tribunal Broker, LEP Auctioneers Company. The reports of execution were made by the Tribunal Broker *vide* letters dated 29th April 2022, Ref. No. H & L/RP/MK/APP NO. 45/2021 and J & L/RP/MK/APP No. 46/2021.

On 2nd day of November 2022, the applicant, LIVIN KASABWA presented for filing this application made under Sections 79 (2) & 95 of the Civil Procedure Code, [Cap. 33 RE 2019] and Sections 43 and 44 of the Land Disputes Courts Act [Cap. 216 RE. 2019], seeking for the following orders:-

- "1. To quash and set aside the ruling and orders Misc. Land Application No. 45 and Misc. Land Application No. 46 of 2021 thereto. (sic).*
- 2. To make declaration that the entire proceedings originating from (sic).*
- 3. Such other and furthers Orders and direction in the proceedings as it deems just and appropriate. (sic).*
- 4. Costs to be provided for."*

In their joint Counter Affidavit, filed on 21st December, 2022, the respondents, HAMISI MOHAMED KIDOLE and JAMALI JUMA MILATI disputed the application, hence the matter was set for hearing.

The matter was heard orally. On the hearing date the applicant was represented by Mr. Daniel Lisanga learned advocate while the respondents enjoyed the service of Mr. Faraji Ahmed, learned counsel.

Submitting in support of the application, Mr. Lisanga adopted the affidavit deponed by the applicant and asserted that the judgment of the ward Tribunal which was executed had some irregularities. He stated that

the applicant was not summoned to defend himself before the trial Tribunal. He added that the suit landed property is not within the Geographical limits of the Tambani Ward Tribunal thus it had no jurisdiction.

It was asserted further by Mr. Lisanga that the trial tribunal did not have Pecuniary jurisdiction as the sale Agreement which was tendered and received into evidence showed that the suit land was sold at Tshs. 3,200,000/=, beyond the pecuniary jurisdiction of the trial Tribunal. The learned counsel for the applicant contended further that the sale Agreements which were received by the trial tribunal were not genuine to prove ownership over the suit landed property by the respondents herein.

He concluded his submission in chief by stating that the Chairman of the District Land and Housing Tribunal ordered demolition of the structures in the disputed land before the lapse of 14 days. He prayed this Court to evoke section 43 of the Land Disputes Courts Act, Cap 216 to nullify the proceedings of the District Land and Housing Tribunal for Mkuranga.

In response thereto, Mr. Faraji averred that the applicant's blames that he was not heard by the Ward Tribunal, ought to have been remedied by applying to set aside the *ex parte* judgment before the same Trial Tribunal instead of opting for objection proceedings. He cemented his arguments by citing the decision of the Court of Appeal in **Herman Omary Mganga vs. Winnie Sheba Seme Civil Appeal No. 368 of 2019**. He concluded by praying for dismissal of the entire application.

In his brief rejoinder submissions, Mr. Lisanga reiterated his submissions in chief and stated further that an *ex parte* judgment of the Court with no jurisdiction cannot be set aside.

Having gone through the submissions made by both Counsel, the main issue for determination is whether the application has merits. It should be noted that the subject matter of the application at hand are the two applications for execution before the DLHT - for Mkuranga, that is, Misc. Land Applications No. 45/2021 and No. 46/2021. However, in his entire submissions, Mr. Lisanga has tried to reveal the discrepancies of the decisions of the Ward tribunal which were executed by the DLHT- for Mkuranga. According to the submissions made by Mr. Lisanga, it appears the applicant was not happy with the decision of the Ward Tribunal and he wants this Court to intervene. I am of the firm view that, if at all the applicant was maimed by the decisions of the trial tribunal, he ought to have challenged it before the proper forum. According to the Land Disputes Courts Act, [Cap 216 RE. 2019) the proper forum to challenge the decision of the Ward tribunal is the District Land and Housing Tribunal. Under Section 19 of the Act, one may prefer for an appeal to the DLHT. It provides thus:

"19. A person aggrieved by an order or decision of the Ward Tribunal may Appeal to the District Land and Housing Tribunal".

Records reveal that the applicant never appealed against the decisions of Ward Tribunal for Tambani in SHAURI NA. 1/2019 and SHAURI NA. 2/2019. He opted for objection proceedings which in fact is a remedy

available to a third party whose property has been wrongfully attached in execution processes.

Further, under Section 36 of the Land Disputes Courts Act (*Supra*) the applicant had another avenue of challenging the decisions of the Ward Tribunal for Tambani in the DLHT by way of Revision. It provides thus;

"36 (1) A District Land and Housing examine Tribunal may call for and examine the record of any proceedings of the Ward Tribunal for the purpose of satisfying itself as to whether in such proceedings the Tribunal's decision has;

- (a) not contravened any Act of Parliament, or subsidiary legislation; or*
- (b) not conflicted with the rules of natural justice; and whether the Tribunal has been properly constituted or has exceeded its jurisdiction, and may revise any such proceedings.*

(2) In the exercise of its revisional jurisdiction, a District Land and

Housing Tribunal shall have all powers conferred upon it in the exercise of its appellate jurisdiction."

From the foregoing the proper forum for challenging decisions or orders of the Ward Tribunal is the District Land and Housing Tribunal. The High Court is not the direct forum for challenging decisions of ward tribunals. The High Court acquires jurisdiction over matters originating from the Ward Tribunals only if they go through DLHTs. In the present case, the applicant is thus barred from using the back door to challenge the decisions of the Ward Tribunal.

In paragraph 10 of the affidavit deposed to support the application, the applicant stated that the respondents did not employ the Service of the Court Brokers, instead they employed the service of street hooligans who were extremely arrogant. Additionally, the advocate of the applicant in his submissions stated that the DLHT's Chairperson issued demolition order before the lapse of 14 days. These allegations forced me to peruse the records of the DLHT for Mkuranga in Misc. Application No. 45 of 2021 and Misc. Application No. 46 of 2021. Upon perusal, I realized that both were called for hearing on 22/03/2022. Mr. Lisanga appeared to represent the applicant herein, who in the said applications for execution was the judgment debtor. In both applications, the orders dated 22/03/2022 reads as follows;

".....Amri: Mjibu maombi atekeleze ndani ya siku 14 kuanzia leo kwa hiari kwani hakuna rufaa wala pingamizi lolote.

Dalali LEP asaidie utekelezaji baada ya kutoa "notice" ya siku 14 ya maandishi kwa Mjibu Maombi. Pia alete taarifa ya utekelezaji.

*Signed.
R. Mwakibuja
Mwenyekiti
22/03/2022"*

Going through the proceedings of the DLHT, it is unequivocally clear that the execution process was assigned and carried out by the Tribunal Broker, LEP Auction Mart. The allegation that the demolition was carried out by hooligans, is unfounded.

As to the claim raised by Mr. Lisanga in his submissions that the Chairperson of the DLHT' issued demolition order before the lapse of 14 days, the Demolition Order in the file was signed by the Chairperson on 21st day of April 2022. This is clearly showing that the demolition order was signed 29 days from when the judgment debtor (applicant) was ordered to comply with the decision of Tribunal. From the record of the DLHT, there is no doubt that the Chairperson issued a Demolition Order after the lapse of 15 days notice of compliance.

From the foregoing, I find the application to have no merits. There is nothing in the proceedings of Misc. Application No. 45 of 2021 and Misc. Application No. 46 of 2021 which require intervention of this Court. I do hereby dismiss the entire application with cost. It is so ordered.

DATED at **DAR ES SALAAM** this 29th day of March, 2023.



[Signature]
L. HEMED
JUDGE

COURT: Ruling is delivered this 29th March, 2023 in the presence of Ms. Anita Katema Advocate of the applicant and Mr. Faraji Ahmed, Advocate for the respondents. Right of appeal explained.



[Signature]
L. HEMED
JUDGE
14/2/2023