

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA

LAND REVISION NO. 6 OF 2021

(C/f The District Land and Housing Tribunal of Arusha at Arusha on Application for Execution No. 75 of 2007 and Appeal No. 61 of 2012 originating from Application No.44 of 2007 at Mateves Ward Tribunal)

LONGUTUTI METISHOOKIAPPLICANT

VERSUS

GODFREY MELAMI RESPONDENT

RULING

20/06/2022 & 25/07/2022

KAMUZORA, J.

This application for revision was brought by way of chamber summons under the provision of section 43(1) (a) and (b) of the Land Disputes Courts' Act, 2002. The application is supported by the sworn affidavit of Frida Magesa, the Applicant's counsel. The Applicant is calling upon this court to go through the records of the District Land and Housing Tribunal (DLHT) of Arusha in Application for Execution No. 75/2007 arising from Application No. 44 of 2007 at Mateves Ward

Tribunal (WT) and the judgment, Ruling and Orders in Appeal No. 61 of 2021 at the DLHT and make orders that the said ruling and Order on Appeal No 61 of 2021 issued on 27/08/2013 by Hon. Makombe, the Chairperson of the DLHT are illegal and give supplementary order to remove the Respondent from the disputed land. The Applicant also calls for this court to revise the order in Miscellaneous Application No. 75 of 2007 issued on 15/7/2021 by Honourable F. Mdachi, the chairperson of the DLHT and set aside the said order as it is too contradictory and led to injustice on part of the Applicant.

The application is contested by the Respondent who filed a counter affidavit deponed by him. As a matter of legal representation, the Applicant was dully represented by Ms. Frida Magesa, learned advocate while the Respondent enjoyed the service of Mrs. Aziza Shakale, learned advocate. The counsel for the parties opted to argued the application by way of written submissions and they both complied to the submissions schedule.

The Applicant's counsel submitted that, the Applicant is the administrator of the estate of the Late Melushoki Ngoyaan and he filed Application No. 44/2007 at Mateves Ward Tribunal against the Respondent after his refusal to vacate the disputed land measuring 3½

acres located at Ngorbob Village within Mateves Ward in Arusha Region to the deceased's family. That, the matter was determined ex-parte in favour of the Applicant who applied for execution in Application for Execution No. 75/2007 and the chairman appointed Majembe Auction Mart to execute the said order. That, before the same was done the Respondent filed an application for stay of execution which was rejected and the execution process continued and on 30/04/2009 the disputed land was handed over to the Applicant and the report was submitted to the Tribunal by the Broker and the matter was marked closed. That, thereafter the clan meeting of the deceased family agreed to sell the said land to Andrew Gamba on 15/03/2009 and the handover was done by the administrator on 29/05/2009 and the buyer built his house and enjoyed ownership of the suit land as per annexure L5 to the Applicant's affidavit.

The Applicant's counsel further submitted that, the hurdles and shackles started to rise on 06/06/2014 when the Respondent invaded the new owner by the demolishing of the house and taking possession of the suit land using the court broker Lumaliza Investment & Auction Mart. That, such execution was based on the allegation that the Respondent was declared the owner of the disputed land after he won

the appeal case No. 61 of 2012 at the DLHT of Arusha. That, without the knowledge of the existence of the said appeal the Applicant filed Land Case No. 52/2014 at the High Court of Arusha applying for the recovery of the said land. That, when the matter came for hearing the Respondent produced an eviction order issued by the chairman of the DLHT (Hon. M. R. Makombe). That, the Applicant doubted the said order and ruling and the High Court ordered for the rectification of the irregularity. That, the Applicant made follow up by writing a letter to the chairperson of the DLHT on 27/04/2021 where the chairperson reopened the case and called the parties who explained the irregularities before him then he ordered the matter to be determined administratively and the prayer in Misc. Application No. 75/2007 was dismissed.

The Applicant's counsel added that, being aggrieved the Applicant preferred this current revision application. She insisted that, neither the Applicant nor the Respondent are the owner of the suit land. That, the Respondent was given the suit land to live temporarily by the deceased and after the deceased's death the Respondent wanted to alienate the suit land from the deceased's family. That, the Applicant filed a suit at Mateves Ward Tribunal only to preserve and protect the land belonging

to the deceased family which was about to be alienated by the Respondent after the death of the deceased. That, due to the circumstances of the case, the suit was properly filed as the Applicant had locus and interest to protect and preserve the property of the deceased. To cement her submission, she cited the case of **Kagozi Amani Vs. Ibrahim Seleman & 6 others**, Land Appeal No. 2 of 2019 HC (Unreported).

It was also submitted that, the Respondent made an appeal after the lapse of 5 years that is Appeal No. 61/2012 in the DLHT and the matter proceeded ex-parte and the decision was issued on 18/09/2013. The Applicant claimed that, the execution order was issued on 27/08/2013 even before the decision of the said appeal was made thus, the Respondent executed what he was not granted.

That, Regulation 30(1) and (2) (a) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003 requires the execution to be marked closed after the court is satisfied with the broker's report. She maintained that, execution in Application No. 75/2007 was successfully closed on 30/04/2009. The Applicant finalised by a prayer for this court to revise all what is explained above as the

decision issued by the District Land and Housing Tribunal is too contradictory and misleading.

Contesting the application, the counsel for the Respondent submitted that, the material facts involved are as stated by the Applicant save that, the Applicant was appointed as an administrator of the estate of the deceased on 22/07/2014 hence on 10/10/2007 when he filed Application No. 44 of 2007, he was not officially appointed as an administrator of the deceased.

Regarding the cited case by the counsel of the Applicant the Respondent submitted that, the case came after the Respondent has filed Application No. 44/2017 followed by execution No. 75/2007 hence the law cannot operate retrospectively. That, the Court of Appeal has made an exception to the rule in the judicial decisions may be relied in matters not yet determined. Reference was made to the case of **DPP Vs. Idd Hassani Chumu & other**, Criminal Appeal No. 430 of 2019 Cat (Unreported).

The counsel for the Respondent went on and submitted that, in Appeal No. 61 of 2021 the chairman's opinion is such that the two grounds laid down by the Respondent have merit and suffice to dispose the appeal. That, the appellate Tribunal failed to give further orders in

that judgment because there was an execution order issued prior to that judgment. It is the claim by the Respondent that, the execution order issued to the Respondent by the Tribunal is a valid order. That, this is a proper court to file revision application as the same cannot be made in the same Tribunal that issued two conflicting decisions. The counsel for the Respondent was of the view that, the difference in dates of the judgment and the execution order is a minor one which does not affect the order or cause injustice to the parties. In concluding, the Respondent prays that the execution order issued in Appeal No 61 of 2012 be regarded as a lawful order.

In a brief rejoinder the counsel for the Applicant reiterated what was submitted in chief and added that, the judgment of the DLHT in Appeal No 61 of 2012 does not give a room to file revision to the High Court, rather it gives the directives to the Respondent to file revision to the DLHT.

Regarding the cited case of **DPP Vs. Idd Hassan Chumu** (supra) the counsel for the Applicant submitted that, the said case was not attached with the Respondent's submission and that, such decision applies retrospective even to this case.

Regarding the submission that the Applicant was aware of Appeal No. 61 of 2021 the Applicant replied that, no proof that the Applicant was properly served with summons and refused the service. She added that, appeal No 61 of 2012 did not grant ownership of the disputed land to the Respondent. on the issue of irregularities in the date she cited the case of **AMI Tanzania Limited vs. Dorin Donald Darbria**, Commercial Revision No. 1 of 2017 HC (Unreported) and submitted that, the irregularities were never cured and led to injustice. To cement on this, he cited the case of **Kombo Khamisi Hassan vs. Paraskeyopolous Angelo**, ZNZ Civil Application No 6 of 2006 CA (Unreported). The Applicant thus prays for the court to make the revision and uphold the decision on Application No. 44 of 2007.

Having analyse the submissions by the parties, this court now turn into determining if there is any reasonable explanation to warrant this court to invoke its revisional powers. In order to determine if there is any irregularities or errors committed by the lower Tribunal, I find it necessary to depict what is in the records of the lower Tribunals.

Briefly, the facts from the records reveals that, the suit was first filed by the Applicant herein before Mateves Ward Tribunal and a decree was passed on 19/07/2007 against the Respondent herein after the matter

was heard ex-parte against him. After the judgment was entered in his favour, the Applicant on 13/08/2007 filed an application for execution of the decree of the Ward Tribunal at the District Land and Housing Tribunal of Arusha vide Application for Execution No. 75 of 2007. The DLHT issued order allowing the execution to proceed on 07/01/2008 but, on 28/01/2008 the Respondent filed before the DLHT an application for stay of execution and the application was overruled by the DLHT in its ruling dated 15/04/2009. The Chairman appointed Tanzania Auction Mart Court Brokers & Debt collectors Limited and later Majembe Auction Mart and Debt Collectors to execute the order. The Appointed Court Broker filed a report showing that the execution was effected and the decree holder was handed with the land in dispute on 30/4/2009. It is unfortunate that, the Court Broker indicated two different dates in that report one showing that the report was prepared on 22/04/2009 and another showing that the decree was executed on 30/04/2009. I find the same to be minor since the court broker even endorsed in the ruling of the DLHT by handwriting and stamp that the execution was conducted on 30/04/2009 thus the later date is considered as the date the execution was conducted.

On 21/11/2012, the Respondent herein filed Appeal No. 61 of 2012 before the same DLHT challenging the decision of the Ward Tribunal which issued a decree in favour of the Applicant. Hearing of the appeal was done ex-parte in the absence of the Applicant (the Respondent in that appeal) and the decision was delivered on 18/09/2013. In that appeal, despite the opinion of one of Tribunal members that the appeal be dismissed for it was filed out of time, the Chairman determined the appeal and found that, the Ward Tribunal denied the appellant (now the Respondent) the right to be heard. He also found that, such a decision was made in the suit filed by a person who was not administrator of the estate of the deceased. The Tribunal went further by giving directives for the parties to apply for revision on account that the Ward Tribunal entertained a case which the real party Melushoki Ngooya was the deceased and the party Longututi Metishooki who appeared in person was not appointed as the administrator of the estate of the deceased Melushoki Ngooya. That directive was not pursued by either of the party.

While the records shows that the decision on appeal was delivered on 18/09/2013 by Hon. Makombe, the same Tribunal Chairman signed execution order on 27/08/2013 in favour of the Respondent and in that

order Lumaliza Investment and court Broker was appointed to hand over the same land 3½ acres to the Respondent. It is unfortunate that I did not find any decree in favour of the Respondent as the decision in Appeal No. 61 of 2012 did not give right to either of the party over a disputed land. I also did not find in record an application for execution by the Respondent or hearing that resulted into the issuing an order for execution in favour of the Respondent. But there an order signed directing the court broker to hand over 3½ acres to the Respondent and the appointed court broker filed a report indicating that the execution was effected on 06/06/2014 by handing over the disputed land to the Respondent Godfrey Melami. This is the order in conflict with the order issued by the same Tribunal on 07/01/2008 which allowed execution in favour of the Applicant and an order dated 15/04/2009 which dismissed application for stay of execution and appointing the court broker, Majembe Auction Mart and Debt collectors to proceed with execution. The report was also filed by the court broker showing the completion of the execution on 30/04/2009.

Again, in the year 2014 the Applicant herein instituted a fresh Land Case before the High Court that was registered as Land Case No. 52 of 2014 against the Respondent herein claiming for recovery of the same

land with 3½ acres. The High Court after hearing the parties discovered that there were two conflicting orders of the DLHT; one allowing execution in favour of the Applicant and another allowing execution in favour of the Respondent. It however made a decision that the errors could not be rectified by filing a fresh suit but only through a revision application. The decision of the High Court was made on 23/09/2016.

On the year 2021, the Applicant through a letter dated 27/04/2021 applied for supplementary order for execution before the DLHT. On 17/04/2021 after hearing both parties, the DLHT dismissed the prayer for supplementary order for execution on account that the execution was fully completed and the disputed land was handed to the Applicant and the execution was closed.

Then the present application was filed by the Applicant praying for this court to look into the Tribunal's order dated 17/04/2021 and the decision and order in Appeal No. 61 of 2012 and satisfy itself as to the correctness and propriety of the same.

From the above narrated facts, the relevant issues that need determination in this matter are two;

- 1. Whether the execution No 75 of 2007 was properly concluded.*

2. Whether, there are errors in records in Execution No. 75 of 2007 and Appeal No 61 of 2012.

Starting with the issue on whether Execution No. 75 was properly concluded, I will first refer the law governing execution process in the District Land and Housing Tribunal, Land Disputed Courts (the District Land and Housing Tribunal) Regulation, 2002 GN No. 174 published in 2003. Under Regulation 29, the court broker is bound to make a report to the Tribunal within 14 days indicating the manner under which the execution was carried out. The Chairman is bound to close the execution upon being satisfied with the court broker's report as per regulation 30. For easy refence the said regulation is hereunder reproduced: -

"30 (1) the chairman shall, upon receipt of the report by a broker under regulation 29, proceed to see to it whether justice has been done in accordance with the judgment.

(2) the chairman shall: -

(a) where he is satisfied with the broker's report, close the execution process

(b) where he is not satisfied with the broker's report, make such orders as may be appropriate

(c) where necessary report the matter to the Registrar of the report is not satisfactory."

Reading Regulation 30 of the Land Disputed Courts (the District Land and Housing Tribunal) Regulation, 2002 GN. No. 174 of 2003, the law

requires that, after the Chairman have received the report of the broker and upon being satisfied with the report to mark the execution closed and in case of dissatisfaction the Chairman can issue any other order as he may think necessary.

I have read the record in execution No. 75 of 2007 and discovered that, the court broker after being appointed and directed to execute the decree, he filed execution report on 30/04/2009. But the Chairman neither marked the execution closed nor gave any directives or order. The proceedings are silent from the date the report was filed until 07/06/2021 when the Applicant came up with prayer for supplementary order for execution. Much as there is no order closing the execution, it becomes obvious that the execution was not concluded. Thus, coming up with a prayer for new order was an alternative move for the DLHT to state if the execution was complete or not.

Upon hearing the parties, the DLHT made a decision that the execution was completed after the filing of the court broker's report. It was wrong for the Tribunal to assume that the execution was concluded upon filing of the report by the court broker. The order closing the execution process is not in records as so required by sub regulation 2 (a) of Regulation 30. That, being said I find it that the execution process

was properly initiated, but not properly conducted and closed by the DLHT. Thus, upon raising a prayer for supplementary order for execution, the Tribunal was supposed to look into the execution process and see to itself if the report filed was satisfactory and close the execution and if not give necessary orders as required by the law.

On the issue as to whether, there are errors in records in Execution No. 75 of 2007 and Appeal No 61 of 2012, this court reiterate what was depicted from the records. It is clear that there are two conflicting orders of the Tribunal, one allowing execution in favour of the Applicant in application for execution No. 75 of 2007 and another allowing execution in favour of the Respondent in Appeal No. 61 of 2012.

Looking into Appeal No. 61 of 2012, the Chairman did not give right to any party but only advised the appellant (now Respondent) to apply for revision to avoid conflicting decisions. It is unfortunate that same Chairman who advised for revision signed an order for execution in favour of the appellant (Respondent herein). It was contended that the order for execution in that appeal was issued even before the appeal was determined. As rightly submitted by the counsel for the Applicant, the records in Appeal No. 6 of 2012 show that, the execution order was issued on 27/08/2013, whereas, the judgment was composed on

06/08/2013 and delivered to the parties on 18/09/2013. A simple interpretation of the dates is that, the execution process commences before the judgment was read to the parties. However, the proceedings do not indicate if there was application for execution initiated and or the execution process except for the order that was signed by the Chairman.

It is also in records that, Appeal No.61 of 2012 was filed more than three years after the decision was made by the Ward Tribunal and after the execution order was issued by the DLHT. The original records do not indicate if the appellant in that appeal was granted extension of time to appeal out of time. During submission, the counsel for the Respondent who was the appellant in that appeal insisted that, the appeal was properly determined and an order for execution properly granted. It is in records that during determination of the appeal the Tribunal members opined that the appeal was out of time. The appeal from the Ward Tribunal to the DLHT is governed by section 19 and 20(1) of The Land Disputes Courts Act [CAP. 216 R.E. 2019] where the time stipulated is 45 days after the date of the decision or order sought to be appealed from. Counting from 19/07/2007 when the decision of the Ward Tribunal was made until on 21/11/2012 when the appeal was preferred to the DLHT, the appeal was out of time as suggested by the Tribunal

assessors. The Chairman in departing from the opinion of assessors, did not give the reason for his departure or determine the competency of the appeal.

Based on the above pointed irregularities, it is my view that, Appeal No. 61 of 2012 was wrongly admitted and determined by the DLHT. Likewise, the order for execution signed in favour of the Respondent was wrongly issued as no decree was issued by any Tribunal or court in favour of the Respondent.

Regarding Execution No. 75 of 2007, the same was properly initiated based on the decision and decree issued by the Ward Tribunal in Application No. 44 of 2007. Save for an order closing the execution, other procedures for execution were well complied with.

However, it was contended by the Respondent that the proceedings and decision which was executed in application for Execution No.75 of 2007 was initiated by the Applicant in his personal capacity instead of administration capacity as the land belonged to his deceased father. Such fact was not disputed by the Applicant and the records shows that the land in dispute belonged to the Applicant's father by the name of Melshooki Ngoya and by time Application No. 44 of 2007 was filed before the Ward Tribunal by the Applicant Longituti Metishooki,

the original owner Melshooki Ngoya was the deceased. The records also show that, the Applicant was appointed administrator of the estate of the deceased and granted letters of administration on 22/07/2014. There is no record showing that the Applicant after being appointed initiated the proceedings in his capacity as administrator. Even the present application was initiated by the Applicant in his personal capacity and not as administrator of the estate of the deceased.

It is a settled law that, a party filing a suit in court has to establish that he/she has locus standi to file such a suit. Where the property in dispute belongs to the deceased person, the person suing for such a property has to establish that he/she has locus to sue on behalf of the deceased by submitting letters of appointment to administer the deceased's estate. I agree with the Applicant's submission that in some circumstances a suit can be preferred by a person before being appointed administrator for purpose of preserving the property of the deceased from being alienated or disposed of. That is the holding of this court in the case of **Amina Athumani Vs. Hadija Mohamed Ninga**, Land Appeal No. 36 of 2013 HC at Tabora. However, it must be shown that there was such a necessity to protect the rights of the deceased and not for personal interest of the person filing the case.

In the present case, I have carefully read the records of the Ward Tribunal in Application No. 44 of 2007. From the beginning while filing the case, the Applicant declared that the land belonged to his deceased father and he was forced to file the case after they were informed that the Respondent was in the process of selling the land in question. The circumstances by that time forced him to file the suit even before he could be appointed the administrator of the estate of the deceased. It is in records also that family members who are beneficiaries to the estate gave their statements before the Ward Tribunal and it seemed that the decision for the Applicant to file the case against the Respondent was the family members' decision. In that sense, the Applicant was not filing the case for his personal interest rather for purpose of protecting the estate of the deceased for interest of all beneficiaries. The decision of the Tribunal was very much clear that the land be handled back to the family of the deceased and not specifically to the Applicant. The Applicant applied for execution of such a decision before the DLHT in Execution No. 75 of 2007. In my view, the fact that the Applicant instituted the matter before being appointed administrator did not affect the interest of the deceased or the rights of the parties because such decision gave right to the deceased's family and not the Applicant. The

decree to be executed gave right of the deceased's family/beneficiaries. In that regarding and in considering the time this case was filed which is almost 15 years, I find no reason to vitiate the decision of the Ward Tribunal.

In the upshot, and in considering all what has been stated above, I hereby invoke revisional powers under section 43(1) (a) and (b) of the Land Disputes Courts Act Cap 216 R.E 2019 and proceed to quash and set aside the whole proceedings, judgment and orders emanating from Appeal No. 61 of 2021 at the District Land and Housing Tribunal and execution process thereto. I also quash and set aside the ruling of the DLHT in Execution No.75 of 2007 dated 15/07/2021 and direct compliance of Regulation 30 of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2002 GN. No. 174 of 2003**. In the event, the revision application is of merit and it is hereby granted with costs.

DATED at ARUSHA, this 25th day of July 2022.




D.C. KAMUZORA

JUDGE