

TANZANIA / JUDGMENT

Judgement of Giruawe Giamu edited 22222

COURT
TANZLIIDECIDED
1 November 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB REGISTRY OF
MANYARA AT BABATI LAND REVISION NO. 21586 OF 2024. (Arising from Land Application No.62
of 2024 in the District Land and Housing Tribunal of Babati at Babati). GIRUAWE
GIAMU..... APPELLANT VERSUS ATHUMANI
ADAMU..... 1st RESPONDENT DIAMOND CREDIT RECOVERY
LIMITED..... 2nd RESPONDENT ISMAIL HILALI
MOPEI..... 3rd RESPONDENT

RULING

31st October & 1ST November, 2024 Kahyoza, J.: This is a ruling in respect of an application for revision filed by Giruawe Giamu (the applicant) against the decision of the District Land and Housing Tribunal for Babati at Babati (the tribunal). Athuman Adamu (the first respondent) sued Giruawe Giamu for trespass in the tribunal vide Land Application No. 72/2022. The tribunal upheld Giruawe Giamu's preliminary objection that Athuman Adamu prematurely instituted the application as he had not first referring the dispute to the ward tribunal for mediation. The tribunal dismissed Land Application No. 72/2022 advising Athuman Adamu to refer the dispute to the ward tribunal for mediation. Instead of referring the matter to the ward tribunal for mediation, 1 Athuman Adamu applied for execution vide Misc. Land Application No 62/2024. The tribunal heard submissions regarding the application execution and thereon made orders or directives. The tribunal ordered or directed inter alia, the tribunal broker to visit the disputed land to identify the land which belonged to Athuman Adamu and that which belonged to Giruawe Giamu. Aggrieved, Giruawe Giamu instituted the current revision proceedings During the hearing of the application, both parties enjoyed the services of the learned advocates. Mr. Alpha appeared for applicant whereas Mr. Kim appeared for first respondent. Mr. Alpha extensively averred that the tribunal issued orders for execution against a non existing decree. He contended that Application No.72/2022 was not decided on merit, thus, there was nothing to execute. Mr Kim, the first respondent's advocate supported the tribunal's order that it acted under section 38(1) of the Civil Procedure Code, [Cap. 33 R.E 2019] (the CPC). He did not contest that there was no executable decree but he submitted that the tribunal in its wisdom resolved to entertain the application for execution and mediate the parties. Indisputably, the tribunal did not pass a decree in Land Application 72/2022 between Athuman Adamu and Giruawe Giamu. For that reason, Athuman Adamu had nothing to execute. Section 34 of the CPC 2 implies that the court executes a

decree or an order. A decree is defined under section 3 of the CPC as "decree" means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final and it shall be deemed to include the rejection of a plaint and the determination of any question within section 38 or section 89, but shall not include

- (a) an adjudication from which an appeal lies as an appeal from an order; or
- (b) any order of dismissal for default.” It on record that the tribunal struck out Land Application No 72/2022, thus, the tribunal did not adjudicate the parties’ rights conclusively. Consequently, there was nothing to execute. It was unfounded and illegal for Athuman Adamu to apply for execution. Athuman Adamu had no ground to apply for execution. An application for execution was illegal as well as the orders emanating from the illegal proceedings were also illegal. It was wrong for the tribunal to lend its aid to Athuman Adamu to enforce right based on an illegal application for execution. There is a longstanding common law principle, that *ex turpi causa non oritur actio*. In the end, I uphold the application for revision, quash the proceedings and set aside the tribunal orders with costs. The parties shall revert to their position after the tribunal struck out Land Application No. 72/2022. It is on record that parties in this case, made appearance once and a second time to receive the ruling, I tax the costs of this application under order 44 of the Advocates Remuneration Order, 2015 GN. No. 263/2015 at Tzs. 100,000.00 being instruction costs, Tzs. 50,000.00 costs for appearance and reimbursement costs of Tzs. 20,000.00. The costs of this application are taxed at Tzs. 170,000.00 in total. It is accordingly ordered. J. R. Kahyoza, Judge 1.11. 2024 Court: Ruling delivered in the presence of the parties. C/C Mr. Shadrack (RMA) present. J .R. Kahyoza, Judge 1.11. 2024 4

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF’s page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/320430/source_file/d9afece4f5986a21/Judgement_of__Giruawe_Giamu_edited_22222.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/giruawe-giamu-executionofdecree-tanzlii-2024

Prepared on 14 October 2026 · Esheria