

john mwakasege vs prisca lawi kasese
2023 tzhc 21745 6 october 2023

COURT
TZHC

DECIDED
6 October 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY
OF SUMBAWANGA AT SUMBAWANGA LAND APPEAL NO. 15 OF 2022 (Appeal from the decision
of the District Land and Housing Tribunal in Miscellaneous Land Application No. 68 of 2021)
JOHN MWAKASEGE..... APPELLANT VERSUS _ PRISCA LAWI KASESE.....
SuS...-..... THE RESPONDENT V\, -? JUDGMENT W' MWENEMPAZI, J: % ' -V>. c The appellant
successfully sued the?respondent for encroaching into the ' "' zf "■ / "'i-^S'Vs boundary that
demarcates, their respective lands. That was in the Land -!' ■- ; ' "■'■■■ '■■■. • >-} dispute No. 16 of
2016. The'respondent was not amused with the decision of the ward tribunal. Thus, she filed an
appeal No. 136 of 2015 against the decision of the Katandala Ward Tribunal. The appeal was
dismissed. The respondent however did not give up. She appealed to this court in Land Appeal
No.33 of 2018. The High Court held that the trial tribunal did not evaluate properly the evidence
before it hence the case in the Ward Tribunal was not decided on the balance of probabilities.
The appeal was allowed with costs. The decisions of the lower tribunals were reversed. Page 1 of
4 The respondent thus filed an application for execution which was registered as Miscellaneous
Application No. 68 of 2021. Hie application was granted and the judgement debtor, the appellant
herein named, was ordered to leave vacant possession of the dispute land. It is against this
application that the appellant went again in the District Land and Housing Tribunal with an
application NO. 203 of 2021 for stay bf execution. The application was dismissed with no order as
to cosh. In the appeal the appellant has attached thb%ecision of the District Land \ir;'=A 'h>'. and
Housing Tribunal in Miscellaneous Application No. 68 of 2021. As the impinged decision. This
was an application for execution. The grounds of appeal are confusing; generally he has kept
referring to the land belonging to the respondent which according to the records of the Katandala
Ward Tribunal, Plot No. Ill Block U(MD) located at Katandala Area, Sumbawanga Municipality as
his Land. That Land was the subject of the decision of the High Court in Land Appeal No. 33 of
2018. That decision has not been appealed against by the appellant to the Court of Appeal of
Tanzania. It stands as the valid decision of the Court for execution. In case of Mwanaisha Kapela
(Administratrix of the Kapera Katumba V. Suleman Hamdu Civil Reference No. 08 of 2021 (2023)
TZCA 1729(1 Page 2 of 4 June, 2023) it is trite that where a decision is not reversed or altered by a
higher Court, it remains intact (See Serikali ya Mapinduzi ya Zanzibar V. Farid Abdallah (1998)
T.L.R 355 and Goyal V. Goyal and others (2009) Z.E.A.143). The question for resolve is therefore,

whether an "order for execution is appealable. In the case of Chacha Nvionaoro versus Ndeae Kiseke, Wise. Land Appeal No. 145 of 2020, High Court of Tanzania at Musoma (Kisanya J.) referred to section 74 of the Civil Procedure Code, Cap. 33 of the Civil Procedure Code, R.E.2022 and Order XL. He ruled that an execution order is not appealable. As to what should have been done by the appellant, my learned brother Honorable Kisanya J explained in the ruling as follows; "The proper recourse to a person aggrieved by the execution order/ruling is to file an application for revision of the execution proceedings, litigate the questions relating to execution under section 38 of the Civil Procedure Code or filing reference to this Court under Order XU, Rule 1 of the Civil Procedure Code See also Kalebu Kuboja Mjinja vs Shadrack Daniel Tembe, HOT at Musoma, Civil Appeal No. 24 of 2020 (unreported)" Page 3 of 4. However, each case with its own facts. In our case, the appellant should have preferred an appeal to the Court of Appeal of Tanzania as the subject matter was substantively decided by this court in the appeal based on evidence which was tendered in the trial tribunal. However, the appellant may be he must let go the property belonging to the respondent, because she was adjudged to be owner after lawful compensation to him. He should also know that there must be an end to litigation. Under the circumstances and for the reasons, this appeal is dismissed with no order as to costs. It is ordered accordingly. Page 4 of 4

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