

TANZANIA / JUDGMENT

KUNDUNGI LOONDUTUNY EDITED 2222

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23 September 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB REGISTRY OF
MANYARA AT BABATI LAND REVISION NO.9648 OF 2024. (Arising from Miscellaneous Land
Application No. 32/2023, original Land Application No. 60/2011 from the District Land, and
Housing Tribunal of Simanjiro at Orkesumet) KUNDUNG'I
LOONDUTUNY.....APPLICANT VERSUS MONJI ESTER
MBAALO..... 1st RESPONDENT KAKEYA PENINA
ALAYEN..... 2nd RESPONDENT

JUDGMENT

1st August & 23rd September, 2024 Kahyoza, J.: Kidung'i Loondutuny (Kidung'i) (the applicant) sued Monji Ester Mbaalo and Kakeya Penina Alayen before the district land and housing tribunal (the tribunal) in 2011 vide Land Application No. 60 of 2011. The suit did not go to full trial as the parties settled their dispute out of court. Following the settlement parties attained out of court, the applicant on 6.12.2011 applied to withdraw the suit or the application before the tribunal. The tribunal granted the applicant's prayer to withdraw the application, marked the application withdrawn and made no order as costs. 1 After hardly 12 years, Monji Ester Mbaalo and Kakeya Penina Alayen surfaced before the tribunal with an application for execution. The tribunal heard the application and granted it. Aggrieved, Kidung'i Loondutuny (Kidung'i) instituted the instant application seeking this Court to revise the tribunal's order contending that the order occasioned injustice. On the date the application came for hearing Ms. Kulwa Lucas represented the applicant whereas Mr. Mlingi, advocate represented the respondent. After the applicant's advocate submitted in support the application, Mr. Mlingi, the respondent's advocate took the floor. He candidly conceded that the tribunal's order was erroneously made. He submitted that there was no order to execute and that even if there was an executable order, which was not, time had elapsed rendering the order or decree not executable. He was, however, quick to submit that much as the tribunal issued the execution order erroneously, the applicant had wrongly moved this Court. He submitted that it was wrong for the applicant to institute the application for revision. He contended that the law required to applicant to appeal instead of moving this court by revision. I wish to commend Mr. Mlingi learned advocate for his sense of justice. Advocates are court officers; their duty is not only to defend the interest of their clients but also to assist the court to administer justice. Mr, Mlingi conceded to the applicant's submission although it was not in interest of his client but in the interest 2 of justice. I join the two learned advocates that the

tribunal misdirected itself to issue the execution orders when there was no executable order. It is obvious as submitted that there was no order to execute since the applicant was who the applicant (plaintiff) withdrew the application (suit) before trial. The applicant told the tribunal that the dispute between him and the respondents had been settled out of court by "leigwanan". The tribunal did not record an out of court settlement which would have been a tribunal's decree or order as the law provides. It simply marked the suit or the application settled. Thus, the settlement did not result into a decree cable of being executed. For sake of clarity, let me quote the tribunal's order which the respondents are seeking to execute. It reads- "Tribunal: Parties have settled their dispute out of court and the applicant has applied to withdraw his case with no costs. The respondent has accepted. I order the case withdrawn with no costs. Hon. M.Mahelele, Chairman 20.12.2011" The application was withdrawn so there was no order for tribunal to execute. The respondents cannot execute an out of court settlement, which was not record as a decree of the tribunal. If the settlement was made before the "leigwanan" (traditional leaders), respondents should beseech them to execute their orders and not the tribunal. 3 I took time to consider whether the application was time barred. Item 20 of Part III of the Schedule to the Law of Limitation Act, [Cap. 89 R.E. 2019] (the LLA) a decree may be executed, if no any other time is specified, within a period of 12 years. It states- "20. To enforce a judgment, decree or order of any court where the period of limitation is not provided for in this Act or any other written law- twelve years." The tribunal issued the order, the respondents seek to execute, on 20.12.2011 and the respondents filed an application for execution on 6.12.2023. Indisputably, time within which to execute the order or decree started running from the date when the court issued it, that is on 20.12.2011. (See section 6(c) of the LLA) Simple calculation proves that a period of twelve years had not expired as 13 days remained before the expiration of the limitation period. All in all, as pointed above, the respondents had no decree to execute. The respondents' advocate argued that much as the tribunal misdirected itself to issue the execution order, the applicant has wrong moved the court. He was of the view that this Court cannot entertain the application and prayed the application to be dismissed. To support his 4 contention, he referred the Court regulation 24 of the Land Disputes Courts (District Land and housing Tribunal) Regulations, 2002 G.N. No. 174/2003 (the Regulations). Regulation 24 states that- "24. Any party who is aggrieved by the decision of the tribunal shall subject to the provisions of the Act, have the right to appeal to the High Court (Land Division)." The applicant's advocate opposed the respondents' advocate's argument contending that the applicant did properly move the court. It is true that regulation 24 of the Regulations provides that a person aggrieved by the decision of the tribunal has a right to appeal. The applicant who was a party to the proceedings had also the right to appeal. The position of the law is settled that if there is a right of appeal, then, that right has to be pursued by the concerned party and, except for sufficient reason amounting to exceptional circumstances, there cannot be resort by the party to the revisional jurisdiction of the Court. See *Mansoor Daya Chemicals Limited v. National Bank of Commerce Ltd*, Civil Application No. 464/16 of 2014 and *Ms. Farhia Abdullar Noor v. ADVATECH Office Supplies Ltd and BOLSTO Solutions Ltd*, Civil Application No. 261/16 of 2017. Both cases referred to the decision of *Halais Pro-Chemie Vs Wella A.G* [1996] TLR 269. I find it settled that a party to the proceedings before the courts 5 subordinate to this Court may institute revision proceedings in the following circumstances; one, where,

although he has a right of appeal, sufficient reason amounting to exceptional circumstance exists, which must be explained; two, where the appellate process has been blocked by judicial process; three, where is no right of appeal exists; or four, where a person was not party to the relevant proceedings. I am of the considered opinion that, the fact the tribunal issued an execution order where no decree or order existed amounts to exceptional circumstance entitling the applicant to apply for revision. It was absurd for tribunal to misuse of its judicial power to order execution of the order, which does not exist. It would be more absurd for this Court to close it eyes on such a glaring error on the pretext that the applicant has not properly moved the Court. I find this application to be a fit case where a party to the proceedings has the right to apply for revision. For that reason, I find that there exited exceptional circumstance for applicant move this case by way revision. In the end, I find that the tribunal's order for execution is a nullity as it based on non-existing decree or order. Consequently, I allow the 6 application, quash the proceedings, and set it aside the execution order with costs. I order accordingly. Dated at Babati this 23rd day of September, 2024. John R. Kahyoza Judge Court: Judgment delivered in the virtual presence of Mr. Mling advocate for the respondent and holding Ms. Kulwa Lucas' brief for the applicant. B/C. Ms. Fatina (RMA) present. John R. Kahyoza Judge

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Prepared on 14 October 2026 · Esheria