

TANZANIA / JUDGMENT

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(LAND DIVISION) AT DAR ES SALAAM LAND REVISION NO. 000026691 OF 2024 CASE
REFERENCE NO. 202410241000026691 (Arising from Land Appeal No. 40 of 2016 in the Temeke
District Land and Housing Tribunal, Original Application No. 21 of 2014 Kibada Ward Tribunal)
LEVIS WAMOYA..... APPLICANT VERSUS REBECCA
JACOB..... RESPONDENT

RULING

24/02/2025 & 25/03/2025 GWAE, J This is an application preferred by the applicant, Levis Wamoya under section 43 (1) (b) of the Land Disputes Courts Act, Cap 216, Revised Edition, 2019 (LDCA) for the following orders:-

1. That, this Court may be pleased to call for, inspect the record and examine the regularity, propriety and correctness of the ruling arising from Misc. Land Application No. 110 of 2024 i delivered by Temeke District Land and Housing Tribunal on 2nd October, 2024, and if necessary, quash the ruling and proceedings arising thereof.
2. Any other order(s) this Court may deem fit and just to grant.
3. Costs of this Application to follow the event. The application is supported by an affidavit sworn by the applicant, his affidavit is essentially to the effect that, the executing tribunal's order vide Misc. Land Application number 110 of 2024 was not consistent with the decree issued by Kibada Ward Tribunal. It is the applicant's stance that, the application for demolition of structures on a piece of land measuring 35 x 15 meters located at Kibada area within Kigamboni District is not in conformity with the decree. Thus, this application comprising the following grounds for the sought revision:-
 - a. That, the District Land and Housing Tribunal granted the relief which was not sought
 - b. That, the DLHT's chairperson granted a relief while composing a ruling suo moto without affording the parties an opportunity of being heard Respondent opposed the application by filing her counter affidavit where she vigorously put the applicant into a strict proof adding that, the 2 orders prayed by her application for execution are in line with the decree issued by Ward Tribunal as it involves demolition of the structures erected on disputed property by

the applicant. At the hearing, the applicant was represented by advocate Lutufyo Mfumbako while the respondent appeared in person unrepresented. Mr. Lutufyo reiterated what is contained in the affidavit and prayed for grant of the application whereas the respondent prayed for adoption of his counter affidavit. As to the first ground of the application, it is common ground that a party in a judicial or quasi-judicial proceedings must be granted what he or she seeks through his or her suit or application or petition. The rationale, in my view, is to prevent courts from granting speculative reliefs that are not sought by the parties. It is therefore a cardinal principle that, the court will only grant reliefs sought by a party. This legal position has been emphasized in a plethora of judicial decisions such as in *Masaka Mussa vs. Rogers and Andrew Lumenyela and Two Others* (1 of 2022) [2022] TZHC 14362 (27 October 2022), where the Court of Appeal of Tanzania held: 3 "It is a settled position of the law that a relief not sought on the pleadings and which is not incidental to any specific prayer in the pleadings cannot be awarded". The same position was stressed in *Dew Drop Co. Ltd vs. Ibrahim Simwanza*, Civil Appeal No. 244 of 2020 (unreported) approved by the Court of the Court of Appeal in *Masaka* (supra), it was stated in the former that:- "The respondent was supposed to list down in his Form No. 1 all the reliefs which he sought to be awarded by the CMA. It is trite law that, as a general rule, relief not founded on the pleadings and which are not incidental to the specific main prayers sought in the plaint should not be awarded..... See also the decision of the Supreme Court of Zimbabwe in *Nzara & Ors vs. Kashumba N.O & Ors* 2018 (1) ZLR 194. In view of the above position of the law and taking into account that, the ward tribunals, prior to 2021 were hearing and determining land disputes but they were not tied up with procedural rules. Examining the records of the DLHT and Ward tribunal, it is manifestly clear that, the respondent's complaint before the trial ward tribunal was on trespass by the applicant by erecting a water tank pole ("mnara wa tank la maji") without her consent. For clarity, parts of the decision of the ward tribunal in that respect are quoted herein under:- "SHAURI LINAAANZA KUSIKILIZWA TAREHEHE 29/9/2014 BIREBECA YAKOB ALIDAIKWAMBA SEHEMU ILIYOVAMIWA NA NDUG LEVIS WAMOYA NA KUJENGEWA MNALA WA KUWEKEA TENK LA MAJI. NI SEHEMU YAKE YAANI AMEMEGA SEHEMU YA KIWANJA CHAKE NA KUJENGA MNALA HUO BILA YA IDHINI YAKE..... BARAZA LILIPOMUULIZA MLALAMIKIWA ALISEMA MLALAMIKAJI NI KWELIALIKANUSHA NAKUSEMA SI KWELI NA SIO PALE NA SIO PALE TU PALIPOJENGWA MNALA BALI ATA SEHEMU ILIYOPANDWA MICHONGOMA NA MITI YA MIRONGE NI SEHEMY YAKE.. However, the decision of the ward tribunal clearly shows that, when the applicant was requested by the trial ward trial tribunal to respond to the respondent's complaint, he replied that, it was not only the piece of land allegedly trespassed but also a piece of land where there are eucalyptus and milonge trees that he planted. 5 It is also evidently clear that, at its conclusion, the ward tribunal held that, the applicant now respondent had satisfactorily proved that, the land in dispute is hers ("WAJUMBE KWA PAMOJA WAMERIZISHWA KWA PAMOJA BILA KUTIA SHAKA NA KUTAMKA RASMI KLIWA SEHEMU ILE NI YA NDUGU REBECCA JACOB"). As the parties' saga has passed through different stages including appeals in the DLHT before Amina Rashid-Chairperson and before this Court (*Msafiri, J*) vide Land Appeal No. 18 of 2022 where the judgment and decree issued

by the DLHT in Appeal No.40 of 2016 were quashed and set aside and the file was remitted for re-composition of judgment after the parties being availed with an opportunity to address the appellate tribunal as to the composition of ward tribunal vide Application No. 21 of 2014. Nevertheless, the judgment was plainly re-prepared and pronounced by another DLHT's Chairperson (Rugarabamu) who delivered his judgment 15th day of May 2023. For sake of this application and the judgment and decree sought to be enforced, parts of judgment delivered on 15th May 2023 only in respect of disputed land especially at page 6 and 7 is reproduced herein under:- 6 "Shaun liwaliwalishwa na kuanza kusikilizwa tarehe 29. 09.2014 na kuona kwamba mrufaniwa aliwasilisha Ialamiko lake la mrufani kuvamia sehemu ya eneo lake na kujenga mna/a wa tenki la maji na mrufani alijibu kuwa sehemu anayolalamikiwa ni sehemu ya eneo lake na kisha Baraza lilitembelea eneo hilo pia HkasikiHza mashahidi na mwishowe Hkatoa hukumu eneo gombezi ni sehemu halali ya mlalamikaji. Sikuona kama sababu ya kuanza ina mashiko kutokana na kwamba baraza ia kata lilipokea kesiya uvamizi wa eneo na kusikiliza mpaka kutoa hukumu inayohusu uvamizi wa eneo hilo." If one looks carefully at the decision of the ward tribunal in its original jurisdiction, which was confirmed by the appellate tribunal exercising its appellate jurisdiction as well as the nature of the respondent's complaint, may inescapably come up with a conclusion that, the decree that ought be applied for execution is the one pertaining to the part of the respondent's land allegedly trespassed by the respondent now applicant by erecting a pole of water tank. Similarly, the respondent through her application for execution (Misc. Application No. 110 of 2024) sought the demolition, Eviction and Handing over the suit land to the decree holder (See para. 4 of the application. 7 However, at para. 3 of the application, the respondent is found claiming to have been awarded vacant possession of 30 x15 paces of land located at Kirurukwe Street in Kibada, which in my considered view, was wrong since that was not her complaint regarding the dispute over 30 x15 paces of land save to erection of the pole of the water tank. Nevertheless, the relief sought by the applicant in her application is consistent with the decree of the trial tribunal which was upheld by the appellate tribunal on 15th day of May 2023 provided that the sought demolition is aimed at the piece of land trespassed by the applicant by erecting water tank. Now to the second and last ground that, the DLHT's chairperson of the executing tribunal granted the relief when composing a ruling suo moto without affording the parties an opportunity of being heard. It is trite law that, once a court of law or tribunal spots a certain point of law in the course of composing a judgment or ruling, such court or tribunal must entertain parties to address it on the point so observed before taking an adverse action against either of the parties. In this regard I associate with the case of Shule ya Sekondari Mwilamvya vs. Kaemba Katumbu (Civil Appeal No.323 of

- 2021) [2023] TZCA 17316 (9 June 2023) at the last paragraph of page 6 and first paragraph of page 7 the Court of Appeal held 8 "From the parties' submissions, it is without doubt, and as conceded by the respondent that, the CMA raised and answered the issue of time limitation in the course of composing its ruling. It did not invite parties to address on that issue. It is a cardinal principle of natural justice that a person should not be condemned unheard, and

that, fair procedure demands that both sides should be heard." (See also Director of Public Prosecutions vs. Rajabu Mjema Ramadhani (Criminal Appeal No. 223 of 2020) [2023] TZCA 45 (23 February 2023, TANZLII) In the present matter, I find the parties were entertained to address the court as to the extent and manner of the sought execution. I am holding this view simply because after I have had gone through the parties' submissions for and against the application for the execution and found the parties argued the application by way written submission and one of their concern was on, whether land measures 30 x 15 paces was part of the execution and the executing tribunal came up with the finding that, the land in dispute though its size not mentioned but the execution of the decree should be on a piece of land where the water tank pole is erected by the applicant ("Mleta Maombi anastahili kukabidhiwa eneo ambalo limejengwa 9 mnala wa tenki la maji na sio Zaidi ya eneo hilo"). It follows therefore, the parties were availed an opportunity pursuant to Regulation 23 (5) of the Land Disputes Courts (The District Land and Housing Tribunal) Rules, GN No 174 of 2003, which reads and I quote:- "(5) The Chairman shall, where there are objections from the judgment debtor consider the objection and make such orders as may be appropriate. Provided that hearing of objections under this sub regulation shall be limited to the subject matter of the objections." It is also the requirement of the law that, the executing court must enforce a decree in conformity of the judgment and its decree issued by the competent court and not otherwise. I associate my holding with a persuasive authority in the case of Maharaj Kumar Mahmud Hasan Khan vs. Moti Lai Bankers on July, 1960, AIR. "I hold it to be a correct proposition of law that a Court executing a decree is bound by the terms of that decree and cannot go behind them. It is equality true as a general proposition that such Court can neither add to such a decree nor vary its terms" io See also jurisprudence in Rachel Nankware Mgeni (As the Lawful Attorney of Sangiwa Amani Mgeni) vs. Josephine Joseph Magelanga t/a Apex Car Care, Execution No. 28 of 2022 (unreported) and Fortunata Edga Kaungua vs. George Hassan Kumburu, Misc. Civil Application No. 71 of 2019 [2020]. That being the court's finding, it is my view that, this application is ungrounded and an afterthought since the verdict of the executing tribunal was patently in the applicant's favour and not that of the respondent. His lamentation that, the dispute be visited or be reheard, is placed in the wrong forum as he ought to appeal or file revision against the decision of DLHT in Appeal No. 40 of 2016. In the upshot, this application for revision dismissed for want of merit. The applicant shall bear the costs of the application. It is so ordered DATED at DAR ES SALAAM LAND division this 25th March, 2025 WAE

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