

TANZANIA / JUDGMENT

majid salum vs stella mboyi 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISCELLANEOUS LAND APPEAL NO. 14 OF 2022 (Originated from the decision of Ward Tribunai of Makangarawe in Shauri No. 153 of 2021 and arising from the decision of District Land and Housing Tribunai for Temeke in Land Application No. 620 of 2021) MA3ID SALUM APPELLANT VERSUS STELLA MBOYI RESPONDENT Date of last Order: 31/08/2022 Date of Judgment: 24/10/2022

JUDGMENT

I. ARUFANI, J This judgment is for the appeal arising from the decision of the District Land and Housing Tribunal for Temeke District at Temeke (hereinafter referred to as the DLHT) delivered in Miscellaneous Application No. 620 of 2021 dated 8th February, 2022. The brief background of the matter as can be discerned from the record of the matter is to the effect that, the respondent in this appeal sued the appellant, Majid Salum Abdallah (Mpemba) and one Omary Ally Omary (Wanyika) before Makangarawe Ward Tribunal in Land Dispute No. 153 of 2021. The respondent was claiming the appellant had built a hut at the front of her house and blocked her way and path of electricity to her house. She also claimed Omary Ally Omary who is not a party in this appeal has constructed a toilet at the front of her veranda and passed a pipe of his toilet on her land without her consent. The respondent prayed the Ward Tribunal to order them to demolish the said structures. After hearing the parties, the Ward Tribunal found it had no jurisdiction to order the appellant to demolish the hut he constructed at the front of the house of the respondent. The Ward Tribunal referred the respondent to the DLHT for further assistance. After the stated decision the respondent instituted an application for execution of the order of the Ward Tribunal in the DLHT which was registered as an application No. 620 of 2021. Upon hearing the parties, the DLHT ordered the appellant to demolish his hut he has built at the front of the house of the respondent. The DLHT also ordered Omary Ally Omary to remove the pipe of his toilet he has put on the land of the respondent. The DLHT appointed Adili Auction Mart to execute the stated order if the appellant and his fellow would have failed to comply with the order of the DLHT. The appellant was aggrieved by the decision of the DLHT and decided to appeal to this court basing on the grounds of appeal listed hereunder: -

1. That the District Land and Housing Tribunal for Temeke being executing tribunal erroneously ordered execution of order that was not ordered by the trial Ward Tribunal of Makangarawe.
2. That the District Land and Housing Tribunal for Temeke erroneously ordered execution of an order that is not executable. When the appeal came for hearing the appellant was represented by Mr. Leslie Koini, learned advocate and the respondent appeared in the court in person. The counsel for the appellant told the court in relation to the first ground of appeal that, they understand that the DLHT has power to enforce decisions issued by Ward Tribunals as provided under section 16 (3) of the Land Disputes Courts Act, Cap 216 R.E 2019. He argued that, if you read the decision of the Ward Tribunal you will find there is nowhere it was ordered the appellant was required to demolish a hut or toilet. He submitted that, as there is no such an order it was not proper for the DLHT to order demolition of the hut and toilet in execution of an order which has never been made by the Ward Tribunal. He argued in relation to the second ground of appeal that, the Ward Tribunal issued an order which was not executable. He argued that, the Ward Tribunal stated it was not sure whether the appellant had fully been paid compensation for the area where he built the hut which the respondent was seeking to be demolished or not and directed the respondent to go to the DLHT for further assistance. He submitted that the order of further assistance is not executable. He argued that, if the Ward Tribunal found it had no jurisdiction to order demolition of the hut of the appellant, the respondent was supposed to institute a fresh suit before a proper forum where she would have been granted the order, she was seeking from the Ward Tribunal. He prayed the court to quash the decision of the DLHT and set aside the orders made by DLHT in Miscellaneous Application No. 620 of 2021 with costs and any other relief the court deems fit to grant. In reply the respondent argued that when the road was being constructed the whole of the house of the appellant was demolished and the beacon of the land were changed and the electricity poles were changed its position. She added that, later on the appellant built a toilet and is using her veranda to go to his toilet. She also argued that, the appellant has built frames of shops at the front of her house and make it difficult for her to get access of passing electricity line to her house. She submitted that she took the matter to the Ward Tribunal which directed her to go to the DLHT for further assistance and after going to the DLHT the decision was made but she was not given its copy. Later on, she was told the matter had been taken to this court for appeal. In his rejoinder the counsel for the appellant reiterated what he argued in his submission in chief and added that all what the respondent has stated are not in the record. He stated the respondent does not know what was stated in the decision of DLHT. After carefully considered the rival arguments from both sides and after going through the record of the matter the court has found the question to determine in this appeal is whether the appeal deserve to be allowed as prayed by the counsel for the appellant. The court has found in relation to the first ground of appeal that, Ward Tribunals are empowered by section 16 (1) of the Land Disputes Courts Act, to make various orders in the disputes they have decided. The court has also found that, as rightly argued by the counsel for the appellant the DLHT is empowered by section 16 (3) of the Land Disputes Courts Act to enforce orders issued by Ward Tribunal where a party to the

dispute has failed to comply with the order issued against him by Ward Tribunal. For clarity purpose the cited provision of the law read as follows: - "Where a party to the dispute fails to comply with the order of the Ward Tribunal under subsection (1), the Ward Tribunal shall refer the matter to the District Land and Housing Tribunal for enforcement" That being the position of the law the court has gone through the proceedings and decision of the Ward Tribunal which the DLHT purported to have executed its orders via Miscellaneous Application No. 620 of 2021 but failed to see any order made by the Ward Tribunal for demolition of the appellant's shops, frames or hut. To the contrary the court has found the Ward Tribunal stated categorically in its decision that, there was no evidence to prove the appellant was fully paid compensation of his area. It stated that, the Ward Tribunal had no jurisdiction to order the appellant's hut be demolished and referred the respondent to the DLHT for further assistance. For clarity purpose the Ward Tribunal stated in its decision as follows: - "Kwa kuwa Baraza hatina ushahidi kama alilipwa tote au la Ha wanaoweza kujua n! TANRAODS na kwa kuwa Baraza haiina uwezo au mamiaka ya kuvunja hiio banda, baraza Unamieta Bi Stella Mboya kwenye Mahakama yako kwa msaada zaidi." The above quoted excerpt shows clearly that there was no order issued by the Ward Tribunal which was supposed to be enforced by the DLHT under section 16 (3) of the Land Disputes Courts Act. Therefore, the act of the respondent to institute Miscellaneous Application No. 620 of 2021 which as stated in the decision of the DLHT was seeking for execution of the orders of the Ward Tribunal which were not in existence was not proper. The court has found it was also improper for the DLHT to entertain the said application and ordered the appellant to demolish his hut and Omary Ally Omary to remove the pipe of his toilet from the land of the respondent in the application for execution of orders which were not made by the Ward Tribunal. It is the view of this court that, as the Ward Tribunal had already stated it had no jurisdiction to order the hut of the appellant to be demolished, it was incumbent upon the DLHT to advise the respondent to institute her matter in a forum with competent jurisdiction to entertain her claim and not to order execution of orders which were not granted by the Ward Tribunal. It is because of the above stated reasons the court has found that, as rightly argued by the counsel for the appellant the DLHT erred in ordering execution of orders which were not granted by the Ward Tribunal. Coming to the second ground of appeal which states the DLHT erred in ordering execution of an order which is not executable the court has found the counsel for the appellant stated the order which is not executable is the order of seeking for assistance of the DLHT made by the Ward Tribunal. The counsel for the appellant argued that, after the Ward Tribunal found it had no jurisdiction to order demolition of the hut of the appellant the Ward Tribunal was required to advise the respondent to institute her claim in a proper forum where she would have obtained the orders, she was seeking from the Ward Tribunal. Although the court is in agreement with the submission by the counsel for the appellant that, it was not proper for the Ward Tribunal to refer the respondent to the DLHT for further assistance after finding it has no jurisdiction to grant the order the respondent was seeking from the tribunal but the court has failed to comprehend how the said order of seeking for further assistance is not executable. To the view of this court the said order was executable by way of the Ward

Tribunal or the DLHT to advice the respondent to institute her claim in a forum with competent jurisdiction of granting the orders she was seeking from the Ward Tribunal. That makes the court to fail to see any merit in the second ground of appeal. In totality of what I have demonstrated hereinabove the court has found the appeal of the appellant deserve to be allowed basing on the first ground of appeal and not together with the second ground of appeal. Consequently, the appeal of the appellant is hereby allowed, the decision of the DLHT which ordered the appellant to demolish his hut and Omary Ally Omary to remove his pipe from the land of the respondent are set aside. The respondent is at liberty to institute her claim at a proper forum with competent jurisdiction to entertain her claim. After taking into consideration the reason for coming to the above stated finding the court is ordering each party to bear his own costs. It is so ordered. Dated at Par es Salaam this 24th day of October, 2022

1. Arufani JUDGE 24/10/2022 Court: Judgment delivered today 24th day of October, 2022 in the presence of Mr. Lesilie Koini, counsel for the appellant and in the present of the respondent in person. Right of appeal to the Court of Appeal is fully explained to the parties. G CO/ I. Arufani a; O JUDGE * 24/10/2022 r % \ (^2 n: 'VON

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Prepared on 14 October 2026 · Esheria