

TANZANIA / JUDGMENT

MICHAEL MADOLE 1

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6 February 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DODOMA DISTRICT REGISTRY
AT DODOMA LAND APPEAL NO. 18953 OF 2024 (Arising from the District Land and Housing
Tribunal for Dodoma in Miscellaneous Land Application No. 368/2023 and Original; Gvil Case No.
233 of 2019 Nzuguni Ward Tribunal) MICHAEL

MADOLE..... APPELLANT VERSUS SIMON

SILITI..... RESPONDENT

JUDGMENT

Last Order: 06th February 2025. Date of Ruling: 21st February 2025. MASABO, J:- The appellant being aggrieved by the dismissal order of his application for execution of decree in Miscellaneous Land Application No. 368 of 2023 before the District Land and Housing Tribunal for Dodoma (the executing tribunal) has appealed to this court on the following grounds: one, the executing tribunal erred in law and fact for re-hearing the matter instead of granting the execution order; two, the executing tribunal erred in law and fact by terming the decision of the ward tribunal uncertain while the same tribunal upheld it in Land Appeal No. 146 of 2019. Briefly, the background of the appeal is as follows. The appellant successfully sued the respondent before Nzuguni Ward Tribunal in Civil Case No. 233 of 2019 over ownership of a parcel of land. The respondent was aggrieved. He appealed in Land Appeal No 146/2019. The appeal was dismissed. The decision of the trial tribunal was upheld. Thereafter, the appellant applied Page 1 of 7 for execution. The application was dismissed on grounds that the description of the suit land was not given and the orders given by the trial tribunal were uncertain. Hence, this appeal which was heard by way of written submissions. The parties were unrepresented. They both filed their submissions within the scheduled time. Submitting in support of the appeal the appellant gave the background of the matter. He narrated that he filed the application for execution after the District Land and Housing Tribunal for Dodoma, sitting as the first appellate tribunal, upheld the trial tribunal's decision which declared him the lawful owner of the suit land. In his application he had prayed for vacant possession of his land but, instead of granting this prayer the executing tribunal heard the matter afresh by reviewing the evidence and held that the decision of the trial tribunal was inexecutable. It went further to strike out the application without stating the remedy for the uncertain decision. Submitting on the second ground of appeal, the appellant argued that the executing tribunal erred in law and fact by terming the decision of the ward tribunal uncertain because the same tribunal upheld it in Land Appeal No 146/2019. He proceeded to

argue that it is trite law that the court which passes a decree is bound by it and is responsible for enforcing it. The executing court/tribunal must execute the decree unless it is set aside or modified by a competent appellate or reviewing court and not the same court which pronounced it. The court executing the decree is empowered to determine all questions regarding the execution of the decree but cannot go beyond the decree or question its validity. In fortification Order XXI, Rule 1 Page 2 of 7 and Section 38 of the Civil Procedure Code Cap.33 R.E 2019 and the case *Balozi A Ibrahim and Another vs. Ms Benandy's Ltd and 2 Others* Civil Revision No.6 of 2015 [2015] TZCA 5 TanzLII was cited. It was argued further that the doctrine of finality of the decree provides that once the decree is issued and no appeal or review is pending, it binds the parties and the function of the executing court is purely administrative that is, to enforce the decree and not to examine its correctness as held in the case of *Tanzania Electric Supply Company Ltd vs. IPTL and Others*

(2005) ICSID case No.ARB/98/8. He explained that, in that case, it was emphatically stated that execution proceedings are not an appropriate forum for reopening or rehearing the matter already decided by the trial court. The execution court is bound by the terms of the decree. Therefore, in the present case, the executing tribunal erred materially as it modified the application by re-hearing the matter and by vitiating its own decree. He prayed that the appeal be allowed with costs. In reply, the respondent argued that the first ground of appeal is baseless because, in Miscellaneous Land Application No. 368 of 2023 which is appealed against, the parties were not heard afresh. Rather, the respondent being the judgment debtor objected to the execution on the following three grounds. First, in the application for execution the suit land was described as located at Nzuguni A street while in the trial tribunal's proceedings, the location of the suit plot was undisclosed. Second, the boundaries stated in the application for the execution and the one stated in the trial tribunal Page 3 of 7 differed materially. Lastly, in the application for execution, the appellant applied for a demolition an order not reflected by the trial tribunal. The trial tribunal was therefore justified to dismiss the application as the substance of the application for execution differed materially from what was decreed by the Nzuguni Ward Tribunal (trial tribunal). He proceeded to urge that Regulation 23(5) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation, G.N. No. 174 of 2003 empowers the chairman to consider the objection raised by the DECREE debtor. Thus, the executing tribunal was justified in considering and entering a decision on the objections raised by the respondent. It was then argued, in opposition to the second ground of appeal, that the basis of the decision of the executing tribunal was that the application for execution filed by the appellant was executable. No decision was made to overrule the decision of the Ward Tribunal. Citing Regulation 23(1) and (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation, G.N. No. 174 of 2003, the respondent argued that an application for execution of a decree or order must be in the form prescribed in the second schedule of the Regulation and must indicate the mode by which the execution is sought to be carried out. The appellant offended this regulation as his application for execution contained facts and details which differed substantially from

the proceedings and judgment of the trial tribunal and the ruling of the executing tribunal was therefore well in order. The present appeal should be dismissed with costs for want of merits. That was all from the parties. Page 4 of 7 I have considered the records of the trial tribunal and that of the execution tribunal alongside the submissions by the parties and the applicable law. The issue to be determined is whether the appeal has merits. Since the appeal is challenging the decision of the executing tribunal, it is apposite to start with the law regulating such executions. Before the ward tribunals were stripped of their adjudication powers over land matters, their decisions were executed by the district's land and housing tribunals. Regulation 23 of the Land Disputes Court (The District Land and Housing Tribunal) Regulation, G.N 174 of 2003 regulates such executions and provides that: 23(1) A decree holder may, as soon as practicable after the pronouncement of the judgment or ruling, apply for execution of the decree or order as the case may be.

- (2) An application for execution of orders and decree under sub regulation (1) shall be made in the appropriate forms prescribed in the second schedule to these Regulations; and shall indicate the mode in which the execution is sought to be carried out.
- (3) The Chairman shall, upon receipt of the application, make an order requiring a judgment debtor to comply with the decree or order to be executed within the period of 14 days.
- (4) Where after the expiration of 14 days there is no objection or response from the judgment debtor, the chairman shall make execution orders as he thinks fits.
- (5) The Chairman shall, where there are objections from the judgment debtor consider the objection and make Page 5 of 7 such order as may be appropriate. Provided that hearing of objections under this sub regulation shall be limited to the subject matter of the objections. In the present appeal, the records show that the applicant lodged her application for execution before the executing tribunal on 6th November

2023. On 11th December 2023 the parties entered their first appearance before Hon. O. Mbega, Chairman. The following three orders were given: a call for the record of the trial tribunal; an order for the decree debtor to file his defence; and a mention on 16/01/2023. Thereafter, the application was adjourned several times to 12/2/2023, 28/2/2023 and 4/4/2023 pending the arrival of the trial tribunal records. The record is silent on whether the respondent filed the defence he was ordered to file. On 7/6/2023, the application was heard inter-parties. In the course of that hearing the respondent objected the application stating that the description given in the execution application differed from what was decreed by the trial tribunal. For instance, the order that the structure in the suit land be demolished was not decreed by the trial tribunal. The tribunal sustained the objection and dismissed the application. The appellant has argued that there was non-compliance with the procedure above and the chairman surpassed his jurisdiction by declaring the decision uncertain and inexecutable. Looking at the narrative above as to the procedure followed by the executing tribunal, I have observed that there was noncompliance because, contrary to the mandatory provision of sub- regulation (3), after receipt of the application, the chairman

did not make an Page 6 of 7 order requiring the decree debtor to comply with the decree. Rather, on the date for mention he ordered him to file a defence and as stated above the record is conspicuously silent on the compliance to this order. Thus it is presumed that he did not but chose to make his objection from the bar in the course of the hearing of the application on 7th June 2024. In my firm view, this was a fatal anomaly because, in the absence of the objection, the decree debtor who is the respondent herein had no right to address the tribunal. Needless to emphasize, the powers of the executing tribunal must be exercised in total compliance with the law regulating execution. Allowing the decree debtor to object the execution from the bar not only offended the regulations but took the appellant, who unlike the respondent was unrepresented, by surprise and robbed him of the opportunity to prepare a formidable submission in reply. In the foregoing, I have found the appeal with merit. I, therefore, quash and set aside the proceedings and the ruling and I order that the file be remitted back to the executing tribunal for it to be entertained by another chairman. Since the anomalies were caused by the executing tribunal there are no orders as to costs. DATED and DELIVERED at Dodoma this 21st day of February 2024 Page 7 of 7

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