

TANZANIA / JUDGMENT

2782 Of 2024 scnd 1

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1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND APPEAL NO.2782 OF 2024 (Arising from the Ruting of the District Land and
Housing Tribunal for Kinondoni in Execution Application No. 534 of 2023 - Hon. R.L. Chenya,
Chairman, dated 17th January 2023) RAJABU IDDI KIKOTI.....
APPELLANT VERSUS ACCESS BANK TANZANIA LIMITED.....
1stRESPONDE WENCESLAUS BONIFACE MLEKE..... 2ndRESPONDE
KOTI BROTHERS COMPANY LIMITED..... 3rd RESPONDENT TIME MIRACLE
LIMITED..... 4thRESPONDEN DARLINGTON
MARUFU.....5th RESPONDENT

RULING

8h & 31st July 2024 L. HEMED, J. At the District land and Housing Tribunal for Kinondoni, the Appellant herein, 1st and 2nd respondents executed the DEED OF SETTLEMENT in respect of Land Application No.89 of 2016 which on 17th October, 2023 was registered as Consent Decree. It appears that the Appellant failed to comply with the Consent Decree which led the 1st Respondent herein to file Application for execution No. 534 of 2023 against the Appellant, 2nd, 3rd, 4th i and 5th respondents. The said application was granted vide the ruling delivered on 17th January 2024. The Appellant was aggrieved by the said ruling hence the instant appeal on the three (3) grounds. While the matter was in the course of hearing by way of written submissions, the court called the counsel for the parties to address the court on whether orders in respect of execution are appealable. Mr. Isihaka Yusuph, learned advocate represented the Appellant while the 1st Respondent enjoyed the service of Ms. Violet Mipawa, learned advocate. They addressed the court by way of written submissions which were filed on 18th July 2024. I got the privilege of reading both submissions. Mr. Yusuph was of the view that the execution order of the District Land and Housing Tribunal is appealable under regulation 24 of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003, GN No.174 of 2003. According to him the only remedy available to the aggrieved party by the decree and order of the tribunal including those resulting from execution is to appeal to the High Court. He added that the wording used under regulation 24 is that any party who is aggrieved by the decision of the Tribunal, shall subject to the provision of the Act have the right to appeal 2 to the High Court which has to be read together with section 41 of Cap.216 which subject to the provision of any law for the time being in force. In the opinion of the counsel for the Appellant, the law in force referred under

section 41 of Cap.216 include Regulation 24 of GN.No.174/2003. It was further submitted that the objective of regulation 24 is to provide a mechanism for review of the decision of the DLHT, ensuring fairness and accountability in the adjudication of land disputes. Construing the regulation narrowly to exclude execution orders would undermine the objective and deprive parties of a meaningful avenue for redress. The learned counsel proceeded to argue that, the recent jurisprudence supports the appeal of execution orders issued by the DLHT. He cited the cases of Enock Marwa Chacha vs Yahaya Joseph Giriama, Land Appeal No. 18 of 2021 and that of Amon Mrimi Magige vs Bahasha Athumani Salugole, Land Appeal No.59 of 2023. The counsel for the Appellant asserted that the Appellant has no other remedy avenue available for him to seek court redress apart from appeal, holding and baptizing the appeal being incompetent will be amounting to deny access to court. 3 On her part, Ms. Mipawa, counsel for the 1st Respondent submitted to be aware of the two school of thoughts emanating from various decisions of this court. One of the school has insisted that an execution order from district tribunal is appealable as per Rule 23 & 24 of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations GN No. 174 of 2003 as discussed in Sospeter Ramadhani & 2 others vs Mchiwa Chedego, Misc. Land Appeal No. 37 of 2023. Another school of thought insists that all orders which are appealable are specifically provided for under section 74 and Order XL of the Civil Procedure Code, Cap. 33 to wit, an execution order is not one of them. The learned counsel preferred to stand on the school of thought which held that an execution order is not appealable. She referred to the decision of this court in Chacha Nyikongoro vs Ndege Kiseke, Land Appeal No. 145 of 2020, Joseph Mwita Magige vs Mokami Werema Gesaya, Misc. Land Appeal No.36 of 2020 and that of Elizabeth T. Balali vs Peter Amo & Titi Ponsian Nsabi, Land Appeal No. 152 of 2021 where the court found that execution orders are not appealable. The learned counsel prayed for dismissal of the appeal with costs. 4 Having carefully read the submissions it is now apt to determine whether the execution orders of the DLHT is appealable. Rule 24 of GN.174 of 2003 provides thus: "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... Provided that, an appeal shall not in any case be a bar to the execution of decree or order of Tribunal." (Emphasis added). Regulation 24 of the GN 174 of 2003 does not provide for the right to appeal against the execution order rather against the decision of the Tribunal subject for execution under part V of the Regulations. The procedure and what can be appealed against is provided under section 38 and 41 of the Land Disputes Courts Act, [Cap.216 R.E 2019]. According to section 38(1) of the Act provides for avenue of appeal to the High Court for only decisions or orders of the DLHT in the exercise of its appellate or revisional jurisdiction. It provides thus:- "38.-(1) Any party who is aggrieved by a decision or order of the District Land and Housing 5 Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court..." (Emphasis added) According to the above provision, execution orders or decisions of the DLHT in Taxation of costs are not covered. In other words, a person aggrieved by execution order or Taxation of Bill of costs by the DLHT cannot appeal under section 38 of the Act. Another provision that governs appeals against decision or orders of the DLHT is section 41 of the Land Disputes Courts Act (supra). It provides thus:- "72. -(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of

any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court. "[Emphasis added] The above provisions refers and covers only suits filed in the DLHT pursuant to section 33 of the Land Disputes Courts Act(supra). The said section provides for type land case which the DLHT can exercise original 6 jurisdiction. Those cases mentioned under section 33 do not include execution orders. It is thus obvious that neither the Land Disputes Courts Act [Cap. 216 R.E 2019] nor the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, GN. No.174 of 2003 that provides for the remedy to a party aggrieved by the execution order of the DLHT. I am aware of section 51(2) of the Land Disputes Courts Act(supra) which provides thus:- "2) The District Land and Housing Tribunals shall apply the Regulations made under section 56 and where there is inadequacy in those Regulations it shall apply the Civil Procedure Code. "[Emphasis added] The above provision requires the DLHT to apply the Civil Procedure Code where there is inadequacy in the Regulations. Since the Regulations are silent or inadequate on how to challenge the execution order, then the provisions of the Civil Procedure Code [Cap.33 R.E 2019] becomes applicable, specifically under section 74 and Order XL. According the cited provisions of the CPC, order arising from execution proceedings are not appealable. The proper remedy to the aggrieved party is to file an application for revision of the execution proceedings. 7 I subscribe to the position taken by my brother at the bench Hon.Siyani,! in Ignasio Ignas vs Rose Hanselem Mpangala, Civil Appeal No. 65 of 2017 who held thus:- "Allowing Appeals against any order relating to execution which otherwise were not intended by the drafters of our laws to be appealable and or where the law provides other mechanism for challenging them; will be opening a floodgate of endless litigations." In the upshot therefore, I am confident to hold that, on account of the reasons aforesaid, execution orders of the District Land and Housing Tribunal are not appealable. The appeal before this court is thus incompetent I proceed to strike it out with no orders as to costs. Order accordingly. 8

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Prepared on 14 October 2026 · Esheria