

**THE UNITED REPUBLIC OF TANZANIA**

**(JUDICIARY)**

**THE HIGH COURT**

**(MUSOMA SUB REGISTRY AT MUSOMA)**

**LAND APPEAL No. 60 O F 2023**

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in  
Misc. Application [Execution Proceedings] No. 192 of 2022)*

**TANZANIA POSTAL BANK ..... APPELLANT**

***Versus***

**SELEMANI WANTAHE..... RESPONDENT**

**JUDGMENT**

22.04.2024 & 22.04.2024

Mtulya, J.:

**Mr. Selemani Wantahe** (the respondent) had a land dispute with **Tanzania Postal Bank** (the appellant) registered in **Land Application No. 95 of 2017** (the application) before the **District Land and Housing Tribunal of Mara at Musoma** (the district tribunal) and the district tribunal had resolved in favor of the respondent. Subsequent to the district tribunal's decision, the respondent had lodged **Misc. Application No. 192 of 2022** (the execution proceedings) before the same tribunal against the Government entity, the appellant praying for the execution of the decision in the application.

After full hearing of the execution proceeding, the district tribunal had ordered the appellant to return the title deed to the respondent and pay costs of Tanzania Shillings Five Million (5,000,000/=Tshs). In the application, the second order on payment of the indicated amount

I have scanned the present record of appeal and found that the respondent had sued the government entity for execution of costs emanated in the application without abiding with the law enacted in section 16 (1) & (2) of the Act and precedent in **Karata Ernest & Others v. The Attorney General** (supra) and the district tribunal had issued the execution order against the appellant.

The law in section 16 (1) of the Act provides, in brief that: in any civil proceedings against the Government, any order to costs made against the Government, the proper officer of the court shall issue to the person [entitled to costs] a certificate containing particulars of the order. Sub section 2 of the section on the other hand, was enacted, in brief, the following words: If the order provides for payment of money by way of damages or other reliefs or of costs, the certificate shall state the amount so payable and the Permanent Secretary to the Treasury shall pay to the person entitled.

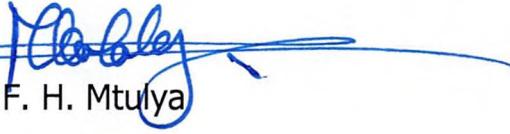
The provisions had received an interpretation of the Court of Appeal decision in **Karata Ernest & Others v. The Attorney General** (supra) and the Court thinks, at pages 4, 5, 15, 16 and 17 of the Ruling that:

*Ordinarily, execution of decrees is governed by sections 31 to 55 and Order XXI of the Code. However, in suits involving the government, the application of Order XXI has been expressly disallowed in execution of decrees against it, by Rule 2A of the same Order. Instead, the execution*

precedent to allow the appeal and move further to quash the decision and set aside proceedings of the district tribunal for want of the law and practice of the Court. I do so under the mandate of this court enacted under section 43 (1) (b) of the **Land Disputes Act [Cap. 216 R.E. 2016]**. I award no costs in the appeal as the fault was caused by the respondent but blessed by the district tribunal. If the respondent so wishes, to initiate fresh execution, he may do so in accordance to the law regulating executions against Government entities.

It is so ordered.



  
F. H. Mtulya

**Judge**

22.04.2024

This judgment was delivered in Chambers Under the Seal of this Court in the presence of **Mr. Samwel Mwita**, learned counsel for the appellant and **Mr. Baraka Makowe**, learned counsel for the respondent.

  
F. H. Mtulya

**Judge**

22.04.2024