

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISC. LAND CASE APPEAL NO. 15 OF 2022

(C/F Application for execution No. 309 of 2020 in the District Land and Housing Tribunal,
Original Kimnyaki Ward Tribunal Case No. BKK/06/2017)

MEISHOORI LORAMATU.....APPELLANT

VERSUS

SAIGURAN LORAMATU.....RESPONDENT

JUDGMENT

15/09/2022 & 20/09/2022

GWAE, J

In the ward tribunal of Kimnyaki Ward in Arusha Region ("trial tribunal"), the respondent, Saiguran Loramatu successfully instituted a dispute against the appellant, Meishoori Loramatu. Seemingly, before the ward tribunal the respondent's application was heard and determined ex-parte. The ward tribunal decision was delivered on 17th January 2017 and on 7th December 2020 the respondent filed his application for execution of the ward tribunal's award.

Upon hearing of the respondent's application for execution, the District Land and Housing Tribunal (Executing tribunal) on 13th January 2022 ruled out that, the execution should be carried out despite the fact that, the

applicant seriously contended that, the execution should be stayed due to the fact that he had already filed an application in this court for extension of time to file his appeal to the court out of time. Following the order of the executing tribunal, the appellant subsequently exhibited his grievances to the court by lodging this appeal duly filed on 27th January 2022. In his appeal, the appellant has advanced three grounds of appeal namely;

1. That, the judgment and proceedings are tainted with irregularity hence judgment was unfair
2. That, the chairperson granting execution erred in law and fact by yet there was pending application regarding the same land dispute
3. That, the chairperson erred in law and fact for not considering and weighing the evidence of the appellant

On 15th September 2022 when this appeal was called on for hearing, the appellant and respondent appeared in person, unrepresented. The appellant reiterated what is contained in his petition of Appeal however he added that, the learned chairperson and tribunal broker erred in law and fact by enforcing the Ward Tribunal's award while there was still pending application for extension to appeal out of time to the court which has already

been decided in his favour and as of now there is an appeal pending in the court.

Whereas the respondent strongly resisted this appeal by submitting that, the impugned order was accurately issued adding that, the decision in the execution case has been enforced and that, he had already been handed over the disputed suit. Having outlined the facts of the case giving rise to this appeal, I should now start determining the appellant's grounds of appeal.

Starting with the first ground, I have observed that, the appellant has certainly fallen short of any demonstration of the irregularity in the order of the executing tribunal nor is the irregularity apparent on the face of the record. I am saying so simply because he has neither showed in his petition of appeal nor in his oral submission the alleged illegality. The requirement of either demonstrating point (s) of illegality or the irregularity being apparent of the face of the record has precisely been stressed by the Court of Appeal of Tanzania in the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 where the court observed;

*"...it cannot in my view, be said that in **VALAMBIA'S** case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process"*

Basing in the judicial precedent quoted above, the 1st ground of appeal is unmerited and it is consequently is dismissed.

In the 2nd ground above, from outset, I am not persuaded by the appellant's argument that, whenever there is an appeal in this court aimed at challenging a decision or order of the lower courts or tribunals or an application for extension of time to appeal out of time, an application for enforcement of a decree or order to be appealed or subject of revision is automatically barred by such appeal or application. It follows therefore, a mere application for extension of time to file an appeal out of time to an appellate court cannot therefore operate as a bar to an application for execution of a decree or order of a court or quasi-judicial body. Perhaps for

a proper guidance of the determination of this ground, Regulation 24 and 25 of the Land Disputes Courts (District Land and Housing Tribunal) Regulations GN. No. 174 of 2003 are reproduced as herein under;

“24. Provided that an appeal shall not in any case be a bar to the execution of a decree or order of the tribunal

25. Notwithstanding Regulation 24, a judgment debtor who intends to appeal to the High Court, Land Division may at any time before the decree or order of the tribunal is executed apply”.

In the light of the wording of the above quoted provisions of the procedural law governing the District Land and Housing Tribunals, it is my considered view, that, mere filing of an appeal or application for revision or extension of time does not bar an application for execution of a decree or order of the court or tribunal unless an order staying of the intended execution is issued by a competent court or tribunal. That being the position, the appellant’s assertion that, the executing tribunal erroneously issued an order directing execution to proceed in favour of the respondent is legally baseless (See also Order XXXIX Rule 5 of the Civil Procedure Code Cap 33, Revised Edition, 2019).


As to the last ground, having keenly considered this ground of appeal and the ruling of the executing tribunal, it is the observation of the court that, the execution tribunal chairperson had taken into account of the evidence given by both parties as depicted in page three of the typed ruling. She endeavored to show that there was no appeal by that time of filing of the respondent's application for execution. Equally, the 3rd ground of appeal is lacking merit.

Similarly, the appellant's appeal has been overtaken by event since the impugned order has been executed by handing over the suit land to the respondent. So, each party shall maintain his status quo till decided otherwise by this court on an appeal.

Consequently, the appellant's appeal is entirely dismissed for want of merit. The respondent shall have his costs borne by the appellant.

It is so ordered




SGD: M. R. GWAE
JUDGE
20/09/2022