

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND REVISION NO. 04 OF 2020**

(Originating from the decision of Hon. S.H. Wambili, Chairman dated the 6<sup>th</sup> February, 2020 Application for Executing in application No. 9 of 2006 at the District Land and Housing Tribunal for Kinondoni District at Mwananyamala)

**ALIA SHARIF ..... APPLICANT**

**VERSUS**

**DEVOTA DELFINA ELISEI ..... RESPONDENT**

**RULING**

*Date of Last Order: 30/08/2021*

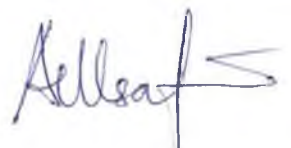
*Date of Ruling: 28/9/2021*

**A. MSAFIRI, J**

The Applicant in this matter is praying for revision of the decision of the District Land and Housing Tribunal for Kinondoni District at Mwananyamala in Application for Execution No.9 of 2006 originating from Application No.9 of 2006, the decision dated 06<sup>th</sup> February 2020 by Hon. S.H. Wambili, Chairman.

The applicant is moving the court to revise the proceedings and decision of hereinabove cited decision and make order as follows;

- a) That the Tribunal erred to issue an order for execution over properties not mentioned in both the judgment and decree issued on 30<sup>th</sup> April 2009 by Hon. Joseph T. Kaare, Chairman (as he then was).*



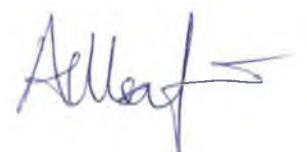
*b) That, the Tribunal erred to issue an order requiring the applicant to demolish, vacate and hand over the said properties to the Respondent to wit; Plot No. 202, Block 'A' Goba Kunguru area, with Title No. 54798,L.O No. 196221 registered in the name of SANJEEV DIPAK KOTAK, Plot No. 203, Block 'A' Goba Kunguru area, with Title No. 54565,L.O No. 196305 registered in the name of RAJIV DIPAK KATOK,@ KOTAK, Plot No. 204, Block 'A' Goba Kunguru area, with Title No. 54564,L.O No. 196303 registered in the name of PRITESH DIPAK KOTAK, Plot No. 205, Block 'A' Goba Kunguru area, with Title No. 54880,L.O No. 196304 registered in the name of RAHUL DIPAK KOTAK, all located in Dar es Salaam Tanzania which properties are not owned by the Applicant nor mentioned in the judgment and a decree.*

*c) That, the Tribunal erred in its decision dated the 6<sup>th</sup> February 2020 by issuing order in favour of the Respondent which orders were not originally prayed for by the Respondent in her original Application No. 9 of 2006 as well as the Application for Execution filed at the Tribunal on 28<sup>th</sup> April 2016.*

Applicant further prayed for the costs to be provided for and any other orders and reliefs as this Court shall deem fit, just and equitable to grant.

The Application has been preferred under Sections 41 & 43 (1), (a), (b), and (c) of the Courts (Land Disputes Settlements) Act No. 2 of 2002.

As usual the chamber application was supported by an affidavit sworn by the applicant. Opposing, the respondent filed counter affidavit and also raised a Preliminary Objection which was determined and overruled by this Court



on 04/6/ 2021. Briefly the facts are that the respondent instituted Application No. 9 of 2002 at the District Land and Housing Tribunal for Kinondoni at Magomeni claiming among other orders, to be declared the lawful owner of the disputed land and eviction of the applicant.

As per the judgement, the land in dispute was a piece of land located at Mbezi Juu, Kawe Ward, near Kunguru area, Kinzudi along road to Goba which measured about a quarter of an acre.

The trial Tribunal decided in her favour whereas it declared the then applicant the lawful owner of the disputed land and order the respondent to vacate the same. The judgement was delivered on 30/4/2009.

On 28/4/2016, after multiple applications from the now applicant which were either dismissed or struck out, the now respondent managed to institute an Application for Execution of a decree. Hearing of the Application was conducted by way of written submission. After hearing of both parties, the District and Housing Tribunal for Kinondoni allowed the Application and made an order that the now applicant should vacate the disputed land within 14 days and handover the same to the then applicant.

The respondent was aggrieved and after several attempts to lodge Applications to the District Land and Housing Tribunal which went in vain, the now applicant has preferred this Application for revision of execution of decree in Application No. 9 of 2006 which was determined and decided by Hon. Wambili on 06/2/2020.

By leave of the Court, this Application was argued by written submissions. The applicant was represented by the Legal and Human Rights Centre

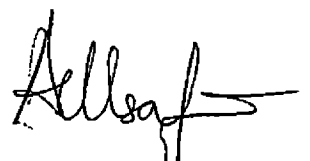


whereas the respondent was represented by Eliezer E. Kileo, learned advocate.

For avoidance of repetition, I will combine the affidavit and the written submission by the applicant and do the same for the respondent with regards to her counter affidavit and reply to the written submission.

In her submission, the applicant stated that, the Hon. Tribunal erred to issue execution order over the property which does not belong to the respondent. In the judgement by Hon. Kaare, Chairman which was issued on 20/4/2009, the disputed land is clearly described to be a quarter of an acre. That the said judgment did not mention any other property beside the disputed land.

The applicant submitted further that despite the fact that the disputed land was clearly stated in the judgment, the executing Tribunal erred and went further to allow execution of other properties not owned by the applicant and was not mentioned in the judgement and decree. She went on to reveal that the execution was allowed on Plot No. 202 Block 'A' Goba Kunguru Area, registered in the name of Sanjeev Dipak Kotak, Plot No. 203 Block 'A' Goba Kunguru area registered in the name of Rajiv Dipak Katok @ Kotak, Plot No. 204, Block 'A' Goba Kunguru area, registered in the name of Pritesh Dipak Kotak and Plot No. 205 Block 'A' Goba Kunguru area, registered in the name of Rahul Dipak Kotak all located in Dar es Salaam. She argued that this shows that the Tribunal made a mistake on allowing the execution of properties not owned by then applicant nor mentioned in the judgement and decree. The applicant concluded by referring this Court to Order XX Rule 9 of the Civil Procedure Code Cap 33 and prayed for this court to nullify the Application for execution which was allowed by the trial Tribunal.

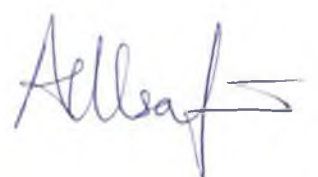


On her part, the respondent through her advocate Mr. Kileo vehemently denied the claims in the applicant's submission and prayed to adopt the contents of her counter affidavit. He submitted that the disputed land is at Mbezi Juu, Kawe Ward near Kunguru area, along road to Goba currently Mbezi Juu Ward, Kinondoni opposite Libermann School, along Goba road.

He stated further that, the land which is in dispute was once not surveyed during the start of this dispute. But while the proceedings was at initial stage at local Government Authorities, the respondent (now applicant) decided to survey the disputed land and four plots came out from the same. He referred this Court to page 3 of the trial Tribunal judgment dated 30<sup>th</sup> April, 2009 while the applicant was testifying, that the Court observed that;

*"However, according to the witness, Mzee Libabu did not go on with the cultivation and the disputed land turned into a grazing area. She then decided to survey it and four plots came out of that survey".*

The respondent's advocate pointed out that, again, the description of the land which was subject for execution was well described from various applications filed by the applicant such as Misc. Application No. 851 of 2018 and Misc. Application No. 721 of 2019. All these applications states that the disputed land is from landed property located at Plot No. 202, Block 'A' Goba Kunguru area, with Title No. 54798, registered in the name of SANJEEV DIPAK KOTAK, Plot No. 203, Block 'A' Goba Kunguru area, with Title No. 54565, registered in the name of RAJIV DIPAK KATOK, @ KOTAK, Plot No. 204, Block 'A' Goba Kunguru area, with Title No. 54564, registered in the





name of PRITESH DIPAK KOTAK, and Plot No. 205, Block 'A' Goba Kunguru area, with Title No. 54880, registered in the name of RAHUL DIPAK KOTAK. He observed that the allegation that the decree and judgement are defective has no merit at this stage, and if the applicant was dissatisfied with the decision of the trial Tribunal, she could have challenged it by way of appeal or correction of a decree.


Mr. Kileo concluded that, the legal owner of the suit property is the respondent and this ownership was since determined by the Hon. Tribunal on 30<sup>th</sup> April 2009, and there is no appeal or applications which has changed or reverse this position. He prayed that this application be dismissed with costs as it lacks merit.

There was no rejoinder.

Having gone through the parties' affidavit and counter affidavit, the written submissions from both parties and the Court records, the main issue for determination is whether the Application for revision has merits.

The law requires the High Court to exercise its revisional jurisdiction in a case where it appears that there has been an error material to the merits of the case involving justice. This is provided under Section 43 (1) (b) of the Land Disputes Court Act, Cap 216 R.E 2019 (also refer the Case of **Zabron Pangalameza vs. Joachim Kiwaraka** (1987) TLR 140).

The applicant is praying for this Court to call and inspect the records and decision of the District Land and Housing Tribunal for Kinondoni District at Mwananyamala in Application for Execution originating from Application No. 9 of 2006, as there is an error material to the merits of the case involving



**injustice. The wanting question here is whether there was any error material to the merit of the case i.e. Application for execution of the decree in Application No. 9 of 2006 involving injustice.**

In her submission as observed hereinabove the applicant is claiming that the Hon. Tribunal erred to issue execution order over the property which does not belong to the respondent whereas the judgment and decree issued on 20<sup>th</sup> April, 2009 did not mention any other property in favour of the respondent other than the property which made the respondent institute a case. That the trial Tribunal made a mistake for allowing an execution over properties not mentioned in neither the judgment nor the decree.

This dispute originates from Application No. 9 of 2006 whereas the respondent sued the now applicant over a piece of land. As per the judgment of the District Land and Housing Tribunal in the said Application, the land in dispute is on a piece of land located at Mbezi Juu, Kawe Ward near Kunguru area, Kinzudi along a road to Goba measuring about a quarter of an acre. The trial Tribunal declared the applicant (now the respondent) the lawful owner of the disputed land. I have observed that, the description of the disputed land in the trial Tribunal judgement is the one which appears as an opening statement on the said judgement which was delivered on 30/4/2009. There is no description of plots or certificate of ownership. I reproduce the said statement as hereunder;

*"A dispute in this application is on a piece of land located at Mbezi Juu, Kawe Ward near Kunguru area, Kinzudi along a Road to Goba measuring about a quarter of an acre".*



This is similar to the pleadings by the applicant in her original Application before the trial Tribunal in Application No. 9 of 2006. The said application form which was filed by the applicant at the Tribunal, was filled by the applicant at part 3 which shows Location and address of suit premises as follows:

"MBEZI JUU, KAWA WARD, NEAR KUNGURU KINZUDI ALONG AND TO THE LEFT OF GOBA ROAD TOWARDS GOBA".

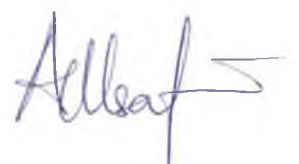
The decree of the judgment of Application No. 9 of 2006 does not describe the disputed land. It states thus;

- 1. The applicant is declared the lawful owner of the disputed land,***
- 2. The respondent is ordered to immediately vacate the disputed land and,***
- 3. The respondent is ordered to bear costs of this application.***

As observed earlier, after several attempts, the respondent managed to file an Application for Execution No. 9 of 2006 which was arising from Land Application No. 9 2006. The Application for Execution was disposed of by written submissions. In her filed submission the respondent (then applicant) stated that the dispute Land which was heard and determined is at Mbezi Juu Kawa Ward, near Kunguru area along road to Goba.

However, in her prayers, as per her submission, the then applicant prayed for the orders as follows:

*"Court order respondent to be immediately evicted from landed property located at Plot No. 202, Block 'A' Goba Kunguru area,*





*with Title No. 54798, registered in the name of SANJEEV DIPAK KOTAK, Plot No. 203, Block 'A' Goba Kunguru area, with Title No. 54565, registered in the name of RAJIV DIPAK KATOK, @ KOTAK, Plot No. 204, Block 'A' Goba Kunguru area, with Title No. 54564, registered in the name of PRITESH DIPAK KOTAK, and Plot No. 205, Block 'A' Goba Kunguru area, with Title No. 54880, registered in the name of RAHUL DIPAK KOTAK."*

After hearing the submissions from both parties regarding the Application for execution, the Hon. Chairman find that the Application has to succeed. Guided by the case of **Fakihi R. Siku vs. Salumu Ahamad Kulyanganga**, Land Case Revision No. 1/2008, High Court Mtwara (unreported), **the trial Chairman held that it was the duty of the trial Tribunal to execute orders or decree as they were passed and not otherwise.** The Hon. Chairman went on to hold that there was no justified defence raised by the respondent/judgement debtor in the application for execution.

The Hon. Chairman went on to hold at page 15 of the Ruling that;

*"I have carefully read the judgment of this Tribunal, the same shows that suit land is about a quarter of an acre as per page one of the judgement ..... It is not in dispute according to the copy of judgement all four plots mentioned by the parties in their written submission were produced from the applicant's/decreed holder's land as per page three of the judgment. So the 4 plots namely Plot No. 202, Block 'A' Goba Kunguru area, with Title No. 54798, L.O No. 196221 registered in the name of SANJEEV DIPAK KOTAK, Plot No. 203, Block 'A' Goba Kunguru area, with Title No. 54565, L.O No.*



*196305 registered in the name of RAJIV DIPAK KATOK, @ KOTAK, Plot No. 204, Block 'A' Goba Kunguru area, with Title No. 54564, L.O No. 196303 registered in the name of PRITESH DIPAK KOTAK, Plot No. 205, Block 'A' Goba Kunguru area, with Title No. 54880, L.O No. 196304 registered in the name of RAHUL DIPAK KOTAK, are surveyed from the applicant's/decree holder's land.*

With due respect to the Hon. Chairman, I am forced to say that he made an assumption instead of basing his decision on actual facts. There is nowhere in the judgment of the Tribunal which shows that the 4 (four) Plots mentioned by the parties in their submissions are the ones which were surveyed from the applicant's land or the disputed land.

Page 3 of judgment of trial Tribunal stated that;

*"However, according to the witness, Mzee Libabu did not go on with the cultivation and disputed land turned into a grazing area. She then decided to survey it and four plots came out of that survey".*

By this, the Hon. Chairman erred in his findings that the judgment of trial Tribunal produced the four plots mentioned by the parties and are the source of this Application for Revision. **My findings are that, Plot No. 202 Block A, Plot No. 203 Block A, Plot No. 204 Block A and Plot No. 205 Block A all situated at Goba Kunguru area were never mentioned in the judgment and Decree of trial Tribunal.**

By this finding, I agree with the submission by the applicant that the executing Tribunal made an error for allowing an execution over properties not mentioned in neither the judgment nor the decree. In his ruling, the trial

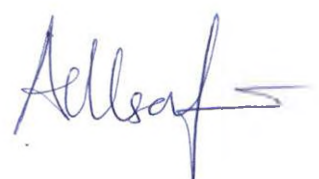


Chairman stated that he was guided by the position held by the case of **Fakihi R. Siku vs. Salum Ahmad Kulyanganga (supra)**. In the cited case Twaib J (as he then was), was of the view that;

*"..... Thus, just like executing court (the District Tribunal), this court has no power to entertain the issue of ownership **or award more than what was awarded by the ward tribunal, something which is not permitted by law .....**".(Emphasis mine)*

Surprisingly, the Hon. Chairman then proceeded to go against the same legal position which he was supposedly to be guided by it. The Hon. Chairman went beyond what was decreed in the main Application. This is because the decree of the trial Tribunal did not give description of the suit land to plots Nos.202, 203, 204, and 205 all situated at Goba as they now appear in execution order. The decree simply states that the application is declared the lawful owner of the "disputed land". The judgment described the disputed land to be a quarter of a piece of land located at Mbezi Juu, Kawe Ward near Kunguru area, Kinzudi along a road to Goba.

Going through the pleadings, I observed that, the application form filed by the applicant was attached with annexures revealing that the disputed land is plot No. 202 Block A. One of the annexures are the letter dated 22/6/2005 from Bibi Elinduma Tema who is the mother of the applicant, writing to the Director of Survey requesting his office to stop granting of a certificate of title to Plot No. 202 until determination of the dispute. Furthermore, during the trial while framing issues before hearing, the first issue was; *"who is the lawful owner of a plot currently known as 202 Block 'A' Goba Kunguru."*



However, in his findings and judgment the trial Tribunal did not consider answering this issue. I find that the trial Chairman erred in this because he was supposed to determine the proper status of the suit land where the evidence reveals that at one time it was unsurveyed and later on it was surveyed and it was named Plot No. 202 Block A Goba.

In the circumstance where the judgment and decree have no proper description of the suit property, it will be difficult to execute the decree basing on the description for execution. It is obvious that the described plots were not mentioned in the judgment and decree.

As per **Fakihi R. Siku's case (supra)**, the execution cannot go beyond what was stated in the decree of trial Tribunal.

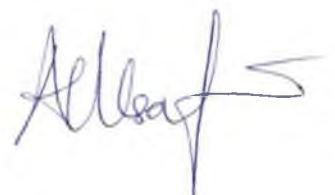
Order XX Rule 6(1) of the Civil Procedure Code, Cap 33 R.E. 2019 provides that the decree should agree with the judgement.

Furthermore, Order XX Rule 9 of the same act provides thus;

*"Where the subject matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by a title number under the land Registration Act, the decree shall specify such number".*

This was not followed in the Judgement and Decree of Application No. 9 of 2006.

In the case of **The Board of Trustees of F.P.T.C Church vs. The Board of Trustees of Pentecostal Church**, Misc. Land Appeal No. 3 of 2016,





HC Shinyanga (unreported), Makani, J was of the view that;

*"The rationale for proper description is to make execution easy and to avoid any chaos by proper identification of suit property. The judgment of the Ward Tribunal is therefore not executable for failure to have proper details/description of the suit land ....."*

I entirely agree with the above position of the statute law and case law that the description of the suit property in the judgment and decree is mandatory.

In the present Application although the applicant has prayed for the call and inspection of the records and a decision of Application for Execution No. 9 of 2006 dated 6<sup>th</sup> February 2020, the court cannot inspect the same without touching the original Application No. 9 of 2006 which is the source of the disputed execution order.

From the above reasons and position, I hereby find that there was an error material to the merits of Application for Execution No. 9 of 2006 whereby the Hon. Chairman erred when he went beyond and allowed an execution of land properties which were not described in the trial judgement and decree. I am of the view that the said decision involve injustice. I thus hereby hold that the judgment and decree of the trial Tribunal in Application No. 9 of 2006 delivered on 30<sup>th</sup> April 2009 are not executable for failure to have proper details/description of the suit land.

Having established that there was an error material to the merits of the Ruling of the Application for Execution, in order to correct the observed errors which are material to the merits of the above said Application, I hereby grant the revision.





This Court orders that the proceedings, judgement and decree in Application No. 9 of 2006 before Hon. Joseph T. Kaare at the District Land and Housing Tribunal for Kinondoni at Magomeni are hereby quashed and set aside. This Court further orders that the proceedings, ruling and orders on Application for Execution No. 9 of 2006 by Hon. S.H. Wambili, at the District and Housing Tribunal for Kinondoni at Mwananyamala are also hereby quashed and set aside.

If any of the parties still wish to contest on the disputed land, they may opt for fresh and proper suit before the competent forum in accordance to the law. I make no order for the costs.

It is so ordered. Right of appeal explained.



A handwritten signature in blue ink, appearing to read "A. Msafiri", is written over a horizontal line.

**A. MSAFIRI,**  
**JUDGE**  
**29/9/2021**