

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA
LAND APPEAL NO. 59 OF 2023

AMON MRIMI MAGIGE APPELLANT

VERSUS

BAHASHA ATHUMANI SALUGOLE RESPONDENT

JUDGMENT

22/3/2024 & 28/3/2024

ROBERT, J:-

The appellant, Amon Mrimi Magige, lodged this appeal against the decision of the District Land and Housing Tribunal (DLHT) for Mwanza in Misc. Application No. 116 of 2023 in which the respondent applied for execution through detention of the judgment debtor (appellant) and vacant possession. The DLHT granted the prayer for vacant possession. Aggrieved, the appellant preferred this appeal praying for the ruling of the DLHT to be quashed and set aside.

The genesis of the present appeal stems from land application no. 164 of 2021 filed by the respondent against the appellant before the DLHT for Mwanza. The parties to the dispute subsequently reached an amicable

settlement and executed a Deed of Settlement on 14th November, 2022 which the DLHT admitted and certified as consent judgement. Among other provisions, the Deed of Settlement obligated the Appellant to pay the Respondent a sum of TZS 21,000,000 in monthly installments as full satisfaction of all claims. Additionally, it was agreed that in the event of default, the respondent would be entitled to interest, and upon full payment, the respondent would withdraw a caveat placed on the property.

However, the Appellant defaulted on the payment, prompting the Respondent to file Misc. Application No. 116/2023 seeking execution of the decree, including an order for vacant possession of the disputed property. The DLHT, upon hearing the application, granted the order for vacant possession, prompting this appeal.

At the hearing of this appeal, parties were represented by Messrs. Arnold Katunzi and Frank Obedi, learned counsel for the appellant and Respondent respectively.

Before addressing the substance of the appeal, the Court identified a significant legal issue requiring clarification by the parties. The Court noted that the appeal concerns an execution order issued by the District Land and

Housing Tribunal (DLHT). However, upon examination of relevant provisions within the Civil Procedure Code, particularly Section 74 and Order XL, it was observed that orders arising from execution proceedings are not expressly listed as appealable orders. Given this legal framework, the Court invited the parties to present arguments on whether an execution order issued by the DLHT is indeed appealable.

Mr. Kabula, learned counsel for the respondent, contended that the appeal lacks merit as the subject matter falls outside the scope of appealable matters. He argued that the issue at hand does not align with the matters enumerated in Section 74 and Order XL of the Civil Procedure Code as appealable orders. Mr. Kabula referred to the case of **Chacha Ikongolo vs Ndege Kiseke**, Misc. Land Appeal No. 145 of 2020, where the Court emphasized that recourse for a person aggrieved by execution proceedings lies in filing an application for revision, as execution proceedings are not among the appealable issues. Consequently, he asserted that the present appeal is incompetent and should be dismissed.

In response, Mr. Katunzi, counsel for the appellant, asserted the competency of the appeal before the Court. He argued that the matter arose from the DLHT, and Section 51(2) of the Land Disputes Courts Act, Cap. 216

R.E. 2019, permits the application of the Civil Procedure Code in cases where there is a legislative gap in land-related matters. Furthermore, with regard to appeals stemming from execution proceedings in land matters, Regulation 24 of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, G.N. No. 174 of 2003, explicitly allows for appeals against decisions arising from execution orders of the DLHT. Mr. Katunzi supported his argument by referencing the case of **Enock Marwa Chacha vs Yahaya Joseph Giriama**, Land Appeal No. 18 of 2021, HCT, Mwanza (unreported), wherein the Court held that execution orders of the DLHT are indeed appealable. He emphasized that this decision, being more recent than the one cited by the respondent, holds greater sway, particularly as it aligns with established legal principles.

In his rebuttal, counsel for the respondent countered that Regulation 24, as cited by the appellant's counsel, does not explicitly mandate that a person aggrieved by the DLHT's execution decision shall appeal to the High Court. Rather, it serves as a general provision on appeal for matters arising from the DLHT. He argued that the proviso to the cited regulation, upon closer examination, does not preclude the execution of a decree pending appeal.

To determine the issue of appealability of execution orders issued by the DLHT requires a nuanced understanding of the legal framework governing land disputes and the interpretation of relevant statutes and regulations.

Firstly, it is essential to recognize that the DLHT operates within a specialized legal framework established to address land and housing disputes. The Land Disputes Courts Act, Cap. 216 R.E. 2019, provides the statutory basis for the establishment and jurisdiction of the DLHT. This Act empowers the DLHT to adjudicate on various matters pertaining to land and housing, including the enforcement of decrees and orders arising from its proceedings.

In interpreting the appealability of execution orders, it is imperative to harmonize the provisions of the Land Disputes Courts Act with other relevant laws, such as the Civil Procedure Code. While the Civil Procedure Code primarily governs procedural matters in civil cases, including appeals, the Land Disputes Courts Act establishes a specialized regime for land disputes. Therefore, there may arise a need to reconcile potential conflicts or gaps between these legal frameworks.

Regulation 24 of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, G.N. No. 174 of 2003, is central to the analysis of appealability. This regulation grants parties aggrieved by decisions of the DLHT the right to appeal to the High Court. However, it does not explicitly enumerate the types of decisions that are subject to appeal. This omission raises questions about whether an appeal is an available avenue for parties aggrieved by execution orders issued by the DLHT. However, this Court considers that, while Regulation 24 does not explicitly mention execution orders, its broad language grants parties the right to appeal "any decision" of the Tribunal to the High Court. This expansive language suggests an intention to encompass all decisions, including those pertaining to execution.

Moreover, the principle of statutory interpretation dictates that courts should interpret statutory provisions purposively to advance the objectives of the legislation. In this context, the objective of Regulation 24 is to provide a mechanism for review of decisions of the DLHT, ensuring fairness and accountability in the adjudication of land disputes. Construing the regulation narrowly to exclude execution orders would undermine this objective and deprive parties of a meaningful avenue for redress.

Furthermore, the recent jurisprudence, particularly the case of **Enock Marwa Chacha vs Yahaya Joseph Giriama**, Land Appeal No. 18 of 2021, supports the appealability of execution orders issued by the DLHT. In that case, this Court affirmed the right of parties to appeal execution orders to the High Court, thereby establishing a precedent consistent with the overarching principles of access to justice and fairness.

In light of the foregoing analysis, this Court finds and holds that execution orders issued by the DLHT are appealable to the High Court. Therefore, the respondent's contention regarding the appealability of execution orders of DLHT is not sustained, and the appeal shall now proceed for substantive consideration on its merits.

The appeal is founded upon two grounds, namely:

- (a) The trial Tribunal erred in law by giving an order of vacant possession while it was not among the terms of the Deed of Settlement (Consent Judgment) nor the remedy for failure to pay the decreed amount of money.*
- (b) The trial Tribunal erred in law by giving an order of vacant possession on a house lawfully owned by the appellant.*

Submitting on the first ground of appeal, counsel for the Appellant contended that the trial Tribunal erred in granting an order of vacant

possession as it was not within the terms of the Deed of Settlement or the remedy for non-payment stipulated therein. He asserted that the agreement solely pertained to the payment of a specified sum of money by the Appellant to the respondent, with no stipulation regarding eviction in case of default. Therefore, the order of vacant possession was erroneous and exceeded the scope of the agreement. He contended that the primary remedy for non-payment was specified in the Deed of Settlement as execution through methods such as arrest of the judgment debtor or attachment and sale of property under Order XXI Rule 28 of the Civil Procedure Code.

Coming to the second ground, he contended that the appellant, being the lawful owner of the disputed property, was only liable to pay the agreed sum of TZS 21,000,000, and that any failure to pay should have resulted in execution through other means. He maintained that, the Appellant being the lawful owner of the disputed property an order for vacant possession was erroneous.

In response to the first ground of appeal, Counsel for the Respondent contends that the Deed of Settlement obligated the Appellant to finalize the sale of the disputed property by paying the agreed sum. Failure to pay

constituted a breach of the agreement, warranting the remedy of vacant possession as envisaged in paragraph 8 of the Deed of Settlement.

Responding to the second ground, the learned counsel submitted that the Appellant did not acquire full ownership of the property until the entire agreed sum was paid, as stipulated in paragraph 2 of the Deed of Settlement. Therefore, the Respondent's claim for vacant possession was justified.

Starting with the first ground of appeal, the Court notes that the respondent applied for execution through arrest and detention of the judgment debtor (appellant) and vacant possession. However, the DLHT granted an order for vacant possession without deliberating on the respondent's prayer for the detention of the appellant as a civil prisoner. This omission raises concerns regarding the completeness of the DLHT's decision-making process and the consideration of all available remedies regardless of whether the remedies would be granted or not.

As for an order of vacant possession, this Court observed that, the Deed of Settlement did not explicitly provide for vacant possession as a remedy for non-payment. Paragraph 8 of the Deed of Settlement merely treated the settlement as an order of the Court and did not specifically authorize vacant

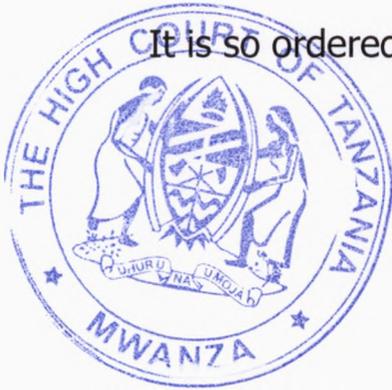
possession. Most importantly, Order XXI Rule 28 of the Civil Procedure Code outlines the permissible methods of execution for a decree for payment of money, none of which include vacant possession. Therefore, the trial Tribunal erred in granting an order for vacant possession as a remedy for non-payment. Since the respondent had applied for execution through arrest and detention of the judgment debtor (appellant) as well as vacant possession, the Appellant having failed to continue with the agreed payment plan as per the Deed of Settlement, the Tribunal would have deliberated on the respondent's prayer for execution through arrest and detention of the judgment debtor.

As for the second ground of appeal, the Court finds merit in the Appellant's argument. Paragraph 2 of the Deed of Settlement does not contain any provision indicating that full ownership of the property was contingent upon payment of the agreed sum. Therefore, the Respondent's claim that the Appellant was not the owner until full payment contradicts the terms of the Deed of Settlement and the parties' intentions therein.

In light of the aforementioned omission by the DLHT, the Court finds it necessary to remit the matter back to the DLHT for reconsideration and deliberation on the respondent's prayer for the detention of the appellant as

a civil prisoner. Therefore, the appeal is upheld to the extent of remitting the case back to the DLHT for reconsideration in accordance with this judgment. Consequently, the order for vacant possession issued by the trial Tribunal is quashed and set aside. Each party shall bear their own costs of this appeal.

It is so ordered.




K.N. ROBERT
JUDGE
28/3/2024

