

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

AT ARUSHA

LAND REVISION APPLICATION NO. 4 OF 2020

(Coming from Misc. Land Application for execution No. 54 of 2019 of the Kiteto District Land and Housing Tribunal)

KIPARA OMARY @ LUBEMBE MARI.....APPLICANT

VERSUS

KADODA MMELO.....RESPONDENT

RULING

27/07/2021 & 30/09/2021

GWAE, J

Aggrieved by an eviction order made by the Kiteto District Land and Housing (DLHT) vide Miscellaneous Application No. 54 of 2019, the applicant has duly filed this application for revision on the grounds contained in his sworn affidavit that; **firstly**, that, the respondent's application for execution was filed by a person who had **no locus standi** since the respondent was no longer alive, **secondly**, that, that the DLHT did not rule out as to the status of the person who appeared on behalf of the deceased person and thirdly, that, the applicant's application for extension of time to appeal out of time was not heard (Miscellaneous. Application No. 1 of 2020).

The respondent through his representative one Chesco Chrispine Mmelo admitted the applicant's complaints, the above-named respondent is dead since on the 30th August 2019 while the judgment and decree of the ward tribunal were delivered on the 8th October 2018 and that, the said **Chesco Chrispine Mmelo** is an administrator of the respondent's estate effectively from 3rd day of September 2020

When this application was called on for hearing before me, the applicant and respondent were represented by advocates namely; **Pastory Kong'oke** and **Eliakimu Sikawa** respectively. With consensus, the matter was disposed of by way of written submission and the parties' advocates subsequently filed their submissions in conformity with the court's order dated 4th day of May 2015.

Arguing for the application, the applicant's counsel seriously stated that, it was a misdirection on the party of the DLHT for its failure to avail the applicant an opportunity to respond on the application for execution considering the eviction order which is to the effect that the respondent was declared a lawful owner of 87 acres whereas the suit land in which he (applicant) complained in the ward tribunal was over a parcel of land measuring 8 acres adding that the application was filed by dead person which, according to him is vital. He referred this court to a decision of the court-Commercial Division in **Salehe Said vs. NMB and Adili Auction Mart**, Commercial Case No. 1 of 2015 (unreported) and **Ally Ahmad**

Bauda (Administrator of the late Amina Hussein Senyange vs. Raza Hussein Ladha Damji and two others, Civil Application No. 527 of 17 (unreported-CAT) of 2016 (unreported) where procedure to be adhered for a legal representative in order to be a party to a judicial proceeding upon demise of a former party. He added that the grant of letters of administration was procured in September 2020 to just to rescue this application.

In his submission, the respondent's counsel argued in form of a preliminary objection that a decision emanating from the applicant's application for extension of time is appealable in law as the same was determined on merit as well as the decision in the execution application. Admittedly, the counsel for the respondent went on arguing that this application is also bad in law since it is against the dead person. The respondent's counsel also argued that, the applicant is found giving contradictory reason or information for his failure to appeal within the time limit.

In his rejoinder, the applicant's counsel maintained the only remedy in the execution is to file an application for revision as an order made in execution is not appealable. He cited section 74 (1) of the Civil Procedure Code Cap 33, Revised Edition, 2019 and that the impugned order is tainted

by irregularities and violation of right to be heard and then called upon this court to go through the record in Execution Application No. 54 of 2019

An Issue of suing a person who has locus standi is very pertinent in litigation since by suing a person who has no locus standi or who is a dead person may render a decree ineffectual or inexecutable (see **Lujuna Shubi Balonzi, Senir vs. Registered Trustee of Chama Cha Mapinduzi, CCM** (1996) TLR 203 and **Oysterbay properties and another v. Kinondoni Municipal Council and others**, (2011) 2 EA 315 –CAT).

Similarly, continuous naming a person who was party in a proceeding as a party to a subsequent proceeding while in actual fact he or she has already perished or signing on behalf of a deceased person is even worse as it may involve constitute an of forgery of his signature.

In our instant matter the respondent, deceased passed away on the 30th August 2019 as depicted in his death certificate whereas the application for execution was filed on the 30th day of December 2019 and the same was purportedly signed by the respondent, deceased person. That is absolutely wrong as the respondent was already dead by then. I humbly subscribe the jurisprudence in the case the case of **Ally Ahmada Bauda (Administrator of**

the late Amina Hussein Senyange vs. Raza Hussein Ladha Damji and two others (supra) where it was held;

“Locus standi is a common law principle which requires that a person bringing a matter to court should be able show that his right or interest has been infringed

“It is not disputed that the name of the defendant at the High Court is Amina Hussein Senyange as per annexure ‘E’ to the affidavit. This is the person who is said to be the deceased whom the applicant is purporting to represent through letters of administration of her estate. However, the documents proving the status of the applicant have glaring shortcomings.....”

The Court of Appeal went further holding that

“The authority in *Amani Mashaka (supra)* is distinguishable because in that case of *Amani Mashaka vs. Mazoea Amani Mashaka Civil Application No. 124 of 2015 (unreported)* was administrator of the late Mwavita Ahmed who had Locus standi to sue to sue under that capacity (underlined supplied)”.

In our instant matter, the said **Chesco Crispine Mmelo**, on the 30th December 2019 was yet to be appointed as an administrator of the estate of his late brother since he was duly appointed on the 3rd September 2020. It therefore follows that he had no locus standi to either file an application for execution or appear on behalf of the deceased person and sign by then same on that behalf

that is prior to 3rd September 2020. Henceforth, whatever was conducted thereof is nothing but a nullity.

I have further examined the record of the respondent's Application for Execution No. 54 of 2019 and observed as correctly submitted by the applicant's counsel that, the applicant was not availed an opportunity to address the DLHT on the application for execution considering the fact that, the eviction order issued was for 87 acres while the suit land before the trial tribunal was for only 8 acres. That, means if the applicant was/is in possession of more than 8 acres, he would be illegally evicted from some acres which were not in dispute. That means the respondent would yield some more acres from the applicant than what was actually disputed (8 acres if any) during trial before the ward tribunal. More so, the application for execution was not heard at all instead an order was made through a ruling in respect of the applicant's application for extension delivered on the 29th July 2020.

I have taken into account of the contentions by the respondent's counsel, that this application for revision is bad in law as the applicant was to appeal since the eviction order was appealable, with due respect with the respondent's counsel, that is wrong, orders emanate from executions are not appealable as rightly argued by the applicant's counsel. More so, the illegalities or fatal irregularities inevitably require attention of this court by way of a revision.

Moreover, the assertion that the applicant has filed this application for revision aimed challenging the decision in his application for extension of time in the DLHT is unfounded and lacking professional integrity as the applicant is glaringly complaining of the eviction order and not DLHT's decision dated 29th July 2020.

Equally, the respondent's contention that the applicant's reasons of his delay to file an appeal in the DLHT are contradictory as he initially stated that, he failed to do so within the prescribed period due to his sickness and now is found stating that due to absence of an administrator of the respondent's estate is also baseless since the record vide Misc. Land Application No. 1 of 2020, in which the applicant's advocate during hearing vividly argued that, following the respondent's demise, they failed to appeal in time ("The late Kadoda Mmelo died and there had no administrator of the estate. That is why we failed to file an appeal in time") and in his affidavit, issue of sickness and the issue of death of the respondent and absence of an administrator of his estate are clearly stated in paragraph 4 and 6 respectively. That being the observations of the court, the respondent's assertions are therefore baseless.

Consequently, exercising the power vested to this court under section 43 of the Land Disputes Courts' Act, Cap 216 Revised Edition, 2019, proceedings, decisions and any ancillary orders emanating from Miscellaneous Application No.

54 of 019 and Miscellaneous Application No. 1 of 2020 are quashed and set aside since they were initiated against the dead person and by a person who by then had no locus standi respectively. For interest of justice, the applicant and respondent's representative are given **fifteen (15)** days from the date of this order or date of being aware as the case may be within which they may file their respective applications and the same be heard by a different tribunal chairperson. As the errors was caused by the DLHT, no order as to costs of this application and those before DLHT is made.

It is so ordered.



A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

M. R. GWAE

JUDGE

30/09/2021