

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. LAND REVISION NO. 11 OF 2020**

(C/F Misc. Application for Execution No. 259 of 2019 of Arusha District Land and Housing Tribunal, Originating from Application No. 4 of 2019 at Maji ya Chai Ward Tribunal)

**ITIKISAEI KIWANDAI NNKO ..... 1<sup>ST</sup> APPLICANT**  
**NAHUMU VERAELI PALLANGYO ..... 2<sup>ND</sup> APPLICANT**  
**HOSEA VERAELI PALLANGYO ..... 3<sup>RD</sup> APPLICANT**  
**ESTAR ANNATHE PALLANGYO ..... 4<sup>TH</sup> APPLICANT**  
**MASAME t/a MASAME SHOP ..... 5<sup>TH</sup> APPLICANT**  
**SAID SALIM ..... 6<sup>TH</sup> APPLICANT**  
**SIKOLASTIKA MAMSERI ..... 7<sup>TH</sup> APPLICANT**

**VERSUS**

**ELIAKIRA G PALLANGYO ..... RESPONDENT**

**RULING**

18/3/2022 & 22/7/2022

**ROBERT, J: -**

The applicants herein seek to revise the Ruling of the District Land and Housing Tribunal in Misc. Application for Execution No. 259 of 2019 delivered on 19<sup>th</sup> October 2020 in favour of the Respondent herein. The application is lodged under the provisions of section 43(1)(a), (b) and (2) of the Land

Disputes Courts Act, No. 2 of 2002 and supported by an affidavit of Nerius N. Rugakingira, Counsel for the Applicants.

The Applicants herein were Judgment Debtors whereas the Respondent was the Decree Holder in Misc. Application No. 259 of 2019 at the District Land and Housing Tribunal for Arusha arising from ex-parte Judgment of the Ward Tribunal of Maji ya Chai in Land case No. 4/2019. In this application the applicants moved this Court to determine the correctness of the Ruling of the District Land and Housing Tribunal after the alleged failure to consider whether the Respondent was a legal administrator with legal capacity to maintain a suit on behalf of the deceased as declared by Maji ya Chai Ward Tribunal. In the course of submissions, the applicants also raised an issue whether the Ward Tribunal had jurisdiction to hear and determine the matter ex-parte, although this issue did not feature in their pleadings.

At the request of parties, the Court allowed parties to argue the application by filing written submissions whereby the applicants' joint submissions were drawn and filed by Mr. Fortunatus Muhalila, learned counsel whereas the Respondent's reply submissions were drawn and filed by Mr. Sylvester S. Kahunduka, learned counsel.

Highlighting on the application, the learned counsel for the applicants argued that, the District Land and Housing Tribunal for Arusha maintained a case filed by a person who is not a legal administrator of the deceased. He argued that, it was proved during the execution process that the Respondent had no locus to institute and appear in the case at Maji ya Chai Ward Tribunal because he was not a personal legal representative of the owner of the disputed land. However, the District Land and Housing Tribunal continued to grant the application for execution. He maintained that, since the Respondent had no locus to institute Land Complaint No. 4/2019 at Maji ya Chai Ward Tribunal then, the District Land and Housing Tribunal erred in enforcing the judgment arising from a suit instituted by the person who had no locus to do so.

The other legal issue raised in the course of submissions of the applicants, is whether the trial Tribunal had mandate to issue ex-parte judgment. The learned counsel for the applicants argued that, the decision of Maji ya Chai Ward Tribunal in Land Complaint No. 4 of 2019 which was executed by the District Land and Housing Tribunal of Arusha in Misc. Application No. 259 of 2019 was an ex-parte judgment which is against a settled principle that a Ward Tribunal cannot issue an ex-parte judgment.

He referred the Court to the case of **Petro Bira Chato vs Hima Hudu Ubaya**, Land Appeal No. 47/2020 where this Court at Dodoma registry, held that, the Ward Tribunal is not given jurisdiction to hear cases ex-parte. Therefore, he argued that, the District Land and Housing Tribunal was duty bound to refuse execution of the decision of the Ward Tribunal which was illegal and prayed for this application to be allowed.

In response to the two issues, counsel for the Respondent submitted that, the applicants were served with summonses to appear before the Ward Tribunal of Maji ya Chai but they refused to appear and they addressed the Chairman of the Ward Tribunal, through a letter, that they would not appear before the Ward Tribunal because, according to them, the Ward Tribunal had no pecuniary jurisdiction to try the matter. He argued that, as the applicants were duly served to appear at the Ward Tribunal but they didn't appear the Ward Tribunal heard and determined the matter ex-parte.

He submitted further that, as the matter was adjudicated ex-parte at the Ward Tribunal, the applicants who were Judgment Debtors at the District Land and Housing Tribunal had no any right to challenge that the Respondent had no legal capacity because their right to be heard on the issue could only be through a revision to the District Tribunal. He maintained

that, the District Land and Housing Tribunal rightly observed that it could not venture into revision which was not before it.

He argued further that, the suit land was given by the clan to the Respondent herein to take care of and later he distributed it accordingly. He is therefore the owner of the disputed land customarily and he had the legal mandate to institute the suit at the Ward Tribunal to protect his interest thereon.

With regards to the powers of the Ward Tribunal to hear the matter ex-parte, he cited section 10(2) of the Land Disputes Courts Act, Cap. 216 which provides that in cases of conflict between the Provisions of the Ward Tribunals Act, 1985 and the provisions of Cap. 216 in relation to the Ward Tribunals, the provisions of Cap. 216 shall apply. He continued to argue that, as the position is not well settled on what happens when a party refuses to appear before a Ward Tribunal, this being a land case and therefore a civil case, principles of civil case should be applied to fill in the lacuna in both the Land Disputes Courts Act, Cap. 216 and the Ward Tribunals Act, 1985. He made reference to the case of **Kuyela Chulugu & another vs Maua Mgata**, Misc. Land Appeal No. 25 of 2012 where this Court, at Iringa registry, held that a remedy for a party aggrieved by an ex-parte judgment

of a Ward Tribunal is to set aside the said ex-parte judgment first otherwise the aggrieved party has no right to file an appeal.

He maintained that, as filing of this application amounts to circumventing the law to access the right they refused to exercise when they were summoned before the Ward Tribunal, this application is frivolous and lacks legs to stand on and should be dismissed with costs.

Having heard submissions of parties and examined records of this matter, it appears to this Court that the determination of this matter boils down to two issues. One, whether the Respondent was the legal administrator with capacity to maintain a suit on behalf of the deceased Yohana Gabriel Pallangyo. Two, whether the Ward Tribunal had jurisdiction to hear and determine this matter.

Starting with the question whether the respondent was the legal administrator with capacity to maintain a suit on behalf of the deceased who is said to be the owner of the disputed land. This issue was also raised as one the grounds before the District Land and Housing Tribunal when considering an application to enforce the decision of Maji ya Chai Ward Tribunal in Land Complaint No. 4 of 2019 to the effect that the Decree Holder

(Respondent herein) lacked locus standi to commence and prosecute this matter at the lower Tribunal as he was not the legal representative of the deceased. However, the Hon. Chairman considered that the grounds raised by the Judgment Debtors (Applicants) including this ground were improperly brought before him as the proper action to be taken was for the Judgment Debtors (Applicants) to make application for revision of the proceedings and decision of the lower Tribunal under section 36(1) of the Land Disputes Courts Act.

This Court has noted that, the respondent's complaint at the Ward Tribunal, as rightly quoted in the impugned award of the DLHT was filed in respect of the land he termed as the "land of four orphans". The complaint reads in Swahili language as follows:

*"Nawalalamikia hawa ndugu kuuziana, kununuliana na kujenga majengo kwenye ardhi ya watoto yatima 4 wafuatao Esta John Pallangyo – 40 yrs*

- 1. Ekaeli John Pallangyo – 30 yrs*
- 2. Joseph Christopher – Pallangyo – 30 yrs*
- 3. Frank Christopher Pallangyo – 25 yrs*

The complaint filed by the Respondent at the Ward Tribunal as indicated in the excerpt above indicates that the disputed land is not the property of the Respondent. This is clearly indicated in the testimony of the three

Respondent's witnesses (Jackson Emmanuel Pallangyo, Fitiael Verael Pallangyo and Sarikyiael Elibarik Pallangyo) who testified to the effect that, the disputed land belongs to the late Yohana Gabriel Pallangyo and the respondent was asked to take care of it pending the distribution of the said land by the clan to the beneficiaries. Therefore, the respondent had no locus standi to commence and prosecute Land Complaint No. 4 of 2019 at the Ward Tribunal in his own name. Similarly, the proceedings of the trial Tribunal do not indicate if the Respondent herein was appointed as administrator of estate of the late Yohana Gabriel Pallangyo. That said, the proceedings and decision of the Ward Tribunal together with the decision and proceedings of the DLHT in Misc. Application No. 259 of 2019 enforcing the decision of the lower Tribunal are null and void as they stem from a nullity.

As a consequence, I hereby quash and set aside the proceedings, judgment and decree of the DLHT in Misc. Application No. 259 of 2019 as well as the proceedings and decision of Maji ya Chai Ward Tribunal in Land Complaint No. 4 of 2019 and orders made therefrom. If any of the parties so wish, he or she may recommence the action in the Court of competent jurisdiction subject to having the required locus standi to prosecute the

matter in respect of the disputed land. In the circumstances, I find no pressing need to canvass the remaining issue in this matter. Each party will carry its own costs.

It is so ordered.



A handwritten signature in cursive script, appearing to read "K.N. Robert".

K.N. ROBERT  
JUDGE  
22/7/2022