

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**(CORAM: WAMBALI, J.A., KEREFU, J.A. And MASOUD, J.A.)**

**CIVIL APPLICATION NO. 25/17 OF 2022**

**DOTO HAMZA..... APPLICANT**

**VERSUS**

**MOHAMED HASSAN MTONGA ..... RESPONDENT**  
**(Application for Revision from the decision of the High Court of Tanzania,**  
**Land Division at Dar es Salaam)**

**(Mgeyekwa, J.)**

**Dated the 16<sup>th</sup> day of November, 2021**

**in**

**Miscellaneous Land Appeal No. 88 of 2021**

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**RULING OF THE COURT**

21<sup>st</sup> July & 3<sup>rd</sup> November, 2023

**WAMBALI, J.A.:**

According to the record of the application placed before the Court, the respondent, Mohamed Hassan Mtonga filed Land Application No. 18 of 2018 at the Ward Tribunal of Kimbiji (the Ward Tribunal) in Coast Region concerning a dispute over a piece of family land (the disputed land) in which he alleged that it was illegally invaded by the applicant, Doto Hamza. The allegation was strongly contested by the applicant. Having heard the parties, the Ward Tribunal on 26<sup>th</sup> July, 2018 decided in

favour of the respondent and ultimately, the applicant was ordered to vacate the disputed land.

Aggrieved, the applicant approached the District Land and Housing Tribunal (DLHT) for Temeke through Miscellaneous Land Application No. 460 of 2018 in which he sought extension of time to lodge an application for revision against the decision of the Ward Tribunal. In the same application, he also prayed the DLHT to revise the Ward Tribunal's proceedings and set aside the decree. As it turned out, the application was dismissed on 26<sup>th</sup> March, 2020.

The record of the application reveals further that the applicant lodged Miscellaneous Land Application No. 549 of 2020 before the High Court of Tanzania, Land Division seeking extension of time within which to appeal against the decision of the DLHT in Miscellaneous Land Application No. 460 of 2018. Unfortunately, the application was also dismissed by the High Court for lack of merit on 11<sup>th</sup> August, 2021.

More importantly, before the said decision by the High Court, the respondent had lodged Miscellaneous Land Application No. 437 of 2020 before the DLHT seeking execution of the decree of the Ward Tribunal in Land Application No. 18 of 2018. The respondent's application was prompted by the fact that the application for extension of time by the

applicant to lodge the revision alluded to above had been dismissed and as such, there was no pending appeal against the decision of the Ward Tribunal before the DLHT. Consequently, on 15<sup>th</sup> July, 2021, the DLHT appointed a Tribunal broker to execute the decree.

The decision of the DLHT seriously dissatisfied the applicant. In this regard, he lodged Miscellaneous Land Appeal No. 88 of 2021, the subject of the current application before the Court, to challenge it. As it transpired, in its decision dated 16<sup>th</sup> November, 2021, the High Court dismissed the appeal with no order as to costs and fully explained to the applicant his right to appeal to the Court.

Nonetheless, on 17<sup>th</sup> January, 2022, the applicant lodged the instant application for revision premised on section 4(3) of the Appellate Jurisdiction Act, Cap 141 R.E. 2009 (the AJA) and rule 65 of the Tanzania Court of Appeal Rules, 2019 (the Rules). In this application, the applicant urges the Court to call for and examine the record of proceedings of the High Court in Miscellaneous Land Appeal No. 88 of 2021 to satisfy itself as to the correctness, legality, propriety and regularity of the same. The grounds upon which the revision has been preferred are:

*"(1) That the decision of the High Court is illegal  
as there was no pending application No. 18*

*of 2018 of the District Land and Housing Tribunal  
between the parties herein.*

- (2) That the decision of the High Court is illegal as the learned Judge blessed the decision of Temeke District Land and Housing Tribunal for executing what was not before it.*
- (3) That the decision of the High Court is illegal as there was no application for execution of Kimbiji Ward decision therefore the District Tribunal Chairman assumed the role of Applicant during the so called execution process.*
- (4) That the instant Application is much squared by Halais Pro – Chemi Vs Wella AG (1996) T.L.R. 269 and also SGS SOCIETTE GENERALE DE SURVIELLANCES S.A. Vs VIP ENGINEERING & MARKETING LTD in CIVIL APPLICATION No. 84 of 2000, under the proposition of exceptional circumstances.”*

The application is supported by the affidavit of the applicant. Essentially, the applicant's affidavit recites the grounds in the notice of motion reproduced above. Ultimately, the applicant has ended by emphasizing that there are special circumstances for this Court to revise the High Court proceedings and nullify the same for containing apparent illegalities which occasioned miscarriage of justice on his part.

The application is contested by the respondent through an affidavit in reply. It is noteworthy that the respondent also lodged a notice of preliminary objection comprising two points of law, but withdrew the same before he made submission to support it. We, accordingly, granted the respondent's prayer. Both the applicant and respondent appeared in persons with no legal representation at the hearing. Considering the nature and circumstances of the application, before we considered its merit or otherwise, we required the parties to address us on whether the intended revision was properly before the Court.

For his part, the applicant adamantly and briefly emphasized that there are exceptional circumstances as intimated in the grounds for revision. He therefore urged us to consider the said grounds of revision, decide in his favour, nullify the High Court proceedings and those of the DLHT and order the respondent to bear costs of the application.

In response, the respondent argued that the application is incompetent on the contention that the proposed grounds do not raise any exceptional matter to entitle the Court to undertake revision. He added that if the applicant had wished to challenge the decision of the High Court, he would have lodged an appeal to the Court as he had that right. Nevertheless, in his view, the appeal would have no basis because

the appeal which he lodged in the High Court was properly dismissed for lacking merit. In the circumstances, the respondent pressed us to strike out the application with costs for being incompetent.

It is common knowledge that section 4 (3) of the AJA provides the Court with the power to revise the proceedings of the High Court in appropriate circumstances either on its own motion or upon the application by an interested party. It states:

*"4 (3) Without prejudice to subsection (2), the Court of Appeal shall have the power, authority and jurisdiction to call for and examine the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings of the High Court."*

To this end, in **Hasmukh Bhagwanji Masrani v. Dodsai Hydrocarbons and Power (Tanzania) Pvt Limited & 3 Others**, (Civil Application No. 100 of 2013) [2013] TZCA 489 (16 September 2013, TANZLII), the Court stated that section 4(3) of the AJA provides a statutory basis for revision, where a revision is not, like in this case, initiated by the Court *suo motu*. Moreover, the section provides the scope

and parameters within which the applicants are to fit their grounds for motion to move the Court on revision.

Indeed, it is apparent that the respective provision seeks to ensure that the Court has power to rectify any errors, illegalities or improprieties in decisions of the High Court which are brought to its attention. For this stance, see, among others, the decision in **Halima Hassan Marealie v. Parastatal Sector Reform Commission and Another**, Civil Application No. 84 of 1999 (unreported). In this regard, the Court can also be moved on revision by a third party who has an interest in the matter.

It is not doubted that the applicant in this application was a party to an appeal which he initiated at the High Court in Miscellaneous Land Appeal No. 88 of 2021 which sought to challenge the execution proceedings lodged by the respondent in the DLHT to enforce the decree in Land Application No. 18 of 2018 issued by the Ward Tribunal of Kimbiji. In the circumstances, the applicant is duty bound to show that there are exceptional circumstances to warrant this Court to exercise its power of revision. The applicant also has a duty to demonstrate that he has no right of appeal or that the appellate process has been blocked by the judicial process before urging the Court to undertake revision of the impugned High Court proceedings to which he was the party. To echo the

requirement, in **Halais Pro-Chemie v. Wella AG** [1996] T.L.R. 269, the Court observed as follows:

- "(i) The Court may, on its own motion and at any time, invoke its revisional jurisdiction in respect of proceedings of the High Court;*
- (ii) Except under exceptional circumstances, a party to proceedings in the High Court cannot invoke revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court;*
- (iii) A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court in matters which are not appealable with or without leave;*
- (iv) A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court where the appellate process has been blocked by judicial process".*

It noteworthy that the appellate and revisional jurisdictions of the Court against the decision of the High Court do not co-exist.

Reverting to the application at hand, gauging from the stated background of the dispute between the parties, there is no doubt that the applicant has never appealed against the decision of the Ward Tribunal in Land Application No. 18 of 2018. It is further not contested that the



applicant's attempt to seek extension of time to lodge an application for revision against the Ward Tribunal decision through Miscellaneous Land Application No. 460 of 2018 was dismissed by the DLHT. Moreover, his attempt to seek extension of time to appeal against the DLHT's decision was dismissed by the High Court in Miscellaneous Land Application No. 549 of 2020. It is also on record that the respondent approached the DLHT seeking execution of the Ward Tribunal decree in Land Application No. 18 of 2018 which was granted while the applicant's appeal to the High Court in Miscellaneous Land Appeal No. 88 of 2021, the subject of this application was equally dismissed.

More importantly, a careful scrutiny of the ground in support of the application reproduced above leads us to a settled view that there are no exceptional circumstances which have been shown by the applicant to enable the Court to exercise the power of revision under section 4 (3) of the AJA over the High Court proceedings in Miscellaneous Land Appeal No. 21 of 2018. Besides, the applicant's supporting affidavit has merely, as stated above, recited the grounds in the notice of motion without furnishing sufficient explanation on the same or expounding why he thinks there are exceptional circumstances for revising the High Court proceedings. It should be noted that in an application of this nature, it is

not the duty of the Court to fish out the illegalities, irregularities and improprieties or to embark into the voyage of discovering the alleged exceptional circumstances which are not explicitly stated in the applicant's application. It is for the applicant to demonstrate that sufficient exceptional circumstances do exist for the Court to invoke its power of revision.

On the other hand, considering the nature of the proceedings and the decision of the High Court, we are of the view that the applicant, subject to compliance with the law, had a right of appeal. Nonetheless, he has not given any good and sufficient reasons why he did not wish to appeal against that decision. Besides, he has not alleged that the appellate process had been blocked by any judicial process. In the event, the failure by the applicant to unearth the alleged exceptional circumstances and his inability to explain why he did not appeal, disable the Court to exercise its power of revision under section 4 (3) of the AJA against the proceedings of the High Court in Miscellaneous Land Appeal No. 88 of 2021.

In this regard, we agree with the respondent that the application before the Court is incompetent. Ultimately, we decline the applicant's invitation to determine the application on merit.

In the result, we strike out the application for being incompetent. On the other hand, considering the nature and circumstances of the application, we make no order as to costs.

**DATED at DAR ES SALAAM** this 27<sup>th</sup> day of October, 2023.

F. L. K. WAMBALI  
**JUSTICE OF APPEAL**

R. J. KEREFU  
**JUSTICE OF APPEAL**

B. S. MASOUD  
**JUSTICE OF APPEAL**

The Ruling delivered this 3<sup>rd</sup> day of November, 2023 in the presence of the applicant and the respondent in person is hereby certified as a true copy of the original.



*S. J. Kainda*  
S. J. KAINDA  
**REGISTRAR**  
**COURT OF APPEAL**