

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

**CIVIL APPLICATION NO. 538/17 OF 2022**

**JALIBU MRISHO MWENEMILAO** (*Administrator of the Estate of the Late Mrisho Jalibu*).....**APPLICANT**

**VERSUS**

- |   |   |                          |
|---|---|--------------------------|
| <ul style="list-style-type: none"><li><b>1. THE HON. ATTORNEY GENERAL</b></li><li><b>2. THE HON. SOLICITOR GENERAL</b></li><li><b>3. VILLAGE EXECUTIVE OFFICER OF KIWANGA VILLAGE COUNCIL</b></li><li><b>4. THE DISTRICT EXECUTIVE DIRECTOR OF CHALINZE DISTRICT</b></li><li><b>5. THE DIRECTOR COMMISSIONER OF BAGAMOYO DISTRICT COUNCIL</b></li><li><b>6. DISTRICT EXECUTIVE DIRECTOR OF BAGAMOYO DISTRICT COUNCIL</b></li><li><b>7. VILLAGE EXECUTIVE OFFICER OF MWAVI VILLAGE COUNCIL</b></li><li><b>8. HUSSEIN IDD MKANG'ATA</b></li></ul> | } | ..... <b>RESPONDENTS</b> |
|---|---|--------------------------|

(Application for Extension of Time to Lodge an Application for Revision against the Decision of the High Court of Tanzania, Land Division, at Dar es Salaam)  
(Mgeyekwa, J.)

Dated the 22<sup>nd</sup> Day of September, 2021  
in  
Land Case No. 49 of 2021

-----  
**RULING**

1<sup>st</sup> & 7<sup>th</sup> November, 2023

**KEREFU, J.A.:**

The applicant has lodged this application seeking an order for extension of time within which to lodge an application for revision against the decision of the High Court of Tanzania, Land Division at Dar

es Salaam, (Mgeyekwa, J. as she then was) dated 22<sup>nd</sup> September, 2021 in Land Case No. 49 of 2021. The application is brought by way of notice of motion lodged under Rule 10 of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules). The grounds canvassed in the notice of motion is as follows, that:

- (1) The honourable Court be pleased to grant the applicant an order for extension of time within which to file an application for revision against the decision of the High Court, Land Division, at Dar es Salaam dated 22<sup>nd</sup> September, 2021 in Land Case No. 49 of 2021 with a view to addressing the serious illegality being glossed over;*
- (2) Costs of the application; and*
- (3) Any other order (s) the Court may deem fit to grant.*

The application is supported by an affidavit deposed by the applicant. On the other hand, the first and eighth respondents have filed their affidavits in reply opposing the application on 4<sup>th</sup> November, 2022 and 20<sup>th</sup> October, 2022 respectively. It is also on record that, on 26<sup>th</sup> October, 2023, after lapse of almost one year, from the date of being served with the notice of motion, the first, second, third, fourth, fifth, sixth and seventh respondents lodged their joint reply affidavit opposing the application.

For a better appreciation of the issues raised herein, it is important to explore the background of the matter and the factual setting giving rise to this application. According to the affidavit in support of the application, in 2021, the applicant instituted a land suit in the High Court of Tanzania, Land Division, at Dar es Salaam (Land Case No. 49 of 2021) against the respondents claiming that the eighth respondent unlawfully obtained Certificate of Customary Right of Occupancy No. 24 BGM/801 from the third respondent dated 11<sup>th</sup> August, 2014, measuring 4.5 acres with estimated value of TZS 45,000,000.00 (the suit land). That, the suit land is covering a portion of the estate of the late Mrisho Jalibu which was yet to be divided to his rightful heirs.

The eighth respondent disputed the applicant's claim and raised a notice of preliminary objection contending that, **first**, the suit was bad in law for suing a wrong person; **second**, that, the suit is time barred; **third**, the suit is *res judicata* with the Land Application No. 111 of 2013 instituted by the applicant in the District Land and Housing Tribunal (DLHT) at Kibaha; and **fourth**, the suit offends the mandatory requirements of the law. However, at the hearing of the preliminary objection, the fourth point was abandoned and parties submitted only on the first, second and third points of objection.

Upon hearing the parties on the said points of objection, the trial court, on 22<sup>nd</sup> September, 2021, sustained the third point of objection and struck out the applicant's suit for being *res judicata* with the Land Application No. 111 of 2013 instituted by the applicant in the District Land and Housing Tribunal (DLHT) at Kibaha which was determined in favour of the 8<sup>th</sup> respondent and the Land Appeal No. 126 of 2016 before the High Court (Mwangesi, J. as he then was) where the decision of the DLHT was upheld.

Aggrieved by that decision, on 1<sup>st</sup> October, 2021 the applicant requested for certified copies of the proceedings, ruling and drawn order of the High Court for necessary action. Subsequently, the applicant lodged a notice of appeal in this Court on 20<sup>th</sup> October, 2021 against the impugned decision. However, upon receipt and perusal of the trial court's record supplied to him on 8<sup>th</sup> November, 2021, the applicant's counsel discovered that there are errors in reciting the order of the trial court and the Registrar, inadvertently, had omitted the duly endorsed exhibits admitted during the trial. In its letter, dated 30<sup>th</sup> December, 2021 and lodged in the High Court on 7<sup>th</sup> January, 2022, the applicant notified the Registrar on the said errors and omission and requested to be supplied with the corrected version together with the said exhibits for appeal purposes. On 25<sup>th</sup> May, 2022, the applicant was availed with the

corrected version of the High Court's documents. Thus, the applicant decided to lodge the current application on 8<sup>th</sup> September, 2022 as indicated above.

At the hearing of the application before me, the applicant was represented by Mr. Bernard Mbakileki, learned counsel whereas the first, second, third, fourth, fifth, sixth and seventh respondents were represented by Mr. Charles Mtae, learned State Attorney assisted by Mses. Luciana Kikala and Agnes Gombe, both learned State Attorneys. The eighth respondent entered appearance in person.

It is noteworthy that, the learned counsel for the applicant had earlier on lodged written submission in terms of Rule 106 (1) of the Rules which he sought to adopt to form part of his oral submission. On the other side, the respondents did not file any written submissions and they thus addressed the Court under Rule 106 (10) (b) of the Rules. It is also on record that prior to the hearing of the application, Mr. Mtae prayed to abandon the affidavit in reply filed by the first, second, third, fourth, fifth, sixth and seventh respondents on 26<sup>th</sup> October, 2023 and thus relied only on the affidavits in reply filed by the first and eighth respondents on 4<sup>th</sup> November, 2022 and 20<sup>th</sup> October, 2022 respectively.

Submitting in support of the application, Mr. Mbakileki commenced his submission by fully adopting the contents of the notice of motion, the supporting affidavit and his written submission. In his written submission, Mr. Haifani narrated the historical background to this application as indicated above, he then argued that, the applicant has taken various steps to challenge the impugned decision including lodging of the notice of appeal timely on 20<sup>th</sup> October, 2021 against the impugned decision which is still pending determination by this Court.

Upon being probed as to whether it was appropriate for the applicant to lodge the current application seeking extension of time to file revision while at the same time he lodged the notice of appeal against the same decision, thus driving two horses, appeal and revision, at the same time, the learned counsel responded that, if the current application is granted, the pending notice of appeal may be deemed to have been withdrawn. He thus urged me to grant the prayers sought in the notice of motion to enable the Court to address the illegalities in the impugned decision.

In response, Mr. Mtae commenced his submission by adopting the contents of the affidavits in reply lodged by the first and eighth respondents on 4<sup>th</sup> November, 2022 and 20<sup>th</sup> November, 2022

respectively. He then strenuously opposed the competence of the application by arguing that the law does not allow riding two horses at the same time as it amounts to an abuse of court process. That, the act of the applicant of lodging the notice of appeal on 20<sup>th</sup> October, 2021 against the same impugned decision, which is still pending before the Court and then, at the same time, on 8<sup>th</sup> September, 2022, lodged this current application to pursue revision on the same High Court's decision, is not tenable and had rendered the application incompetent. That, it is the position of the law that revision power can only be invoked where there is no right of appeal. The learned State Attorney insisted that, if the current application is entertained will amount to abuse of court process. Reinforcing his argument, Mr. Mtae cited the cases of **Isidore Leka Shirima and Another v. The Public Service Social Security Fund** and 3 Others, Civil Application No. 151 of 2016 [2021] TZCA 761: [183 October 2021: TanzLII] and **Hector Sequiraa v. Serengeti Breweries Limited**, Civil Application No. 395/18 of 2019 [2020] TZCA 1849: [13 November 2020: TanzLII]. On that basis, Mr. Mtae urged me to find that the application is incompetent and proceed to strike it out.

In his response, the eighth respondent associated himself with the submission made by Mr. Mtae and also prayed for the application to be struck out.

In a brief rejoinder, Mr. Mbakileki mainly reiterated what he submitted earlier and he distinguished the cases of **Hector Sequiraa** (supra) and **Isidore Leka Shirima and Another** (supra) relied upon by Mr. Mtae by arguing that facts in those cases are distinguishable to the circumstances of the current application. He, however, indicated that if the application is struck out for being incompetent, the applicant will still challenge the impugned decision through the appeal that is still pending before the Court. He thus, once again, prayed for the application to be granted.

Having examined the record of application and considered the rival submissions advanced by the learned counsel for the parties, the main issue for my consideration is the propriety or otherwise of the application before me.

To determine the said issue, I have thoroughly perused the record of application and my finding is consistent with the submissions advanced by the learned counsel for the parties that the applicant is riding two horses at the same time. It is on record that, having been



aggrieved by the decision of the High Court in Land Case No. 49 of 2021 dated 22<sup>nd</sup> September, 2021, the applicant, immediately and within time, lodged the notice of appeal in this Court on 20<sup>th</sup> October, 2021 to challenge it. Again, and while the said notice of appeal is still pending, he decided to lodge the current application on 8<sup>th</sup> September, 2022 seeking extension of time within which to lodge an application for revision against the same decision.

I am mindful of the fact that, in his submission, although, Mr. Mbakileki conceded that the applicant is riding two horses at the same time, had a different argument on the way forward. It was his argument that, if the application is granted, the pending notice of appeal may be deemed to have been withdrawn. With profound respect, I am unable to agree with him on that aspect. As rightly argued by Mr. Mtae, riding two horses at the same time is abuse of court process as frowned upon by this Court in **East African Development Bank v. Blue Line Enterprises Ltd**, Civil Appeal No. 101 of 2009 (unreported). Therefore, the act of the applicant to pursue the said two remedies at the same time had rendered the current application incompetent before the Court. On this position, I find solace from our pervious decisions in the cases of **Hamis Said Mkuki v. Fatuma Ally**, Civil Appeal No. 147 of 2017

[2018] TZCA 341: [9 October 2018: TanzLII] and **The Registered Trustees of Kanisa la Pentekoste Mbeya v. Lamson Sikazwe & 4 Others**, Civil Appeal No. 210 of 2020 [2021] TZCA 713: [2 December 2021: TanzLII] together with the two cases of **Hector Sequiraa** (supra) and **Isidore Leka Shirima and Another** (supra) cited to me by Mr. Mtae. Specifically, in **The Registered Trustees of Kanisa la Pentekoste Mbeya** (supra), the Court stated that:

*"...With respect, as the learned advocate has conceded, we do not think riding two horses at the same time in the circumstances of the instant appeal was free from procedural impropriety as the learned judge lamented. As rightly submitted by the learned counsel for the respondents, riding two horses at the same time was an ingenuity and tantamount to forum shopping. We cannot agree with them more that the act of the appellant's appeal against the ruling in the former application had all elements geared towards using the subsequent application as a shield so much so that should the appeal in the Court of Appeal fail, then they would resort to that application. Having held that the filing of the subsequent application was unwarranted."*

Being guided by the above authorities, I find the application incompetent on account of the existence of the notice of appeal against

the same impugned decision of the High Court which is yet to be determined by the Court.

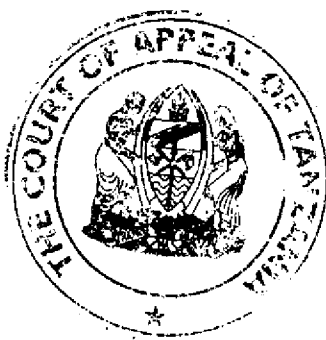
Consequently, I hereby strike out the incompetent application. Since all parties have not pressed for costs, I make no order in that regard.


It is so ordered.

**DATED at DAR ES SAALAM** this 6<sup>th</sup> day of November, 2023.

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

The Ruling delivered this 7<sup>th</sup> day of November, 2023 in the presence of the applicant in person, Mr. Bernard Mbakileki, learned advocate for the applicant, and Ms. Luciana Kikala, learned State Attorney for the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents, 8<sup>th</sup> respondent in person is hereby certified as a true copy of the original.



  
J. E. FOVO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**