

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**(CORAM: NDIKA, J.A., KAIRO, J.A., And MURUKE, J.A.)**

**CIVIL APPLICATION NO. 202/17 OF 2022**

**EQBAL EBRAHIM.....APPLICANT**

**VERSUS**

**YESSEH K. WAHYUNGI (As the Administrator of the Estate of the  
late ALEXANDER K. WAHYUNGI) ..... RESPONDENT**

**(Application for the revision of the proceedings, ruling and orders of the High  
Court of Tanzania Land Division, at Dar es Salaam)**

**(Mohammed, J.)**

**dated the 23<sup>rd</sup> day of March, 2022**

**in**

**Misc. Land Application No. 726 of 2016**

.....

**RULING OF THE COURT**

1<sup>st</sup> & 21<sup>st</sup> November, 2023

**MURUKE, J. A:**

The applicant filed an application for revision of the Proceedings, Ruling and Orders of the High Court, Land Division, in Misc. Land Application No. 726/2016 dated the 23<sup>rd</sup> March, 2022.

To be able to appreciate what is before us, the factual background giving rise to this application is necessary. Through Civil Case No. 69A of 1999 at the District Court of Ilala, the applicant obtained an *ex-parte* Judgment against the respondent and another person not a party to this application for ownership of the land on Plot No. 504 Bungoni, Ilala District,

Dar es Salaam. Subsequently, the respondent and other persons not parties to this application, trespassed on part of the suit property. Consequently, the applicant filed a suit at the District Land and Housing Tribunal for Ilala (DLHT), vide Application No. 299 of 2010 for eviction of the respondent and the said other persons from the suit property. Upon the trial, he obtained a judgment in his favour (the judgment No. 2).

While the execution of the second decision was in process, the respondent filed Land Case No. 81/2012 against the applicant claiming ownership of the suit property and or part of it. For the reason of non-appearance of the applicant the High Court as per Wambura, J, pronounced a Judgment in favour of the respondent (the judgment No. 3).

Having procured the judgment No. 2 and while the execution process of the second decision was still in the process, the respondent lodged the revision at the Land Court requesting the Court to call for the records of the DLHT with a view to satisfying itself as to the correctness and legality of the Judgment No. 2 and proceedings thereof, including the execution proceedings on account that the respondent was, according to the Judgment No. 2, the lawful owner of the suit property.

The applicant opposed the application for being res-judicata to the first decision and for being procured fraudulently. The Land Court declined

to comment on the two issues for want of jurisdiction. In his own words, the Land Court Judge stated as follows:-

*"I find all the above mentioned three Judgments and their decrees are inextricably linked to two protagonists essentially over the same subject matter and they thus raise a serious legal difficulty that I am incompetent to address. I would like to highlight that the High Court's Judgment and decree in Land Case No. 81 of 2012 did not invalidate the lower Court's decisions in Civil Case No. 69A of 1999, or Land Application No. 299 of 2008 leading to the present quagmire".*

The applicant was not the one who initiated the revision, but was dissatisfied with the Ruling. Ultimately, the Land Court Judge dismissed the application for revision on the reason that his hands were tied to deal with it. He could not file revision in this Court within time but he successfully sought and obtained extension of time vide Civil Application No. 235/17 of 2020 to file revision in the Court. Eventually, present revision was filed on 2<sup>nd</sup> May, 2022, raising the following grounds in Notice of Motion:

- 1. The High Court ruling and orders in Misc. Land Application No. 726 of 2016 have manifest errors that have resulted in miscarriage of justice to the applicant because:-*

- (a) *Upon having found as a matter of law that there are several valid and controversial decrees of courts of competent jurisdictions over substantially the same subject matter and the same parties, the High Court Judge erred in law by not finding that land Case No. 81 of 2012 being initiated and concluded nine (9) years after Civil Case No. 69A of 1999 had been determined was res judicata;*
- (b) *Upon having found that Land Case No. 81 of 2012 dealt with Plot No. 504/504A whilst Civil Case No. 69A of 1999 and Land Application No. 299 of 2008 dealt solely with Plot No. 504 Ex-Daya Estate, the Judge erred by finding that the High Court does not have competent jurisdiction to determine the matter of controversy;*

The application is supported by an affidavit of Captain Ibrahim Mbiu Bendera, the applicant's counsel, which recited the grounds in the Notice of Motion reproduced above. The respondent contested the application through an affidavit in reply sworn by advocate Mr. Isaac Nassor Tasinga who also filed a notice of Preliminary Objection containing four grounds, which upon being engaged by the Court, the respondent's counsel abandoned three of them and remained with one that reads:

*This application is not properly before this Honourable Court for being preferred instead of an appeal.*

When invited to expound on the notice of Preliminary Objection he raised, Mr. Tasinga submitted that the application for revision is not maintainable in law for being preferred as an alternative to an appeal. He submitted that revision is only filed if the right to appeal has been blocked by judicial process, which according to him is not the case here. He maintained that the applicant had a right of appeal but he never utilized it. Mr. Tasinga insisted that the revision filed is an abuse of the Court process.

On the other hand, Captain Bendera submitted that, although the High Court Judge dismissed the application for revision, and that, there is a right to appeal, yet, in the present revision application, there exists three decisions on the disputed Plot confirming ownership over the land for both applicant and respondent. He submitted, therefore, that there exist special circumstances for invocation of revision powers. He argued that the only way the applicant could have approached the doors of this Court was by way of an application for revision, to be able to rectify any errors, illegalities or improprieties in the decisions of the High Court.

It is worth noting that, section 4 (3) of the AJA confers powers to the Court 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 proceedings of the High Court"*

In a nutshell, the above provisions provide the scope and parameters within which the applicants are to fit their grounds for motion to move the Court on revision. Section 4 (3) of the AJA ensures that, the Court has power to rectify any errors, illegalities or improprieties in decisions of the High Court which are brought to its attention.

The powers of the Court on revision has been explained in detail in the famous case of **Halais Pro-Chemie v. Wella A. G.** [1996] TLR 269 where this Court held that:

- (i) The Court could on its own motion and at any time invoke its revisional jurisdiction in respect of proceedings in the High Court;*
- (ii) Except under exceptional circumstances, a party to proceedings in the High Court could not invoke the revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court;*

- (iii) A party to proceedings in the High Court could invoke the revisional jurisdiction of the Court in matters which were not appealable with or without leave; and*
- (iv) A party to proceedings in the High Court could invoke the revisional jurisdiction of the Court where the appellate process has been blocked by judicial process.*

Relying on the above authorities, we find that it is a settled principle of law that if there is a right of appeal then, that right has to be pursued first unless there are sufficient reasons amounting to exceptional circumstances which will entitle a party to resort to the revisional jurisdiction of the Court. It is worth insisting that the appellate jurisdiction and revisional jurisdiction of the Court of Appeal of Tanzania are in most cases mutually exclusive, in a way, do not co-exist.

A careful scrutiny of the grounds 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 exercise the power of revision under section 4 (3) of the AJA over the High Court proceedings in Miscellaneous Land Application No. 726/2016. 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 dig up for illegalities, irregularities and improprieties or discovering the alleged exceptional circumstances which are not explicitly stated in the applicant's application. It is for the applicant to demonstrate that 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 sufficient reasons why he did not wish to appeal against that decision. Equally so, he has not alleged that the appellate process had been blocked by any judicial process.

We find that, failure by the applicant to unearth the alleged exceptional circumstances and his inability to explain why he did not appeal, prevent 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 Application No. 726/2016.



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

For the foregoing reasons, we strike out this application for revision with costs.

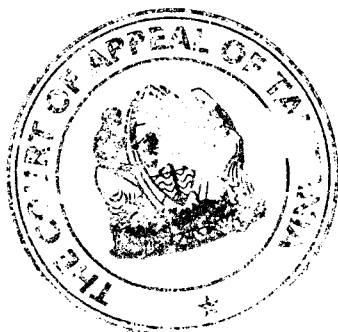
**DATED** at **DAR ES SALAAM** this 20<sup>th</sup> day of November, 2023.

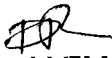
G. A. M. NDIKA  
**JUSTICE OF APPEAL**

L. G. KAIRO  
**JUSTICE OF APPEAL**

Z. G. MURUKE  
**JUSTICE OF APPEAL**

The Ruling delivered this 21<sup>st</sup> day of November, 2023 in the presence of Captain Ibrahim Mbiu Bendera, learned counsel for the Applicant and in the presence of Mr. Isaac Tasinga, learned counsel for the Respondent is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**