

IN THE HIGH COURT OF TANZANIA

AT TABORA

CIVIL REVISION NO. 5 OF 2013

(Original Civil Case No. 1 of 2013 Primary Court of URBAN)

SALEHE SUDI HAMADIAPPLICANT

VERSUS

(1) FUNDIKIRA MUSSA

(2) FURAHA AUCTION MARTRESPONDENTS

RULING

21st May & 11th June, 2014

S.M.RUMANYIKA, J

The application for revision of the decision, Probate cause No. 15 of 2013 by Urban Primary Court – Tabora, is brought under section 31 (1) and (2) of the Magistrates' Court Act Cap 11 R.E 2002.

Parties appear in person.

It is supported by affidavit of Salehe Sudi Hamadi. Infact there is no any material connection between the facts deponed and the application purportedly being supported.

The summary of it will witness thus, that the Applicant, having lost in Land application No. 10 of 2006, again lost the war and battle herein on 10.12.2008 ie. Appeal No. 10 of 2008 (Ngwala, J), not satisfied, he lodged on 12.12.2008, a notice of appeal to the court of Appeal. That it was not, until sometimes in 2003, that the present 2nd Respondents now undertaking to execute the decree, gave him a proclamation of sale on the disputed land. Then one lodged this application.

In deed, this one, given its circumstances, it was a fit case for summary rejection (under section 28 (3) of the Magistrates' court Act Cap. 11 R.E 2002). **Ejusdem Jeneris.**

It is very unfortunate! That as long as I heard the parties, I will precede writing the ruling.

The central issue is whether revision proceedings can go to the High Court. Like it is happening here, from a primary court directly. The answer is no. If anything, the application ought to have been instituted in the District court. It is trite law that matters be instituted in courts of the lowest grades. Rather than going about it in a manner suggesting it being a 2nd bite in disguise. The matter being **res judicata**. Probably one may wish to apply for stay of execution if never ever attempted one. Should the step not yet over taken by events anyway. Application dismissed with costs.

R/A explained.

S.M.RUMANYIKA

JUDGE

30/05/2014

Delivered under my hand and seal of the court in chambers. This 11st June, 2014. In the presence of the 1st Respondent.

S.M.RUMANYIKA

JUDGE

11/06/2014