

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

LAND REVISION NO. 1 OF 2016

(From the Ruling of 9.2.2016 in Misc. Application No. 126 of 2015 in the District Land and Housing Tribunal for Morogoro, Judgment Land Appeal No. 29 of 2010 in the District Land and Housing Tribunal for Morogoro and the Judgment of the Ward Tribunal of Mhonda in Application No.13 of 2009 and the Judgment of 6.8.2012 of the High Court of Tanzania in Misc. Land Case Appeal No. 14 of 2012)

ABDALLAH HASSAN.....APPLICANT

VERSUS

MARISEL MAKAMBA.....RESPONDENT

RULING

14 Dec. 2017 & 16 Mar. 2018

DYANSOBERA, J:

The applicant herein has filed this application praying for the following orders:

1. That this Honourable Court be pleased to call for the records of Misc. Application No. 126 of 2015 in order to examine and revise the impropriety, incorrectness and legality of the ruling and proceedings of Hon. Chairman, O. Y. Mbega for the end of justice.
2. Costs of this application be provided for.
3. That this Honourable be pleased to grant anyother relief it may deem just to grant.

The application has been made under sections 41 of the Courts (Land Dispute Settlements) Act, 2002 and is supported by the affidavit of SAMSON RUSUMO, Advocate for the applicant.

The respondent in his counter affidavit, is resisting the application. He has also filed a notice of preliminary objection praying the application to be struck out with costs on the grounds that:

1. The applicant's application is incurably defective for non-citation of proper and enabling provision of law.
2. The applicant's application is incurably defective for being brought under the provisions of non-existing legislation.
3. The applicant's application cannot be entertained as an alternative to the applicant's right to institute objection proceedings.

Briefly, the historical background of the matter is the following. The applicant herein successfully instituted an Application No. 13 of 2009 at the Ward Tribunal of Mhonda claiming for a piece of land. Aggrieved, the respondent successfully appealed to the District Land and Housing Tribunal for Morogoro vide Appeal No. 29 of 2010. The applicant thought that the decision of the District Land and Housing Tribunal given on 30th November, 2011 robbed him of justice and appealed to this court in Miscellaneous Case Appeal No. 14 of 2012 but the appeal was dismissed on 6th day of August, 2012. Through Miscellaneous Application No. 126 of 2015, the respondent went to the District Land and Housing Tribunal at Morogoro and applied to have his decree executed and on 16th day of March,

Tribunal in Land Appeal No. 29 of 2010. According to learned counsel the proper provision would have been section 43 (1) (b).

It was further argued on part of the respondent that failure to cite proper and specific enabling provisions of law renders the application incompetent and therefore liable to be struck out. Counsel relied on the two case laws to support this legal position, that is, **Jannet Mmari v. International School of Tanganyika Limited**, HC Misc. Civil Cause No. 70 of 2005 and **China Henan International Cooperation Group v. Salvand K. A. Rwegasira**, (CAT) Civil Reference No. 22 of 2005.

As to the second point of preliminary objection, Mr. Rwegasira is contending that the application has been brought under the provisions of a non-existing legislation. It is his submission that the Courts (Land Disputes Settlements) Act was amended by the Rectification of Printing Errors (the Land Disputes Courts Act, 2002), Order 2003, Government Notice No. 225 of 8th August, 2003 whose paragraph 2 states that:

The errors appearing in the Land Disputes Courts Act, 2002 are hereby rectified as follows; “ by deleting title “Courts (Land Disputes Settlements) appearing at the top of every page of the Act and substituting for it the title “Land Disputes Courts”

Counsel for the respondent explains that from the date of the above cited order, a legislation which used to be referred as “The Courts (Land Disputes Settlements) Act” ceased to exist in the law books, and a legislation known as the “Land Disputes Courts Act” came in place.

It was argued on part of the respondent that citing a non-existent law renders the applicant's application incompetent and the remedy is to be struck out. Counsel for the respondent relied on the case of **Mkandila Tambo v. TANESCO & 2 others**, HC Civil Application No. 2 of 2005.

On the last point of objection, counsel for the respondent stated that the application is incompetent and cannot be entertained as an alternative to the applicant's right to institute objection proceedings. Attention of this court was drawn to paragraphs 2 and 7 of the affidavit of Samson Rusumo supporting the applicant's application in which the grievance of the applicant which forced him to initiate these revisional proceedings is the decision of the District Land and Housing Tribunal which, as alleged, ordered execution to be over the land allegedly the property of the applicant and which the respondent is not entitled to. It is contended by learned counsel for the respondent that the remedy is not a revision but institution of objection proceedings and he relied on sections 57 and 62 of the Civil Procedure Code [Cap. 33 R.E.2002]. Supporting the argument that revision is not a proper remedy in a situation where there is an alternative remedy, counsel relied on the case of **D.P. Shapriya & Co. Ltd v. Leighton Offshore Pte Ltd (T) Branch and 2 others**, CAT Civil Revision No.8 of 2016.

According to the time frame set on 23rd February, 2017, the written submission in chief were to be filed by 9th day of March, 2017, reply to be filed by 23rd day of March, 2017 and rejoinder had to be filed by 30th March, 2017. The respondent's advocate duly filed his written submission in chief in support of the

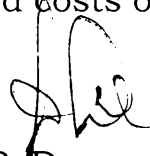
preliminary objection on 8th March, 2017 but the applicant who was represented by Mr. Samson Rusumo, learned counsel who also swore the affidavit in support of the applicant's application did not file any reply.

It seems that the preliminary objection has not been resisted. In view of the submission by learned counsel for the respondent, the legal position obtaining in the present case and the cited case laws, the application is incurably defective for the reasons stated in the preliminary objection and expounded by learned counsel for the respondent.

I thus uphold the preliminary objection and strike out the application which is incurably incompetent before this court.

The respondent is awarded costs of this application.

Order accordingly.

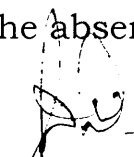


W. P. Dyansobera

JUDGE

16. 3.2018

Delivered at Dar es Salaam this 15th day of March, 2018 in the presence of respondent and in the absence of the applicant.



W. P. Dyansobera

JUDGE