

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
MBEYA DISTRICT REGISTRY  
AT MBEYA  
LAND REVISION NO. 3 OF 2020**

*(Arising from consolidated Application No. 60 and 90 of 2016 District Land  
and Housing Tribunal Mbeya)*

**BAHATI GEOFREY KYANDO Administratrix of the estates of the late  
GEOFREY LAITON KYANDO.....APPLICANT  
VERSUS**

<b>HENRY KYANDINDI.....</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>DALMA NYANDINDI.....</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>LUPETHA NYANDINDI.....</b>	<b>3<sup>RD</sup> RESPONDENT</b>
<b>ALDA NYANDINDI.....</b>	<b>4<sup>TH</sup> RESPONDENT</b>
<b>HENRCK NYANDINDI.....</b>	<b>5<sup>TH</sup> RESPONDENT</b>
<b>ANNA NYANDINDI.....</b>	<b>6<sup>TH</sup> RESPONDENT</b>
<b>YAKWELA NYANDINDI.....</b>	<b>7<sup>TH</sup> RESPONDENT</b>
<b>CHIPI NYANDINDI.....</b>	<b>8<sup>TH</sup> RESPONDENT</b>
<b>DANIEL NYANDINDI.....</b>	<b>9<sup>TH</sup> RESPONDENT</b>
<b>MATHEW NYANDINDI.....</b>	<b>10<sup>TH</sup> RESPONDENT</b>
<b>CASTO NYANDINDI.....</b>	<b>11<sup>TH</sup> RESPONDENT</b>
<b>GLORIA NYANDINDI.....</b>	<b>12<sup>TH</sup> RESPONDENT</b>
<b>CASSIAN NYANDINDI.....</b>	<b>13<sup>TH</sup> RESPONDENT</b>
<b>CHRISTINA NYANDINDI.....</b>	<b>14<sup>TH</sup> RESPONDENT</b>
<b>YAPARAMA NYANDINDI.....</b>	<b>15<sup>TH</sup> RESPONDENT</b>
<b>NESTROL NYANDINDI.....</b>	<b>16<sup>TH</sup> RESPONDENT</b>
<b>RONALD NYANDINDI.....</b>	<b>17<sup>TH</sup> RESPONDENT</b>
<b>SEVERIN NYANDINDI.....</b>	<b>18<sup>TH</sup> RESPONDENT</b>
<b>EMMANUEL NYANDINDI.....</b>	<b>19<sup>TH</sup> RESPONDENT</b>
<b>ANTONIA NYANDINDI.....</b>	<b>20<sup>TH</sup> RESPONDENT</b>
<b>URIC NYANDINDI.....</b>	<b>21<sup>ST</sup> RESPONDENT</b>

## **R U L I N G**

Dated: 4<sup>th</sup> & 26<sup>th</sup> October, 2021

### **KARAYEMAHA, J**

Consolidated Land Application No. 60 and 90 of 2016 is still pending in the District Land and Housing Tribunal (DLHT) for Mbeya at Mbeya. On 21/4/2021 a hot debate erupted between parties on the issue whether Henry Nyandindi (4<sup>th</sup> respondent in this application) was to defend himself and be subjected to cross-examination by the 2<sup>nd</sup> applicant's advocate and Dr. Luambano for the remaining applicants together with Mr. Mushokorwa. After entertaining arguments from both sides, the trial Chairman excluded the 1<sup>st</sup> defendant from entering defence because the case against him had already been determined. He ordered the 2<sup>nd</sup> respondent to enter defence alone.

This decision utterly aggrieved the applicants. They took a bold step of preferring the application for revision before the main application was determined to its finality. To this end, it is uncontroverted that consolidated Application No. 90 of 2016 is still pending before the DLHT. It was scheduled for defence on 15/06/2021.

Orders sought by applicants in the chamber summons are as follows:

- 1. This Honourable court be pleased to call for and examine the proceedings in consolidated application No. 60 and 90 of 2016 of the DLHT by Chairman Mapunda for the purpose of ascertaining and satisfying itself as to the correctness, illegality, or propriety of the findings and decisions and orders incidental to.*
- 2. Having revised the respective decisions subject to the prayer canvassed above, this court be pleased to direct the determination of the two disputes in the manner it considers appropriate.*
- 3. Any other relief(s) directives that the Court may deem fit to grant.*

Supporting the application is an affidavit, sworn by Bahati Geoffrey Kyando, the applicant and it sets out grounds on which the prayers are sought.

Simultaneous with filing a counter-affidavit in opposition to the application, the 2<sup>nd</sup> to 21<sup>st</sup> respondents filed a notice of preliminary objection to the effect that:

- 1. That the application is incompetent and bad in law for being a revision against the interlocutory orders of the trial Tribunal contrary to section 79 of the Civil Procedure Code [Cap 33 of 2019]*

They therefore prayed this Court to struck out the application with costs.

Hearing of the application was conducted through written submissions. Hearing of the application pitted Mr. Kamru Habibu Msonde, learned counsel for the respondents, against Ms. Mary L. Mgaya, learned advocate for the applicant.

Arguing in support of the preliminary objection, Mr. Msonde submitted that grounds contained in the supporting affidavit such as improper consolidation of land cases, improper entering a judgment on admission, refusal of the right to cross-examine the 1<sup>st</sup> respondent and biasness of the trial Chairman amount to preliminary or interlocutory decisions with no effect to determining the land dispute at hand. He held the view that the major issue being who the lawful owner of the land is, then the applicant was supposed to wait for the final decision of the DLHT and henceforth bring all her grievances as grounds of appeal. To buttress his position Mr. Msonde cited section 79 (2) of the Civil Procedure Code, Cap. 33 [R.E 2019] (hereinafter the CPC) and the case of **Ilimgadi Lihimbo vs Tito Christopher Njiba**, Land Revision No. 03 of 2020, HC-Mbeya and **Junior Construction Company Limited & others vs MANTRAC Tanzania Limited**, Civil Appeal 252 of 2019 CAT-DSM (both unreported).

Having submitted as such he prayed the application to be struck out with costs.

In rebuttal, Ms. Mgaya argued that the irregularities committed by the DLHT threatened the welfare of justice by taking it into the grave. She stated that they were pushed to file the instant application after realizing that the irregularities committed in the proceedings were not healthy to the procedure adopted by the DLHT. Ms. Mgaya turned on the ruling concerning the application for extension of time and argued that this court allowed extension of time after realizing that the manner through which the proceedings were handled at the DLHT was prejudicial to the substantive justice. It was her firm view that by noting the irregularities and holding so, this Court became *functus officio* to come out with a contradictory decision based on the same issue at this point in time.

Submitting on section 79(2) of the CPC and the case of **Ilimgadi Lihimo** (supra) Ms. Mgaya held the view that this is High Court which is not binding. She added that the applicability of the CPC is highly discouraged to land related matters as there is a specific law covering land issues. She argued that this application focuses on pointing how the procedural issues and improprieties exhibited by the trial Chairman were

very irregular and hostile in determining the application's fate. She zealously submitted that the deprivation of the right to cross-examine the adverse part was an anomaly that could not wait for final disposal of the matter. Citing section 44(a),(b) of the Land Dispute Act [Cap 216 R.E.2019], the learned Counsel argued that this provision does not bar/prohibit the aggrieved party complaining against procedural irregularities to file revision to the High Court for the purpose of rectifying the persisting irregularities and errors apparent on the face of the record.

Apart from recognizing that orders/decisions of the DLHT were interlocutory, Ms. Mgaya's viewpoint was that circumstances of this case necessitate the immediate intervention of this Court because procedures adopted were prejudicial to the rendering of justice and should not wait the application in the DLHT to be determined to the finality. She remarked that application for revision was a proper forum to address the process. She, however, opined that irregularities covering this matter are not covered under the doctrine of interlocutory orders.

I have anxiously considered the contending submission for the parties. The vexing question now is whether the instant application is maintainable. I have gone through the impugned decision and what

comes out clearly is that the trial Chairman's decision was a ruling and not a Judgment as it would ordinarily occur with land applications and related orders. This implies that the impugned decision was in respect of orders which were intermediate and which would not finally and conclusively determine the matter. This argument is given credence by the court proceedings which came subsequent to the impugned ruling. These proceedings reveal that matters relating to the substantive claim were awaiting the defence evidence. One of the instances is for the proceedings held on 21<sup>st</sup> April, 2021, in which the court ordered as follows:

**"Baraza:** ...kama nilivyosema hii ni mahakama ya sheria na inatikiwa kufanya kazi zake kwa kufuata sheria. Sheria zinazotumiwa na baraza hili ni kama nilivyozitaja. Haipo hata moja inayosema kuwa mdaiwa namba 1 anatakiwa alete utetezi au ahojiwe. Hivyo utetezi utatolewa na mdaiwa namba mbili tu."

**Amri:** Kusikiliza tarehe 31/5/2021"

The fact that a date was set with an order that the defence would proceed on 15<sup>th</sup> June, 2021 implies that there were alive proceedings which would come to the finality upon taking defence evidence. Whatever else that came before it, including the ruling from which this application for revision arose did not have the finality effect. To gauge if

the impugned ruling is interlocutory or not, need arises for reproducing a descriptive definition thereof, as deduced from Black's Law Dictionary, 8<sup>th</sup> Edn. It defines an interlocutory order in the following mould:

*"An order that relates to some intermediate matter in the case; any order other than a final order. Most interlocutory orders are not appealable until the case is fully resolved...."*

The position obtaining in our jurisdiction is that revision application is not maintainable on interlocutory decisions or orders. This is in terms of section 79 (2) of the CPC that the instant application for revision is prematurely before this court hence unmaintainable in law. For ease of reference, I reproduce Section 79 (2) of the CPC as hereunder:

*" 79 (2) Notwithstanding the provisions of subsection (1),  
**no application for revision shall lie or be made in  
respect of any preliminary or interlocutory decision  
or order of the Court unless such decision or order  
has the effect of finally determining the suit."***

*[Emphasis supplied]*

The tenor and import of the cited provision are that no application for revision shall lie or be made in respect to preliminary or interlocutory order before the Court.

The foregoing passage is similar to several decisions of the Court of Appeal of Tanzania, including **Vodacom Tanzania Public Limited**



**Company v. Planetel Communications Limited**, CAT-Civil Appeal No. 43 of 2018 (unreported), wherein it was stated:

*"We are of the opinion that the ruling and order sought to be revised is an interlocutory order .... because in that order nowhere it has been indicated that the suit has been finally determined."*

See: **Augustino Masonda vs. Widmel Mushi**, CAT-Civil Application No. 383/13 of 2018; **Tanzania Motor Services Ltd & Another v. Mehar Singh t/a Thaker Singh**, CAT-Civil Appeal No. 115 of 2006; and **Multazar Ally Mangungu vs. The Returning Officer for Kilwa North Constituency & 2 Others**, CAT-Civil Application No. 80 of 2016 (all unreported).

It may, for sake of argument, be asked whether the provisions of section 79 (2) of the CPC apply to the circumstances of this case. This was the strong argument by Ms. Mgaya. I shall intiomorously venture to say that there is no much room, I think, for debate over the fact that section 79 (2) of the CPC applies squarely to the matter at hand since there is no specific provision (there is a lacuna) in the Land Disputes Courts Act, Cap.216 [RE. 2019] which provides that no revision shall lie or be made in respect to preliminary or interlocutory order. I had an occasion of considering this scenario in **Ilimgadi Lihimbo** (supra) and I

still maintain this position. Going through section 51 of the Land Disputes Courts Act (supra) cited by Ms. Mgaya, it is digested that in the exercise of its jurisdictions, the High Court shall apply the Civil Procedure Code and may, regardless of any other laws governing production and admissibility of evidence, accept such evidence and proof which appears to be worthy of belief. Similarly, the DLHT, apart from being directed to apply the Regulations made under section 56 of the Land Disputes Courts Act (supra), it is allowed to apply the Civil Procedure Code where there is inadequacy in those Regulations. If I may repeat myself, the Land Disputes Courts Act and the Regulations do not provide, as argued by Ms. Mgaya for a manner to deal with interlocutory applications. This gap is covered/filled by applying section 79(2) of the CPC.

Next for consideration is whether an aggrieved party can file a revision against an interlocutory order? As unanimously submitted by both counsel, and as given credence by the record, orders made by the trial Chairman are purely interlocutory ones. Therefore, in terms of section 79 (1) of the CPC this court is impotent to invoke its revisional powers. I am not alone in this. An array of decisions has similar views. A splendid guidance is distilled from the cases of **Henry Lyimo v Eliabu E. Matee** [1991] TLR 93, **Lucky Spin Ltd (Premier Casino) Ltd vs**

**Thomas Alcorn & Joan 7 Alcorn**, Revision No. 445 of 2015 Labour Division at Dar es Salaam and **Catholic Archdiocese of Dar es Salaam & another vs. Latifa Said Saphy**, Land Revision No 37 of 2020 (both unreported). For instance, in the case of **Henry Lyimo** (supra) the respondent filed a suit against the applicant in the Resident Magistrate's Court. Then he applied for temporary injunction to restrain the applicant from doing a number of things. He also prayed for a temporary closure of business in which the applicant was involved pending final disposal of the suit. The lower court granted the application. Aggrieved the applicant filed the application in the High Court praying that the order of closure of the business be revised. The Court held that:

*"The order made by the learned magistrate is clearly an interlocutory one. It is an interim order pending the determination of the case. It is therefore not a case decided within the meaning of the provisions of section 79 (1) of the Civil Procedure Code and this court has no jurisdiction to invoke its revisional powers as provided for in that section".*

This is no doubt a good principle from which we can draw inspiration and I fully subscribe to it in determining this matter.

Ms. Mgaya talked about the application for extension of time and submitted at length that this court extended time after discovering that the manner through which the proceedings were handled by the DLHT was very prejudicial to substantial justice. As much as I agree with her, it must be understood at this juncture that this Court was justifying why it was to extend time for filing this revision. It was not dealing with the application for revision. At that time not all material facts were revealed and nothing suggested that it was impugning the interlocutory orders. In view thereof, I disagree with her that this Court is *functus officio*. *Functus officio* means once a court has passed a valid decision after a lawful hearing, it is *functus officio* and cannot open the case once more. It would a different scenario if this court was once again determining another application for extension of time. This is not the scenario in this matter. There is no decision determining the application for revision.

On the strength of the foregoing discussion and guided by the cited authorities, I take the view that this is an application which should not have been preferred by the appellant because it seeks to revise a decision against which no application for revision can lie. In consequence of all that, I hold that the same is incompetent. In a nut shell, I find and hold that the preliminary objection raised is substantial and I sustain it. I order that it be struck out. I further direct that the

matter be remitted to the DLHT for final disposal of the pending matter.

Costs to be in the due course.

It is so ruled.

**DATED at MBEYA this 26<sup>th</sup> October, 2022.**



A handwritten signature in black ink, appearing to read "J.M. Karayemaha", is written above a horizontal line.

**J.M. Karayemaha**  
**JUDGE**