IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

LAND CASE REVISION No. 4 OF 2020

(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 117 of 2019)

BUKOBA MUNICIPAL COUNCIL ---------- APPLICANT

Versus

MALIKI SUDI ---------- RESPONDENT

RULING

09/03/2021 & 09/03/2021
Mtulya, J.:

In the present Revision both parties are in agreement that this application was filed to protest a Ruling of the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Application No. 117 of 2019** (the Application) emanated from determination of Preliminary Objection on a point of *res judicata* (the objection on *res judicata*). The Ruling of the Tribunal dismissed the raised objection with costs, which irritated the Applicant hence on 15th July 2020 preferred the present Revision registered in **Land Case Revision No. 4 of 2020** of this court.

However, before the Revision was scheduled for hearing, learned counsel Mr. Aaron Kabunga for the Respondent, Mr. Maliki Sudi, registered a point of Preliminary Objection (the objection)

contending that the Application was filed prematurely and therefore incompetent on account of lack substance to revise from the Tribunal's Ruling. When the objection hearing was scheduled today morning, both parties enjoyed legal representations. The Applicant marshalled Mr. Athumani Msosole, learned Municipal Solicitor whereas the Respondent invited the legal services of Mr. Kabunga. After a lengthy submissions of the learned brothers, it was vividly at display that the dual are contesting on interpretation of the law in provisions of sections 74 (2) and 79 (1) of the **Civil Procedure Code** [Cap. 33 R.E 2019] (the Code).

According to Mr. Kabunga, the law in section 74 (2) of the Code bars appeals or revisions against dismissal orders emanated from preliminary objection hearing in the lower courts or tribunals which do not determine disputes in the finality. Giving the background of the section, Mr. Kabunga argued that it was enacted in 2004 via **Misc. Act No. 12 of 2004** to bar parties who were misusing the law in appealing against orders which do not finalize matters registered in courts. With remedies available to the parties in cases like the present one, Mr. Kabunga argued that the remedy is to wait until the suit is determined to the finality and if a party is aggrieved by a

decision, he may wish to advance those grievances as points of contest in an appeal stage.

This submission was resisted by Mr. Msosole who briefly stated that the decision of the Tribunal is un-appealable and the only remedy available is under section 79 (1) of the Code, especially when there is a material irregularity committed by the Tribunal. In a brief rejoinder, Mr. Kabunga stated that the cited section 79 (1) of the Code was not displayed in the Applicant's Chamber Summon to legally move this court and that in any case, the section is mainly invoked by this court *suo moto*, not parties in a dispute. Mr. Kabunga argued further that in the Tribunal, proceedings had not yet commenced to have substance to determine any material irregularities.

On My part, I need not be detained on a straight forward disputes on interpretation of the plain texts in section 74 (2) and 79(1) of the Code. The guidance from our superior court in cases like the present one is that where a statute is enacted in plain and clear language, the court is required to interpret the text in the statute as it is without any further interpolations (see: **Pan African Energy Tanzania Ltd v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 81 of 2019; **Mbeya Cement Company**

Limited v. Commissioner General, Civil Appeal No. 160 of 2017; and **Republic v. Mwesige Geofrey & Another**, Criminal Appeal No. 355 of 2014). In the precedent of **Republic v. Mwesige Geofrey Tito Bushahu** (supra) the full court of the Court of Appeal, stated at its page 11 & 12 of the judgment that:

> *We have chosen to begin our discussion with the familiar canon of statutory construction that* ***the starting point for interpreting a statute is the language of the statute itself****. Absenting a clearly expressed legislative intention to the contrary, that* ***language must ordinarily be regarded as conclusive****... if a statute's language is plain and clear, the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion... it is elementary that the meaning of a statute must in the first instance, be sought in the language in which the act is framed, and* ***if it is plain, the sole function of the courts is to enforce it according to its terms.***

(Emphasis supplied)

I fully subscribe to this directive of our superior court and shall invite the interpretation in this application as both contested sections are

enacted in plain words. For purposes of understanding, I will quote them, starting with section 74 (2) of the Code:

> *No appeal shall lie against or be made in respect of any preliminary or interlocutory decision or order of the District Court, Resident Magistrate's Court or any other tribunal,* ***unless such decision or order has effect of finally determining the suit.***
>
> (Emphasis supplied)

Whereas section 79 (1) of the Code was enacted in the following words:

> ***The High Court may call for the record of any case which has been decided by any court subordinate to it*** *and in which no appeal lies thereto, and if such subordinate court appears- (a) to have exercised jurisdiction not vested in it by law; (b) to have failed to exercise jurisdiction so vested; or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.*
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> (Emphasis supplied)

It is fortunate that in the present Revision, both parties are in agreement that there is an interlocutory order in nature of Ruling delivered by the Tribunal and does not complete the matter in its finality. It is therefore obvious that section 74 (2) of the Code is applicable and no need of further interpolations. It is glaring fact that, the Applicant was not supposed to file the present Revision in this court as she has appropriate remedy readily available after judgment of the Tribunal. If the Applicant will be aggrieved by the final decision of the Tribunal, she may wish to prefer an appeal in this court attached with explanations or grounds of appeal on how she was aggrieved.

I understand Mr. Msosole cited section 79 (1) of the Code in favour of the Revision. However, I perused the record of this application including a glance at the Applicant's Chamber Summons without seeing any citation of the same. Therefore, citing of section 79 (1) of the Code at hearing stage may be interpreted as afterthought, which may not be well received by this court. Finally, I do not need to analyze other protests registered by Mr. Kabunga as it is obvious that I have already determined the objection and ends this matter. Having said so and considering the objection registered

by Mr. Kabunga has merit, this Application is dismissed with usual consequences of costs awarded to the Respondent.

It is so ordered.

F.H. Mtulya

Judge

09.03.2021

This Ruling was delivered in chambers under the seal of this court in presence of the Applicant's Solicitor Mr. Athumani Msosole and in the presence of the Respondent's legal counsel, Mr. Aaron Kabunga.

F.H. Mtulya

Judge

09.03.2021