

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND REVISION NO.14 OF 2020

FINCA MICROFINANCE BANKAPPLICANT

VERSUS

BWIRE BERNARD KASEREKA..... RESPONDENT

*(Arising from Misc. Land Application No.313 of 2020 and Land Application No.116 of 2016
before the District Land and Housing Tribunal of Musoma at Musoma).*

RULING

26th May&1st June,2021

Kahyoza, J.

FINCA Microfinance Bank (FINCA) instituted revisional proceedings against **Bwire Benard Kasereka** (Bwire) praying to this Court to call and examine the records of the District Land and Housing Tribunal for Mara (DLHT) in the Land Application No. 166/2016 and Misc Land Application No. 313/2020. Specifically, FINCA prayed this Court to examine the judgment, proceedings in Land Application No. 166/2016 and the ruling in Misc. Land Application No. 313/2020 for purpose of satisfying itself to their correctness, legality or appropriateness and give the appropriate directions.

Bwire resisted the application. He filed a counter affidavit and raised the preliminary objection. The preliminary objection had three limbs which are paraphrased as follows:-

- a. The application defective because of improper or wrong citation;
- b. The application is bad in law for being preferred as an alternative to appeal; and
- c. The affidavit is incurably defective.

FINCA and **Bwire** argued the preliminary objection orally. I will not produce the submissions at this stage but I will refer to them while determining the issues.

There are three issues from the three limbs of the preliminary objection, the first issue is, whether the application for incompetent for failure to cite the proper provisions of the law. The second issue is whether the application for revision is incompetent for being preferred as an alternative to appeal. The third and last issue, is whether the affidavit is incurably defective. In short, there is only one issue whether the application is competent.

Is the application for revision competent?

I will commence the submissions in support and in opposition to the second limb of preliminary objection that the application was incompetent for being preferred as an alternative to appeal.

Bwire submitted briefly that **FINCA** was required to appeal and not to apply for revision. He requested this Court to dismiss the application.

FINACA's advocate, Ms. Anna replied that the application for revision was properly filed. She contended that an appeal is a remedy available to the party aggrieved by the decision of the inferior tribunal or

court to the superior tribunal or court. She submitted that there were two cases involving the parties, Land Appl. No. 166/2016 and Misc Land Appl. No. 313/2020.

FINCA's advocate submitted that **FINCA** was not aggrieved by the decision in Land Appl. No. 166/2016. She added that **FINCA** won the suit and commenced the process to execute the decree by selling **Bwire**'s property. **Bwire** instituted Misc. Land Appl. No. 313/2020, which **FINCA** resisted by raising the preliminary objection.

She added that in course of determining the preliminary objection, the DLHT determined Misc. Application No. 313/2020 on merit. Thus, the DLHT determined the application on merit without hearing **FINCA**, or **Bwire**. Having done so the DLHT issued a permanent injunction. She concluded that **FINCA** applied for revision because the decision in Misc Application No. 313/2020 was irregular. She was emphatic that the decision Misc. Application No. 313/2020 was irregular on the ground it did not originate from a main suit and the parties were not given a hearing.

It is a settled position of the law that if the party to the case has a right of appeal, then that right has to be pursued by the concerned party and, except for sufficient reason amounting to exceptional circumstances, there cannot be resort, by the party to the revisional jurisdiction of the Court. See the cases of **Mansoor Daya Chemicals Limited v. National Bank of Commerce Ltd**, Civil Application No. 464/16 of 2014 and **Ms. Farhia Abdullar Noor v. ADVATECH Office Supplies Ltd and BOLSTO Solutions Ltd**, Civil Application No. 261/16 of 2017. Both cases refer to the decision of **Halais Pro-Chemie Vs Wella A.G** [1996] T.L.R 269.

I also find it settled that a party to the proceedings before the court or tribunal subordinate to this Court may institute revision proceedings in the following circumstances; **one**, *where, although he has a right of appeal, there are sufficient reasons amounting to exceptional circumstances which must be explained*; **two**, *where the appellate process has been blocked by judicial process*; **three**, *where no right of appeal exists*; or **four**, *where a person was not party to the relevant proceedings*. See above cited cases.

FINCA, the applicant, was a party to the proceedings she is challenging by invoking this Court's revisionary powers. **FINCA** had a right to appeal. Being the party to the proceedings, **FINCA** could come to this Court by way of revision upon establishing any of the four circumstances pointed out above. **FINCA's** advocate, Ms. Anna submitted that **FINCA** knocked the doors of this court by way of revision, because the DLHT denied **FINCA** a right to be heard before it determined Misc. Application No. 313/2020. She added also that the application for revision was preferred as the decision of the DLHT was irregular for the reason the DLHT decided the application instituted without the main application. She contended that the DLHT issued a permanent injunction in favour of Bwire vide a miscellaneous application.

In brief, **FINCA** was of the view that the nature of the grievances advanced supported the application for revision rather than an appeal. **FINCA** was wrong for two reasons; **one**, an appeal is wider than an application for revision; and, **two**, an application for revision by the party to a suit or application is not reliant on the nature of the complaint.

The Court of Appeal in the **Ms. Farhia Abdullar Noor v. ADVATECH Office Supplies Ltd and BOLSTO Solutions Ltd** added that-

"the invocation of the Court's revisional jurisdiction is not dependent on the nature of the grounds upon which a party seeks to challenge a decision or order of the High Court."

As said above, the right of a party to the suit or application to apply for revision exists; **one**, where, although he has a right of appeal, there are sufficient reasons amounting to exceptional circumstances, which must be explained; **two**, where the appellate process has been blocked by judicial process; **three**, where no right of appeal exists; or **four**, where a person was not party to the relevant proceedings.

To cement the above position **Mulla in Explanatory Notes** and Commentaries on the Civil Procedure Code -10th Edition, p. 277 says

*"The special and extra ordinary remedy by invoking the revisional powers of the court should not be exercised unless as a last recourse for an aggrieved litigant. **The recognized rule is that if a party to the civil proceedings applies to the court to exercise its powers of revision, he must satisfy the court that he has no other remedy open to him under the law to set right that which he says has been illegally or irregularly or without jurisdiction done by a subordinate court. The remedy to the applicant must be certain and conclusive.**"*

Finally, I find that **FINCA** being a party to Misc. Application No. 313/2020 had a right to appeal or resort to the revisional jurisdiction of this Court by proving the existence of any of the circumstances discussed

above. **FINCA** did persuade this Court that there existed reasons to apply for revision. It is therefore, evident that **FINCA** improperly invoked the revisional jurisdiction of this Court, thus, **FINCA's** application is incompetent.

Having held that the application is incompetent, I find no impetus to determine the remaining limbs of preliminary objection. For reasons I have stated above, I uphold the preliminary objection and dismiss the application for revision with costs.

It is ordered accordingly.



J. R. Kahyoza,

Judge

1/6/2021

Court: Ruling delivered in presence of the respondent and in the absence of the respondent's advocate with leave of absence. B/C Catherine present.



J. R. Kahyoza

Judge

1/6/2021