

**IN THE HIGH COURT OF TANZANIA  
TABORA DISTRICT REGISTRY  
AT TABORA**

**LAND REVISION NO. 2 OF 2019**

**JACOB PETRO as the guardian of NYERERE PETRO....APPLICANT**

**VERSUS**


**FATUMA RAMADHANI MRISHO as  
an administratrix of the estate of  
the late MWAJABU ISSA @ KABALE.....RESPONDENT**

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**RULING**  
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Date of Last Order: 25/06/2021

Date of Delivery: 19/07/2021

**AMOUR S. KHAMIS, J:**

Fatuma Ramadhan Mrisho as administratrix of the estate of the late Mwajabu Issa Kabale instituted Land Application No. 27 of 2016 in the District Land and Housing Tribunal for Nzega against Abasi Ally Maganga and Jacob Petro as the guardian of Nyerere Jacob (minor) for declaration that she was the lawful owner of the suit land located at Barabara ya Zamani, Bukene area, Nzega District, Tabora Region. 

The trial tribunal granted the application and declared her as the lawful owner of the disputed land. A sale

agreement between Abasi Ally Maganga and Jacob Petro as the guardian of Nyerere Jacob (minor) was declared void ab initio and nullified.

Aggrieved by that decision, Jacob Petro as the guardian of Nyerere Petro (minor) moved this Court to call for and inspect the records of the trial tribunal to satisfy itself as to an error material to the merits of the case involving injustice and jurisdiction of the tribunal.

The application was made by Chamber Summons under Section 43 (1) (a) and (b) of the Land Disputes Courts Act, Cap 216, R.E 2002 and supported by an affidavit of Mr. Masendeka Anania Ndayanse, learned advocate.

In the supporting affidavit, Masendeka Anania Ndayanse stated that:

*“3. That the disputed parcel of land forms part of the estate of one Mwajuma Issa @ Kabale, the deceased person, whose administratrix (the respondent herein) was appointed by Bukene Primary Court in Nzega District and the same (parcel of land) was sold by one Abasi Ally Maganga who is one of the heir of the deceased person to the applicant.*

*4. That in the course of perming the duties and responsibilities of an administratrix appointed by the Primary Court particularly during collecting the estate of the deceased person, the respondent ought to have filed a suit against the applicant as the buyer of the disputed*

*parcel of land along with one Abasi Ally Maganga as the seller before the ordinary court of law which appointed the respondent and not before the trial tribunal.*

5. *That in view of the contents of the foregoing paragraph and the binding decision of the Court of Appeal of Tanzania (the law) the trial District Land and Housing Tribunal acted without proceedings whatsoever thereby arriving to any illegal decision and orders."*

Fatuma Ramadhan Mrisho as an administratrix of the estate of the late Mwajuma Issa Kabale filed a counter affidavit affirmed by Fadhil R. Kingu, learned advocate.

Mr. Kingu averred that the suit was filed in the proper forum and generally disputed other allegations in the affidavit of Masendeka Anania Ndayanse except a fact that the disputed property formed part of the estate of the late Mwajuma Issa Kabale.

Alongside a counter affidavit, Fatuma Ramadhan Mrisho as an administratrix of the estate of the late Mwajuma Issa Kabale filed a notice of preliminary objection premised on two grounds: that the affidavit of Masendeka Anania Ndayanse was incurably defective for containing legal arguments and conclusion and that the application was time barred.

At the time of hearing, the applicant was represented by Mr. Amos Gahise, learned advocate who held brief of Mr. Masendeka Anania Ndayanse. Mr. Fadhil Kingu, learned advocate, acted for the respondent.

In addition to the points of objection, the Court invited parties to address it on whether revision was the right avenue to challenge decision of the District Land and Housing Tribunal in this matter.

By consent, hearing on the preliminary objections proceeded by way of written submissions and a schedule set by the Court was observed.

I have read the counsel rival submissions on the two limbs of the preliminary objection and on a point of law took up by the Court. I intend to refer to relevant parts of the submissions in the course of tackling each area of the law.

For convenience, I prefer to start with the second limb of the objection on which the respondent alleged that the application was time barred.

Expounding on this ground, Mr. Fadhil R. Kingu contended that the application was filed after almost 17 months from the due date contrary to 60 days rule within which an application for revision is to be lodged.

He asserted that the impugned decision was delivered on 25/01/2018 and the present application filed on 27<sup>th</sup> June 2019.

Mr. Kingu contended further that according to Item 21 of Part III of the Schedule to the Law of Limitation Act, Cap 89, R.E 2019, the application should have been filed within sixty (60) days from the date of decision.

In support of the contention, the learned counsel for the respondent cited the case of **NATIONAL BANK OF COMMERCE V SADRUDIN MEGHJI (1998) TLR 503** which applied Item 21 of Part III of the Schedule to the Law of Limitation Act.

In reply, Mr. Masendeka Anania Ndayanse contended that Item 21 in Part III of the Schedule to the Law of Limitation Act was not applicable because the application was based on Section 43 (1) of the Land Disputes Courts Act, Cap 216, R.E 2019 which provides for supervisory powers of the High Court in respect of proceedings in the District Land and Housing Tribunal and could be exercised at any time.

Section 43 (1) (a) of **THE LAND DISPUTES COURTS ACT, CAP 216, R.E 2019** reads:

*“43 (1) In addition to any other powers in that behalf conferred upon the High Court, the High Court (Land Division):*

*a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions*

*as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay.”*

The marginal notes applicable to Section 43 (1) (a) and (b) of **THE LAND DISPUTES COURTS ACT** (supra) reads: Supervisory and Revisional Powers.

On reading the two provisions, it is clear that Section 43 (1) (a) relates to supervisory powers of the High Court over the District Land and Housing Tribunals as the key phrase used is the “*general powers of supervision*”.

Section 43 (1) (b) relates to revisional jurisdiction of the High Court since the catch words are “*revisional jurisdiction*” of the High Court on proceedings determined by the District Land and Housing Tribunal.

Supervisory power refers to the power of oversight over an inferior body. It does not include any restraining authority over the supervised party. Under their supervisory power, courts have substantial authority to oversee affairs of the lower courts or tribunals to ensure that justice is done.

The application of supervisory powers of the High Court was tested in the Ugandan case of **KYAGONZA V MAGADU 7 OTHERS (2017) UGHCCD 169** wherein it was held that:

*“True this Court has supervisory powers over magistrates’ courts. This Court will exercise the same in*

*appropriate circumstances. This however will not be done to assume or take over the lower courts' jurisdiction....."*

The supervisory power of the High Court was further explained in the case of **GURUSHANTH PATTEDAR V MAHABOOB SHAHI KULBURGAMILLS AIR 2005 KANT 377** wherein the Indian Court held that:

*".....Proceedings under Article 227 of the Constitution are not original but only supervisory. The power under Article 227 is intended to be used for the purpose of keeping subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors....."*

In the case of **ABDALLAH HASSAN V JUMA HAMIS SEKIBOKO, CIVIL APPEAL NO. 22 OF 2007** (unreported), the Court of Appeal of Tanzania seating in Tanga addressed itself to the supervisory jurisdiction of the High Court in terms of Section 44 (1) (a) and (b) of the Magistrates Courts Act No. 2 of 1984 read together with Section 95 of the Civil Procedure Code and held that:

*"Looking at the quoted provision, we are of the settled view that the mode by which a matter comes to the High Court and the type of powers to be exercised under one subsection differ from the other. Under subsection 1 (a) the Court acts suo motu and of course this can be ignited by a complaint, a tip-off*

*from a law abiding citizen or a discovery of undeserving element in the course of its inspection of lower court's records. High Court powers are mainly administrative and not judicial as such. We are fortified in this view by the wording used. The Court would give directions, where necessary in the interest of justice and the courts shall comply with such directions without undue delay. This cannot be on merits of the case because the High Court cannot direct a lower court what decision it should make and how. In our view direction envisaged here are the ones related to the supervisory role of the High Court and which would include for example, transferring a case from one Court to another or from one magistrate to another or directing that it be put on first track during scheduling for hearing. Under this subsection, in giving its orders, the High Court is not enjoined to contact any of the parties involved. However the Court's action which goes into the merits can only come under subsection 1 (b). Again here, the High Court may act suo motu or on application by a party as was the case here. Unlike under subsection 1(a) however the High Court cannot alter the parties' right without hearing them..."*

The wording of the Magistrates Courts Act in relation to supervisory powers of the High Court and arrangements of the section into subsections 1(a) and 1(b) are generally



similar to the wording and arrangement of Section 43 (1) (a) and (b) of the Land Disputes Courts Act, Cap 216, R.E 2019.

In such circumstances, a party cannot move the High Court to exercise its supervisory powers through a formal application under Section 43 (1) (a) of the Land Disputes Courts Act as done by the applicant in this case.

Such supervisory powers are exercised by the High Court suo motu and in deserving cases. The High Court may be moved administratively into exercising such powers by a law abiding citizen.

The remedy open to parties in challenging proceedings of the District Land and Housing Tribunal is through an appeal or revision as per Section 43 (1) (b) of the Land Disputes Courts Act whose limitation of time is 60 days as per Item 21 in Part III of the Schedule to the Law of Limitation Act, Cap 89, R.E 2019.

In the cited case of **ABDALLAH HASSAN V JUMA HAMIS SEKIBOKO** the Court of Appeal held that when moved to exercise its supervisory powers, the High Court can only revise the proceedings where there is an error material to the merits of the case involving injustice and added that:

*“Throughout, the Court would act to rectify that error apparent on the face of the record and not that it sits in its appellate capacity as if on appeal to evaluate*

*the evidence. And neither can it perform both roles (revision and appeal) simultaneously.”*

With this position of the law in mind, it is clear that the present application geared to move the High Court revisit the trial tribunal’s proceedings and entire record in the lower tribunal’s proceedings through its supervisory role, was misplaced for it ought to have been made as a revision under Section 43 (1) (b) of the Land Disputes Courts Act and not Section 43 (1) (a) as done by the applicant.

Consequently, I find this application to be incompetent and thus struck out for reasons stated with costs. It is so ordered.

Dated at Tabora this 19<sup>th</sup> day of July 2021



*[Signature]*  
**AMOUR S. KHAMIS**  
**JUDGE**  
**19/7/2021**

Ruling delivered in the open Court in presence of Mr. Amos Gahise, advocate holding brief of Mr. Anania Ndayanse, advocate for the appellant and in absence of the respondent.

Right of Appeal explained.



*[Signature]*  
**AMOUR S. KHAMIS**  
**JUDGE**  
**19/7/2021**