

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**LAND CASE REVISION NO. 02 OF 2021**

(Arising from the Ruling of District Land and Housing Tribunal for Geita at Geita in Misc.  
Application No. 115 of 2020]

**MANONI MALAWI MALANDO.....APPLICANT**

**VERSUS**

**CHACHA MWITA WAMBURA..... RESPONDENT**

**RULING**

**Date of Last Order: 30/08/2021**

**Date of Ruling: 30/09/2021**

**F. K. MANYANDA, J**

In this application for revision, this Court is been moved under section 79 of the Civil Procedure Code [Cap. 33 R. E 2019] to revise the records, proceedings and the ruling of the District Land and Housing Tribunal (DLHT) for Geita dated 22/01/2021 in Misc. Application No. 115 of 2020. After revising, the Court to satisfy itself as to the correctness, legality, regularity and propriety of the said ruling.

The background of this matter as it be gleaned from the affidavit, counter affidavit and the record is that the Respondent, Chacha Mwita Wambura, purchased a piece of land from the Applicant.

The Respondent paid the purchase piece, but when the land was measured fell short of the agreed area of 60 acres.

Hence, a dispute arose, whereas the Respondent filed Land Application No. 49 of 2020 claiming for ownership of the land he purchased.

After filing the land suit, he subsequently filed Misc. Land Application No. 115 of 2020 applying for interim injunctive orders to prevent the Applicant, his agents or any person claiming under the Applicant, from taking possession, transferring, entering into or doing an act in the suit land pending determination of the main suit.

The trial DLHT granted the injunctive orders and ordered temporary freezing of the bank account into which the Respondent paid the money for maintaining *status quo*.

The Applicant, who was the Respondent in Misc. Land Application No. 115 of 2020 and against whom the temporary injunctive orders were issued been aggrieved, opted at making the instant application seeking for orders quashing setting aside the said temporary injunction.

At the hearing, the Applicant was represented by Mr. Dutu Chabwa, learned Advocate and the Respondent enjoyed the service of Mr. Kabula Benjamini, learned Advocate.

The Counsel for the Respondent raised a preliminary objection to the hearing of the application on point of law that the application has been made pre-maturely and that the same contravenes the law which forbids revision on orders of interim nature.

This Court directed hearing on both, the preliminary objection and the application in order to avoid unnecessary wastage of time.

Mr. Kabula for the Respondent started the ball rolling. He argued that the application against an interlocutory order which was given by the DLHT

in Misc. Land Application No. 115 OF 2020 from Land Application No. 49 of 2020, still pending in the DLHT.

He was of the views that the DLHT gave temporary injunctive orders pending determination of the main Application. Being temporary orders, the same are interlocutory in nature not subject to appeal nor revision as the same are forbidden under section 79(2) of the CPC.

MR. Kabula was of a further view that the rights of the parties were not finally determined in Misc. Land Application No. 115 of 2020, but rather preserved pending determination of the main land application which was to determine their rights.

He cited the case of **UDSM vs Silvester Cprian and 210 others** [1998] TLR 175 where the Court of Appeal held that interlocutory proceedings are those which do not determine the rights of parties. He prayed the objection to be sustained and application struck out with costs.

On his side Mr. Chebwa for Applicant submitted conceding that the DLHT gave interim orders. He mentioned the orders as been restraint to the

Applicant from interfering with the suit land. In addition he was ordered to furnish security or costs or deposit an evaluated certificate of Right of Occupancy and in addition his bank account was frozen.

Mr. Chebwa argued that the issue of furnishing security for costs was illegal in that it is issued under order XV of the CPC which concern foreigners. Moreover, the Counsel argued that the main Land Application is a summary suit and the prayer is about ownership of the land in dispute and return of any excess value, then, he submitted that, then the orders had the effect of determining the rights of parties finally. He was of the views that this matter falls out of the scope of limitation under section 79(2) of the CPC. He prayed the objection to be overruled.

In rejoinder, Kabula re-interated his submission in chief and added that the order for freezing the bank account and furnishing of security for costs were requested as separate and *ex-parte* prayer.

After the argument on preliminary objections, the Court invited the parties to address it in respect of the application for revision.

This time it was Mr Chebwa who started the ball rolling by submitting that they are challenging the ruling because it gave some relief orders which were not prayed for in Miscellaneous Land Application No. 115 of 2020 and that such orders have the effect of determining the main suit to the finality.

He started by attacking the last order of furnishing of security for costs. He was of the views that the chairperson wrongly exercised his powers by raising and deciding the same during ruling without affording the parties chances to be heard. He added that the prayer was not only argued by the Respondent during submissions but also was not borne out in the chamber summons. He was of the views that the chairperson was not formerly moved. He cited the case of **Attorney General (AG). Vs W. K Butambala** [1993] TLR 46 at page 52.

The Counsel argued further that the chairperson wrongly invoked the issue of security for costs which is only invoked in either to a non resident person or stay of execution. He contend that the Applicant was condemned unheard. He prayed for revision be granted.

Then the Court put to task Mr. Chebwa to address it on propriety or otherwise of invocation of revision instead of appeal. The Counsel submitted that they chose revision because the complaint is about irregularities on the face of the record. He argued that the orders were given in the application but the same have the effect of determining the rights of parties; hence they may be subject to appeal, review or revision.

On his side Mr. Kabula submitted that there were prayers for depositing of security for costs in the chamber summons *ex parte*. He added that there was a clause of prayer for any other orders, hence the chairperson was correct to grant security for costs.

When tasked by the Court on the issue of which between appeal and revision was appropriate in this matter. Mr. Kabula replied that the orders sought to be revised are not appealable, hence use of revision is the appropriate way.

In rejoinder Mr. Chebwa argued re-iterating his submissions in chief and added that the prayers under the umbrella of "any other order" are not tenable in law.

These were the submissions by the Counsel for both sides. The issue to determination in this matter is whether the application is proper before this Court, the sub issue is whether the impugned orders been interlocutory in nature are capable of been challenged by way of revision.

The term "interlocutory order" is defined under the **Black's Law Dictionary** 8<sup>th</sup> Edition by Bryan A. Garner at page 1130 as follows: -

*"An order that relates to some intermediate matter in the case, any order other than a final order."*

Judicially interpretation of the term interlocutory order in our jurisdiction is found in the case of **Israel Solomon Kivuyo vs Wayani Langoyi and Maishooki Wayani** [1989] TLR 140 where the Court of Appeal of Tanzania defined what amounts to interlocutory order by quoting from JOWITTS' Dictionary of Law 2<sup>nd</sup> Edition at page 999 as follows: -

*"An interlocutory proceeding is incidental to the principle object of the action, namely the judgment. Thus interlocutory applications in an action include all steps taken for the purpose of assisting either party in the prosecution of their cases, whether before or after judgment; or of protecting or*



*otherwise dealing with the subject matter of the action before the rights of the parties are finally determined; or of executing the judgment when obtained. Such are applications for time to take a step eg deliver a pleading, for discovery, for an interim injunction, for appointment of a receiver, for obtaining a garnishee order etc..."*

My visit to the provisions of section 79(2) of the CPC makes it clear that it bars applications for revision in respect of any preliminary or interlocutory decision. It read: -

*"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 orders of the Court unless such decision or order has the effect of finally determining the suit."*

At it can be gleaned from the authorities and provisions of the Law cited above, in this case, the application is made in order for this Court to revise an order of the trial DLHT. That order was issued in order to restrain the Appellant from taking possession, transferring, entering or otherwise doing any act that suggest possession of land. This order was given as a

temporary order pending determination of the controversy between the parties which was pending in the DLHT.

In my understanding the order was intended to preserve the **status quo** of the parties, as far as the piece of land involved.

However, in this matter as explained above, the Respondent had already made payments in respect of the same piece of land. The controversy is on the amount paid relative to the size of the piece of land. This means that handing over of the piece of land has not yet materialized. It means further that both the piece of land is still in the hands of the Applicant and the money paid are also in the bank account of the Applicant. If no interim order is issued, the Applicant has with it all.

Seen such an undesirable situation as far as justice is concerned, the DLHT issued an interim order also requiring the Applicant to furnish security for costs or deposit a certificate of Right of Occupancy with value half of the claimed money in order to release the Applicant's account which was frozen *ex parte*.

In my opinion, this second order is also a temporary one, that if the Applicant furnishes the security, his bank account which is frozen for the same purpose, will be released. All is about security of the money paid by the Respondent for the piece of land in controversy; and both are intended to preserve the parties *status quo* pending determination of the main suit.

The Counsel for the Applicant contend that the orders are subject to revision because they have the effect of finally determining the rights of parties in this matter. I don't agree with him. I say so because if examined the circumstances of this application in two situations one can see that the orders do not have the effect of finally determining the suit, the reasons are as follows:-

First, if the orders were not given, in the circumstances of this matter it means both the piece of land and the money would be in the hands of the Applicant. Second, if both orders are given, means that the piece of land and the money is neither in any ones hands.

It can be seen that the former situation, is favourable to the Applicant and prejudicial to the Respondent; but in the latter situation no one loses

because both parties are at par, each ones right will be known after determination of the controversy in the main suit.

Due to these reasons, I find that the orders have no effect of determining of rights of the parties to finality.

Now be as it may, as explained above, the orders complained of are temporary and the application intends this Court to revise the same. However, as explained also above, section 79(2) of the CPC forbids applications for revision in respect of interlocutory orders; save where the same have the effect of finally determining the matter. I have already said the impugned orders do not have the effect of finally determining the controversy.

Therefore, I hold that the main issue that, whether this application is proper before this Court is answered in negative; thus this Court has no jurisdiction to entertain the same. The application at hand is legally incompetent, the preliminary objection is hereby sustained.

Having found that the preliminary objection has merit and the same disposes of the application, I don't see need of discussing the same to its merits.

Consequently, I do hereby strike out the application for been incompetent and improperly before this Court. Costs will be borne out by the Applicant. Order accordingly.



  
**F. K. MANYANDA**  
**JUDGE**  
**30/09/2021**