

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

LAND REVISION NO. 10 OF 2020

*(Arising from the Judgment of the District Land and Housing Tribunal of
Mwanza at Mwanza Application No. 320 of 2015)*

1. JANE DISMAS NDOSI

2. EDWARD PAUL

3. MATHIAS JAMES

4. ERASTO SHILINDE

5. LENARD PETRO

6. IDD ALLY

.....**APPLICANTS**

VERSUS

1. RAJABU HAMIS

2. BAHATI PETRO

3. JAMES LUGOBA

4. LAURA CHRISTOPHER

5. MWADAWA PETRO

6. RODA SABUNI

7. HAMISA CHUBWA

8. GADSON SYLVERY

9. SWEDDY RAMADHAN

10. EDWINE ERNEST

.....**RESPONDENTS**

JUDGMENT

Last Order: 30/08/2021

Ruling Date: 25/10/2021

M. MNYUKWA, J.



By way of chamber application, this Revision is brought under section 43(1)(b) of the Land Dispute Courts Act Cap 216 RE: 2019. The applicants in this application are JANE DISMAS NDOSI, EDWARD PAUL, MATHIAS JAMES, ERASTO SHILINDE, LEONARD PETRO, and IDD ALLY who were not parties of the *Judgment of the District Land and Housing Tribunal of Mwanza at Mwanza Application No. 320 of 2015* against the respondents RAJABU HAMISI, BAHATI PETRO, JAMES LUGORA, LAURA CHRISTOPHER, MWADAWA PETRO, RODA SABUNI, HAMISA CHUBWA, GODSON SYLVERY, SWEDY RAMADHANI and EDWINE ERNEST. The applicants are moving this court to revise the decision of the DLHT delivered on 14th August 2020.

The background of the Revision is briefly as follows: the first respondent filed an application before the District Land and Housing Tribunal (DLHT) for Mwanza Land Case No.320 of 2015 against the 2nd to 9th respondent vide Land Application No. 320 of 2015 for a piece of land located at Masemele area Buhongwa ward in Mwanza City which was decided in favor of the 1st Respondent. Sometimes later after the DLHT delivers its judgment, the applicants in this application become aware that there is in the existence of the judgment in favor of the 1st respondent on the disputed land that they have interest and when the matter was



determined they were not joined to have their interests defended. It is from this point that they have filed this application for revision being the only remedy available to them for they were not parties to the former application.

The applicants move this court by filing the Chamber Summons and they have advanced three reasons for this court to consider in the exercise of its revisional powers. For easy of reference, I reproduce those reasons as presented in their chamber summons:

- a. There is an error material to the merit of the case involving injustice to the applicants and the proceedings of the lower tribunal are irregular for failure to join the applicants as necessary parties.
- b. That the honorable court be pleased to quash the proceedings of the lower tribunal for being a nullity for a denial applicants rights to be heard in the matter which they had an interest.
- c. That the judgment and the decree of the lower tribunal are illegal for it deprives the applicants of their houses and premises built on land in dispute for which they are lawful owners.

The chamber summons is supported by the sworn affidavit of Njelwa, J. P learned counsel who represented the applicants, and on the other hand, Mr. Julius Mushobozi learned advocate who represented the

1st respondent filed a reply to the affidavit while the 2nd , 3rd and 5th respondents filed their joint reply to the affidavit in which they have supported the application. The other respondents though served with the summons, could not appear. The matter before me was conducted by way of written submissions where its only the applicants and the first respondent equally complied by the court order dated 23. 07.2021. The other respondents did not comply with the order of the court to file their submissions, therefore the case proceed exparte against them.

In his submission, the learned advocate of the applicants, Mr. Njelwa prays this court to adopt his affidavit and sale agreements of the applicants attached thereto to form part of his submissions. He submitted that the DLHT for Mwanza on 14 August 2020 delivered a judgment that had a material irregularity affecting the applicants.

He went on that, on examining the sale agreement of the applicants attached in the affidavit, it is evident that the applicants purchased or occupied the suited land long before the institution of the Application No. 320 of 2015, for the matter of law they were supposed to be included in the case instituted and be afforded a right to be heard.

He buttress his position by citing the case of **Mohamed Said Seif vs Abdul Aziz Hegeb and Noor Mohamed Abdullah Osman** Civil



Application No. 10 of 2010 CAT at page 14, that it was well settled that the applicant is entitled to have a right of hearing in respect of the interest of the rescission or otherwise the sale agreement before any order which affects his interests can be made against him.

He, therefore, relates to the decision of the DLHT that the applicants were not included despite being occupiers of the land in dispute and the decision rendered was nullity for it denies them a natural justice that no one should be condemned unheard.

He prays this court, therefore, for the reasons stated above to revise and consequently nullify the decision and orders of the Land Application No. 320 of 2015 for failure to adhere to the principles of natural justice, and should this court deem necessary advise the 1st respondent to institute the case by joining the applicants so that can be heard subject to the Law of Limitation.

Responding to the applicants submissions, Mr. Julius Mushobozi the learned counsel for the 1st respondent objected to this application and to the extent that there is no tangible material for this court to allow the application.



Referring to annexure A, the 1st sale agreement by Jane Dismas Ndosu, he avers the same does not show the allocation of the farm. He went on that his reference to BHG street was so general that there was a need for specification over the boundaries for the same to move this court that the applicant has an interest in the matter.

Further on the 2nd sale agreement on Annexure A, he claims that the sale agreement did not refer to the name of one Edward Paul, a part to this revision rather to Edward Dieto and no other particulars. He insisted that this raised doubts. On the 3rd Sale agreement on Annexure A, of one Erasto Shilinde he avers that there are discrepancies as to the measurement of the farm and contradictions as to the buyer and the seller.

He went further that, annexure A and B did not establish ownership of the applicants or else that the purported plots to be in plot No. 750 block E Buhongwa, as in exhibit C and their counter-affidavit which the same he prays to form part of his submissions.

He submitted further that, these discrepancies could be sorted out from the affidavit of the applicants themselves. Arguing as to the affidavit deposed on behalf of the applicants, the learned counsel, Mr. Mushobozi insisted that the facts in the affidavit are being couched with hearsay and



indirect evidence and in absence of the written and sworn affidavit of the applicants who alleged to have passed information to Mr. Njelwa, becomes odorous. To maintain his position he cited the case of this court by his lordship Mlyambina, J. in **Jackline Ntuyabalwe Mengi & 3 Others vs Benson Mengi & 5 others** Misc. Civil Application No 486/2019 and **M/S Consortium of Les Genes (PTY) & Oberol (PTY) LTD vs Medical Store Department and Another** Misc. Civil Application No. 53 of 2019 HC.

He finally insisted that this application for revision lacks merit and prays this court to dismiss it with costs.

In rejoining, counsel for the applicants maintains his submissions in chief and added that, the respondent submissions have no legal substance as against the application at hand for is challenging the validity of the documents attached and the validity of the sworn affidavit of the applicants.

He maintains that the DLHT judgment in Application No. 320 of 2015, the applicants in this application were not parties though they have interest in the subject matter and their remedy to have their interest determined is through this application. He went on that the allegation by the respondent in his submission that the documents do not support their



interests, is pre-maturely raised for the same will be determined when this application is allowed.

Responding to the validity of the applicants affidavit sworn by the learned counsel, he insisted that the cited cases are of this court and therefore persuasive and the circumstances of the cases are different from this application at hand and the affidavit is with no defects. Maintaining his point he cited the case of **Convergence Wireless Network(Mauritius) Limited & 3 Others vs Wia Group Limited & 2 Others** Civil Application No. 263 "B" of 2015. That the allegation of hearsay can not be maintained for the source of information is well disclosed and the same affidavit was duly deponed by the applicants' learned counsel. On the premises, he retires prays this court to allow the application.

In view of the submissions from either side above, there is only one issue that calls for deliberation and determination by this Court, whether the application by the applicants for revision of the decision of the DLHT for Mwanza in Application No. 320 of 2015 is founded.

The law is settled that this court under section 43(1)(b) of the Land Disputes Courts Act, Cap 216 RE: 2019, is conferred with powers to



determine the application for revision as sought by the applicants. The said provision provides that:

"Section 43(1) In addition to any powers in that behalf conferred upon the High Court, the High Court

(b) may in any proceedings determined by the District Land and Housing Tribunal in the exercise of its original, appellate, or revisional jurisdiction on application being made in that behalf by any party or of its won motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order as it may think fit."

Before I determine the grounds of revision as advanced by the applicants, I would like to address the issue raised by the advocate of the first respondent that the applicants' counsel was not the party to the trial proceedings thus he is not conversant with the facts of the trial tribunal records as well as no applicants oath has been made to establish that they told the applicants' deponent thus no sufficient evidence to support the craved orders.

After considering the rival submissions of both parties in this issue, I am of the settled mind that this matter should not detain me much. As it was rightly submitted by the applicants' counsel, the said affidavit is not defective because the verification clause reveals the same was deponed

by the counsel of the applicants and the same mentions some paragraphs of which it's contents have been verified on the counsel personal knowledge, and those which have been stated based on the information he received from the applicants.

When visited the said Affidavit accompanying the Chamber Application, in the verification clause the deponent disclose how he became aware of the facts of the disputed land. Therefore, the Affidavit of the counsel for the applicants' is not defective. I am holding so based on the decision of the Court of Appeal of Tanzania in the case of **Salima Vuai Fom vs Registrar of Cooperatives Societies & 3 others**. 1995 TLR 75 where the court said that

"where an an affidavit is made on information, it should not be acted upon by any court unless the sources of information are specified..."

Coming back to the present Revision, to begin with, first, I am sufficiently satisfied from the available record in the case file that, the applicants were not parties to the decision which they seek to be revised. That being the case, there was no right of appeal to them to challenge such a decision. And, therefore, the intention to contest the propriety and legality of the proceedings in the tribunal decision, the only remedy



available to them to move this Court is by way of an application for revision.

I thereafter, proceed to determine whether the applicants have managed to move this court to grant the application. In his sworn affidavit particularly para 2, 3, and 5 the learned counsel of the applicants managed to annex documents which shows that the applicants claim interest over the disputed land which was subject to determination in Application No 320 of 2015, and much as they portrayed, the judgment entered interferes with the interest they claim to have. The same was opposed by the counsel for the 1st respondent disputing both the validity of the applicants affidavit and as to the annexures attached to the affidavit.

Before I proceed, I have to bring to the attention of both parties that, I am not called upon to determine the rights of parties in the disputed land rather the application before me, is for revision, and I am called to determine if the applicants have been able to show that they claim an interest in the disputed land which was the subject matter in Application No. 320 of 2015 before Mwanza DLHT which was determined without them being afforded the right to defend their interest they claim to have over the same.



In doing so, I went through the pleadings of both parties to include the impugned judgment and I am in accord with the applicants' learned counsel that the applicants in this application claim interest in the subject matter which was determined against their claimed interest in application No. 320 of 2015 before DLHT. For that reason, applicants possess no right of appeal against the decision as they were not parties to the trial proceedings, and therefore, their available remedy was to file this application.

In the case of **Amani Mashaka (applying as the Administrator of the estate of Mwamvita Ahmed deceased vs Mazoea Amani Mashaka & 2 others**, Civil Application No 124 of 2015, the Court of Appeal of Tanzania when determining the issue of the *locus stand* to an applicant who was not a party to the trial proceedings held that:

"... Moreover, since the respondent is contending that the applicant was not a party in the suit which is the subject of this application, he has no right of appeal, so he can seek revision as a third party to challenge Land Case No 198 of 2010. In the premises, the applicant has locus stand in this application and the preliminary objection is without merit and it is hereby dismissed."

Equally, in the case of **Mgeni Seif vs Mohamed Yahaya Khalifani**, Civil Application No 104 of 2008 (Unreported) as cited in the



case of **Amani Mashaka (applying as the Administrator of the estate of Mwamvita Ahmed deceased)** (supra), the court held:-

"... because she was not a party to the said suit, but is contesting ownership of the house in dispute, not having a right of appeal, the only venue for the applicant would be revision."

I also agree with the cited case of **Southern Esso vs People Bank of Zanzibar and Another** [2001] TLR 43 that, in absence of a right of appeal in this court, it is proper for the party to file an application for revision. (see also **Mohamed Said Seif vs Abdul Aziz Hageb & Another** Civil Application No. 10 of 2010 and **Jacquiline Ntuyabaliwe Mengi & 2 others vs Abdiel Reginald Mengi & 5others**, Civil Application No 332/01 of 2021).

As to whether applicants managed to show that they claim interest and therefore vital for them to be heard, I went through the applicants' affidavit and I find that they managed to establish that they claim interest and if the matter will be left unrevised they will be affected. The applicants managed to annex documents that they will rely on to prove their claim in the due cause if this application will be allowed.



If that so, a party who claims an interest in a matter that needs to be decided upon, must be afforded with a right to be heard failure to which is the deprivation of the rights of the party. In the case of **Tan Gas Distributor Ltd v Mohamed Salim Said**, Civil Application for Revision No. 68 of 2011, the Court of Appeal held that:-

"No decision must be made by any court of justice/ body or authority entrusted with the power to determine rights and duties so as to adversely affect the interests of any person without first giving him a hearing according to the principles of natural justice."

The consequences of a breach of this principle is to the effect that, its breach or violation, unless expressly or impliedly authorized by law, renders the proceedings and decisions and/or orders made therein a nullity even if the same decision would have been reached had the party been heard. The above position was stated in the case of **Abbas Sherally and Another v Abdul S/H.M Fazalboy**, Civil Application No.33 of 2002 (unreported).

Therefore, I am in accord with the learned counsel for the applicants that, failure to accords the applicants an opportunity to be heard was a breach of natural justice and a violation of the fundamental right to be



heard as it is provided for under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 which provides that:-

"13(6) (a) wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi wa mahakama au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu, na pia haki ya kukata rufaa au kupata nafuu nyingine ya kisheria kutokana na maamuzi ya mahakama au chombo hicho kinginecho kinachohusika;

In line with aforesaid above, I find merit in the application by the applicant that, and therefore I allow it. The decision of the DLHT of Mwanza at Mwanza which was entered against and in absence of the applicants, was illegal and cannot be left to stand. Invoking the powers vested on me by the provision of section 43(1)(b), I nullify the proceedings and judgment of the DLHT of Mwanza at Mwanza in Application No. 320 of 2015. The applicants are entitled to have a right of hearing in respect of the disputed land before any order which affects their interests can be made against them.

Costs to follow events. It is so ordered.


M.MNYUKWA
JUDGE
25/10/2021

Right of appeal explained to the parties.


M.MNYUKWA
JUDGE
25/10/2021

Judgement delivered on 25th day of October, 2021 via audio conference whereby applicants and 1st respondent were remotely present.




M.MNYUKWA
JUDGE
25/10/2021