

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
LAND DIVISION
AT MOSHI**

LAND CASE REVISION NO. 4 OF 2021

(C/F Application for Execution No.143 of 2021 of the District Land and Housing Tribunal for Moshi at Moshi; Originating from Application No. 08 of 2005 of the District Land and Housing Tribunal for Moshi at Moshi)

RAYMOND P. SWAY APPLICANT

VERSUS

OBERLIN MUNUO..... 1st RESPONDENT

NDEONANSIA PAULO SWAY as Administrator of the Estate of the
Late SAYANDE PAULO.....**2nd RESPONDENT**

**INDEPENDENT AGENCIES & COURT BROKER
LIMITED.....3rd RESPONDENT**

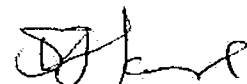
RULING

27/4/2022 & 23/06/2022

SIMFUKWE, J.

The Applicant Raymond P. Sway filed this application under **section 41 of the Land Disputes Courts Act, No. 2 of 2002 Cap 216 R.E 2019** and **section 79 (1) (c) of the Civil Procedure Code, Cap 33 R.E 2019** and other enabling provision of the law seeking the following orders:

- a) That, this honourable court be pleased to call for and examine the Records of the District Land and Housing Tribunal for Moshi at Moshi Execution No. 143 of 2021 between the parties herein so as to*



certify itself as to the correctness, legality and propriety of the decision made therein.

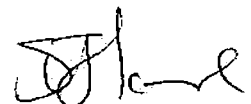
b) Costs of this application be provided for.

The application was made by way of chamber summons supported by reasons and grounds advanced in the affidavit sworn by the applicant.

The matter was ordered to be argued by way of written submissions. The applicant was represented by Mr. Peter Njau learned counsel while the respondents enjoyed the service of Mr. Emmanuel Pascal Karia learned counsel.

Both parties complied to the schedule of filing written submissions.

In his written submission, Mr. Peter Njau learned counsel for the applicant prayed to adopt the filed chamber summons supported by the applicant's affidavit to form part of his submission. He stated among other things the historical background of the matter to the effect that in 2004 the applicant's mother one Saayande Paulo Swai now deceased successfully sued the 1st respondent herein before Masama Kusini Ward Tribunal in Application No. 22 of 2004. In the said application the applicant's mother complained against the 1st respondent that he had trespassed into her one and a half acre of land and erected a house therein on allegation that the same was sold to him by the applicant's brother one Samwel Paulo Swai. The Ward Tribunal ruled in favour of the applicant's mother. After being aggrieved by the said decision of the ward tribunal the 1st respondent instead of filing an appeal before the District Land and Housing Tribunal for Moshi, he opted to file a fresh suit, thus, Application No. 98 of 2005 before the District Land and Housing Tribunal for Moshi



which was heard ex parte against the applicant herein and his mother who was a co-respondent therein.

It was stated further by Mr. Peter Njau that, on different occasions the applicant herein and his mother before her demise made several attempts to set aside the said ex parte decision of the District Tribunal as well as attempts to nullify the said decision for being res judicata but their efforts proved futile. After the demise of the applicant's mother, then the 2nd respondent herein Ndeonansia Paulo Swai was appointed as administrator of the deceased. Then, the 1st respondent successfully filed Execution No. 143 of 2021.

In support of the instant application, Mr. Peter Njau submitted that the applicant herein through his affidavit observed several anomalies including wrong citation of Application No. 08 of 2005 instead of Application No. 98 of 2005. That, it is well established principle that the Execution order must bear the correct names of the parties as well as case number which appears in the judgment and a decree. That, failure to do so, nullify the whole proceedings. The learned counsel opined that, looking at the annexed decisions of the Tribunal, one may simply observe that the said anomaly exist. He prayed that Execution No. 143 of 2021 be declared null for such irregularity which renders that decision incompetent and the appointment of the 3rd respondent be nullified as well.

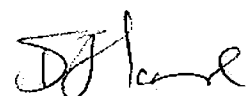
Mr. Njau submitted further that the applicant's Revision emanates from the fact that the District Land and Housing Tribunal for Moshi granted an execution order in respect of the matter which was res judicata. That, the applicant herein in his supporting affidavit annexed the ruling of Masama Kusini Ward Tribunal in Application No. 22 of 2004 between the applicant's



mother and the 1st respondent herein in which the decision was entered in favour of the applicant's mother regarding the same land. That, the issue whether the matter was res judicata is a point of law which can be raised at any stage including the appellate stage because the same is barred by law under **section 9 of the Civil Procedure Code, Cap 33 R.E 2019.**

It was argued further for the applicant that the act of the 1st respondent to institute the same cause of action which had already been determined by Masama Kusini Ward Tribunal was not only contrary to the law (**section 9 of the CPC**), but also was contrary to the pecuniary jurisdiction of the District Land and Housing Tribunal because according to the exhibit tendered by the 1st respondent herein way back in Application No. 98 of 2005 it was the sale agreement dated 3/9/1983 which shows that he bought the land in dispute for 13,500/ Tshs and no valuation report was tendered to prove the market value of the land during the hearing of the matter.

Mr. Njau went on to submit that the Tribunal ordered execution over the matter which was time barred as per the Law of Limitation Act. That, time line for filing cause of action over land is twelve years (12) but the respondent filed Application No. 98 of 2005 twenty-two years from the time which he alleged to have bought the land in dispute, that is 1983 according to his own contract tendered at the Tribunal. The learned counsel for the applicant prayed that he be availed with an opportunity to address the mentioned illegalities by way of fair trial upon which he will be allowed to present his evidence too. That the same can only be done by granting this application and reverse the entire District Land and



Housing tribunal's records for being tainted with those illegalities and order trial de novo before another Chairperson.

Mr. Njau cemented his arguments by citing the case of **Arunaben Chaggan Mistry versus Naushad Mohamed Hussein & 3 others, Civil Application No. 6 of 2016**, CAT, Arusha (reported via Tanzlii Judicial Website) at page 10, last paragraph Hon. Mjasiri J.A held that:

"The legal position is settled. When there is an allegation of illegality it is important to give an opportunity to the party making such allegation to have the issue considered."

(Emphasis supplied)

On that basis, the learned counsel prayed that since Execution No. 143 of 2021 is tainted with illegalities of res judicata and time barred, the same should be reversed in its entirety.

Mr. Njau pointed out another illegality that looking at Application No. 98 of 2005, the same names were used by the Tribunal during the hearing of Execution No. 143 of 2021 regardless of the fact that the 2nd respondent therein Sayande Paulo Swai had already demised and there was an Administrator of her estate (2nd respondent herein) who appeared in the Tribunal's records but the Tribunal Chairperson did not substitute his name with that of the deceased. Mr. Njau was of the view that the same was a serious anomaly which appears on the face of the records of the trial tribunal which requires immediate attention of this Honourable Court.

It was averred by Mr. Njau that the applicant herein, although not an administrator of his mother's Estate, but as the son who fight for his mother's pride and that of his family needs to be given an opportunity to be heard as the matter itself from the outset has a lot of controversies


which needs to be determined considering the fact that Application No. 98 of 2005 was heard ex parte against him. That, in Application No. 98 of 2005 there is nowhere where the 1st respondent proved to buy the land in dispute from the applicant's brother one Samwel Paulo Swai as he alleged before the trial tribunal. Reference was made to the case of **Jimmy David Ngonyani vs National Insurance Cooperation [1994] TLR 28**, at page 31, where Hon. Bahati J. (as he then was) held that:

"...parties in the controversy should be given a fair opportunity to correct or contradict any relevant statement in any information obtained.....I therefore quash the board's decision of dismissing the Applicant."

It was contended further for the applicant that the applicant herein is just a poor old peasant with children who depend on the disputed land (having bequeathed the same by their late mother Sayande) for shelter, food and other basic needs. That, on that reason, if the applicant will not be accorded an opportunity to be heard on merit he will suffer irreparably. In support of that allegation, Mr. Njau cited the case of **Attorney General vs Maallm Kadau and 16 Others [1997] TLR 69**, at page 76 where **Hon. Lubuva J.A** (as he then was) held that:

"Natural Justice requires that even a poor peasant at least be consulted before a decision affecting his life is made. In Court he deserves at least to be heard."

It was concluded that from the above elaborations enlightened with authorities, it is quite clear that the Execution order delivered by **Hon. Makwandi P. J** has no merit in the eyes of law as it was issued pending



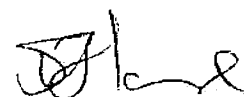
the re-filing of Revision No. 06 of 2017 before this Honourable Court. Moreover, the said Execution order was issued in the presence of several anomalies behind its back to which this Court of Record has duty to correct the same. Mr. Njau prayed this court to nullify the entire lower court records and order trial de novo inter-parte before another trial Chairperson for justice to be seen to have been done.

In response, Mr. Emmanuel Pascal Karia prayed to adopt their counter affidavit filed on 23rd February, 2022 and form part of his reply to the applicant's submission. He submitted inter alia that the 1st respondent herein filed Land Application No. 98/2005 against the applicant and his mother one Sayande Paulo (2nd respondent) which its judgment was delivered on 28th January 2007 in favour of the 1st respondent herein. That, in Land Application No. 98/2005 the respondents (now the applicant) attended the case but before the applicant closed his case, they abandoned appearing and they assigned no reasons to their failure, thus the matter then proceeded exparte.

It was alleged further that on 21st July 2007 (sic) the applicant's mother (the 2nd respondent in Application No. 98/2005) filed **Shauri la Madai Na. 22 of 2007** before Masama Kusini Ward Tribunal on the same subject matter which had been dealt with the District Land and Housing Tribunal vide Application No. 98/2005 whereas, the 1st respondent herein notified the Ward Tribunal that the matter had been dealt with in the District Land and Housing Tribunal but on reasons known to the tribunal the matter was heard and finally judgment was delivered on 21st June 2007. That, the applicant herein and his mother (now deceased) have unsuccessfully attempted several times to challenge Land Application No. 98/2005 vide High Court Revision No. 1/2011; Revision Application No.

4/2013, Land Case Revision No. 8/2014 and Land Case Revision No. 06/2017 which on 28th October 2019 was struck out with leave to re-file. However, the applicant never complied to the said order. From 28/10/2019, the 1st respondent waited for the applicant to comply with the court order until 12th December 2019 when he filed Application for Execution vide Application No. 356/2019 before the District Land and Housing Tribunal in which the applicant herein raised objections inter alia that he had no case with the 1st respondent. That, the 1st respondent had to sue an Administrator of the Estate of Sayande Paulo Swai who is deceased, whereas, on 12/02/2020 the tribunal struck out the application for execution with leave to re-file by suing the administrator of estate of Sayande Paulo Swai. Thereafter, the 1st respondent complied with the said order and on 26th February 2021 he filed Application for Execution vide Misc. Application No. 143/2021 in which the applicant objected the application by referring judgment of **Shauri la Madai Na. 22/2007** of Masama Kusini ward Tribunal. The District Tribunal overruled the said objection on the reason that judgment of **Shauri la Madai na. 22/2007** could not nullify the judgment of Application no. 98/2005, thus granted the application for execution. Hence, the instant application for Revision.

Submitting on the issue that in Execution No. 143 of 2021 wrongly cited the same as originating from Application No. 08 of 2005 instead of Application No. 98 of 2005; Mr. Karia argued that there was a typing error on the number of the case at the heading of the ruling. He said that at page 1, first paragraph, second line of the ruling, it is clearly stated as follows:



"Kwenye uamuzi huu, Mwombaji Oberlin Munuo anaomba kutekeleza Hukumu iliyotolewa na Baraza hill (Maombi Na. 98 la 2005)"

That, the above quoted sentence clearly indicates where Execution No. 143/2021 originated from. Thus, it is proof of typing error on the heading only specifically on the number of the case of which the ruling originated from. Mr. Karia was of the view that the above stated error of a number of a case does not occasion any injustice, thus cannot be used as ground for revision. He supported his argument with the overriding objective and referred to the case of **Deo Peter versus Zuberi Marick, Misc. Land Appeal No. 46/2020**, High Court, Sumbawanga District Registry (unreported) while quoting the case of **Yusuf Masalu @ Jiduvi & 3 Others versus Republic, Criminal Appeal No. 163/2017**, CAT (unreported), it was held that *in any way typing error has never been a ground for reversal of a decision of a court*. That, as long as the typing error occasioned in Misc. Application No. 143 ruling has not resulted any miscarriage of justice, Mr. Karia prayed the court to disregard the same considering that there must be an end to litigation. That, the applicant has been using this honourable court several times to disguise the efforts of the 1st respondent to enjoy the fruits of his decree awarded by the District Land and Housing Tribunal on 28/01/2007.

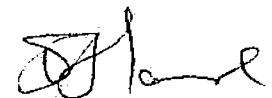
On the issue *whether the District Land and Housing Tribunal erred in law and fact for entertaining the matter which was res judicata*; Mr. Karia strongly disputed the allegation that the tribunal granted an execution order in respect of the matter which was res judicata on the reason that the decision of Land Application no. 98/2005 of Moshi District land and Housing Tribunal was delivered on 28/01/2007 while **Shauri la Madai**



Na. 22 of 2007 of Masama Ward Tribunal was filed after the District Land and Housing Tribunal had delivered its decision. The learned counsel discouraged the forgery which was alleged to have been done by the applicant by altering the said **Shauri la Madai na. 22/2007** so as to read **Shauri la Madai Na. 22/2004**. That, the said forgery aimed to make the court believe that the tribunal granted the execution order in respect of the matter which was re judicata while it was not true. Mr. Karia urged this court to go through the original copy of Shauri Na. 22/2007 of Masama Ward tribunal which is in the court records and order investigation of forgery of court documents to be conducted so that the one who committed the same be charged effectively. That, the applicant having unsuccessfully challenged Land Application No. 98/2005 he is now misleading this court by using forged court documents. He prayed this ground to be dismissed for lack of legs to stand.

Mr. Karia also raised another challenge that the applicant seems to contradict himself on which decision he intends the court to call for and examine. That, in his chamber summons he prayed this court to call for and examine the records of Execution No. 143 of 2021 of the District Land and Housing Tribunal but in his submission, he is challenging Land Application No. 98/2005 which as submitted above the applicant has unsuccessfully attempted several times to challenge and he is time barred.

Concerning the cited case of **Arunaben Chaggan** (supra), it was submitted for the respondents that the applicant has failed to establish any illegality associated with the records which moves the court to examine the same as there is neither res judicata nor limitation of time as submitted.



On the issue whether the proceedings of Execution No. 143 of 2021 proceeded against the 2nd respondent who was already deceased without substituting the name of the Administrator of the estate, Mr. Karia submitted that the existence of typing error on the heading of Execution No. 143/2021 instead of writing the name of the Administrator of the estate of the 2nd respondent, the tribunal wrote the names as they appear in Land Application No. 98/2005. The records are very clear that the applicant filed properly the application for Execution by suing the administrator of the estate as the 2nd judgment debtor. The pleadings were filed in the District Land and Housing Tribunal on 24th February 2021. Then, the administrator was served with summons to show cause why Execution No. 143/2021 should not be granted and upon appearance before the tribunal, the 2nd judgment debtor had no objection to the application. Mr. Karia reiterated what he submitted earlier that typing error has never been a ground for revision and prayed the same to be dismissed.

Regarding the cited case of **Jimmy David Ngonyani** (supra), Mr. Karia said that the same is inapplicable to the application at hand on the reason that Application No. 98/2005 have been challenged several times unsuccessfully. That, the last Revision was struck out with leave to refile but the applicant never complied with the said order dated 28/10/2019, instead he opted to challenge Execution No. 143 of 2021. Thus, using the application at hand to challenge Application No. 98.2005 is abuse of court process as the court is not moved properly to call and examine records pertaining to Land Application No. 98/2005, rather the court is moved to call and examine records of Execution No.143/2021.




It was concluded for the respondent that Execution No. 143/2021 was properly procured and that this court is notified that it has been a tendency of the applicant to institute several suits for the purpose of delaying the 1st respondent whenever he tries to execute Land Application No. 98/2005. That, this application resulted after the applicant had been served with 14 days' notice by the 3rd respondent herein. The learned counsel for the respondent insisted that if at all the applicant was serious, he would have filed Revision which was struck out with leave to refile. He prayed this application to be dismissed with costs and uphold the decision of Execution No. 143/2021.

Having considered submissions of both parties, I have examined the affidavit of the applicant supporting this application, the counter affidavit of the learned counsel for the respondents and the records of the trial tribunal.

The grounds of the instant Revision are stated at paragraph 3 (a) and (b) of the supporting affidavit where the applicant pointed out two alleged illegalities as follows:

- a) That, the decision of the Execution No. 143 of 2021 was wrongly cited as originated from the Application No. 08 of 2005 instead of the Application No. 98 of 2005. (sic)*
- b) That, before institute (sic) the said Application No. 98 of 2005 the Respondent herein was also the Applicant in the Application No. 22 of 2004 before the Masama Kusini Ward tribunal of which the decision was in favour of the Applicant herein hence the District Land and Housing Tribunal erred in law and in fact for entertain the Matter which was Res judicata. (sic)*



The learned counsels of both parties submitted thoroughly on the two raised illegalities.

Starting with the first alleged illegality which concern wrong citation of the original matter which gave rise to Execution No. 143 of 2021, thus Application No. 08 of 2005 instead of Application No. 98 of 2005; Mr. Karia for the respondents conceded to the wrong citation. However, he submitted that the same was a typing error and opined that the same cannot be a ground of Revision. I totally agree with the learned counsel for the respondents that typographical errors cannot be a ground of Revision. The same can be rectified by the same court through review or by the court / tribunal *suo motto*. Grounds of Revision are prescribed under **section 79 (1) (a) (b) and (c) of the Civil Procedure Code** (supra) which provides that:

"79 (1) 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."

Emphasis added

From the above provision of the law, it is obvious that a typing error is neither an illegality nor a material irregularity to warrant this court to revise the decision of the District Tribunal as prayed. I therefore dismiss the first ground of revision for lack of legal basis.



On the second ground of revision that the District Land and Housing Tribunal erred to entertain the matter which was res judicata. That, prior to Application No. 98 of 2005, the applicant had filed Application No. 22 of 2004 before Masama Kusini Ward Tribunal which was decided in favour of the applicant herein. The learned counsel for the respondents contended that the applicant in his affidavit has attached a forged copy of **Shauri la Madai Na. 22/2007** so as to read **Shauri la Madai Na. 22/2004** to make the court believe that the tribunal granted the execution order in respect of the matter which was res judicata.

I have perused the records of the trial tribunal in order to satisfy myself in respect of the correct number of the alleged **Shauri la Madai** of Masama Kusini Ward Tribunal. With due respect to the applicant and his learned counsel, all copies of the alleged **Shauri la Madai** clearly show that the year on the case number has been changed from 2007 to read 2004. It is a common law principle that when you go to equity you must go with clean hands. Having failed to appear in Land Application No. 98/2005 which was decided in favour of the 1st respondent, it seems the applicant and the deceased Sayande P. Swai filed **Shauri la Madai Na. 22/2007** before Masama Kusini Ward Tribunal in respect of the same suit land which was the subject matter in Land Application No. 98/2005. Thus, it is **Shauri la Madai Na. 22/2007** which was res judicata and not otherwise. Unfortunately, the original records of Masama Kusini Ward Tribunal were not attached to the records of the District Tribunal.

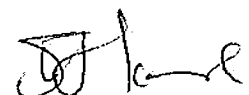
Apart from the above findings, I also concur with the learned counsel for the respondents that after Land Revision No. 06/2017 had been struck out with leave to refile, the applicant should have refiled the same as ordered. In this application the applicant has not disclosed that he had

previously filed Land Case Revision No. 06 of 2017 which was struck out on 28/10/2019 with leave to refile. From 2019, the applicant filed the instant application on 02/11/2021 which is hopelessly out of time. Filing endless unfounded applications and failure to comply to court orders amounts to abuse of court process and forum shopping which cannot be entertained to ensure that litigations come to an end. On this, I am persuaded with the decision in the case of **SH. RANBIR SINGH AND ANOTHER VS. SH. NARESH KUMAR AND OTHERS (2019)**; High Court of Himachal Pradesh, (India), in which Tarlok Singh Chauhan J. stated that: -

*"The Supreme Court Practice 1995, published by Sweet and Maxwell, in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus: This term connotes that the process of the court must be used bona fide and properly and must not be abused. **The Court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation ...**" (Emphasis mine).*

Also, in Nigeria in the case of **SARAKI VS. KOTOYE (1992) 9 NWLR (part 264) 156 at 188** the Court when dealing with the issue of abuse of court process held among other things that:

*"This will arise in instituting a **multiplicity of action on the same subject matter against the same opponent on the same issue.**" (Emphasis mine).*



In the circumstances, I find this application for revision to be unfounded, frivolous and vexatious. I therefore dismiss it forthwith with costs.

It is so ordered.

Dated and delivered at Moshi this 23rd day of June 2022



S. H. SIMFUKWE

JUDGE

23/6/2022