

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

LAND REVISION NO 4 OF 2021

(C/f Misc. Land Application No 236 of 2020 District Land and Housing Tribunal for
Arusha)

FAUSTINE DAVID SHAURI T/A FASHA COMMUNICATION

AGENCY..... APPLICANT

VERSUS

BANK OF AFRICA TANZANIA LIMITED [BOA]..... 1ST RESPONDENT

MEM AUCTIONEERS AND GENERAL BROKERS LTD.....2ND RESPONDENT

AMANI LYIMO.....3RD RESPONDENT

DEOGRATIUS WILLIAM MINJA.....4TH RESPONDENT

RULING

21/06/2022 & 26/07/2021

N.R. MWASEBA J.

The applicant herein has brought this application under certificate of urgency seeking for this court to revise the decision of the District Land and Housing Tribunal for Arusha in Land Application No. 236 of 2020. The application has been made under Section 79 (1) (a) (b) of the Civil Procedure Code, Cap 33 R.E 2019 and is supported by an affidavit of the applicant himself. The same was strongly opposed by the respondents who filed counter affidavit sworn by John Mushi learned counsel who represented the 1st, 2nd and 4th respondent at the trial Tribunal.



The background of the matter is to the effect that on 6th day of September, 2019 the applicant secured a loan from the first respondent to be repaid within the period of one year. The suit land which is his own house was mortgaged as a security. Later he failed to service the loan as agreed so the first respondent engaged the second respondent to auction the mortgaged property. The same was sold to the 3rd respondent and on the second auction was sold to the 4th respondent. The applicant believing that the sale of the suit land was illegal he instituted a Land Application No. 165 of 2020 at the District Land and Housing Tribunal. To avoid being evicted from the suit land he filed a Miscellaneous Land Application No. 236 of 2020 seeking for *status quo* to be maintained pending determination of the main application. After full trial the District Land and Housing Tribunal dismissed the application for want of merit.

Aggrieved by the said decision he has knocked the door of this court to intervene as the 3rd and the 4th respondent are about to evict him and transfer ownership of the property.

Before this court the applicant appeared in person, unrepresented while the 1st, 2nd and 4th respondents enjoyed the legal service of Mr Mworia Dennis learned counsel. The 3rd respondent never appeared in court

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though he was duly served. So, the matter proceeded ex parte against him. The parties agreed to dispose of the application by way of written submission. Both of them filed their submission save for the rejoinder which the applicant defaulted filing it despite of being given extension of time to file the same.

Before embarking to the merit of the application, the counsel for the respondent in his reply submission drew my attention to the two points of law with regard to the competence of the application. That the application is overtaken by event and that this court lacks jurisdiction to entertain the matter.

He clarified on the point that the application has been overtaken by event because this revision emanates from the Ruling and Drawn order in Misc. Application No. 236 of 2020 which also originates from main application No. 165 of 2020 which was struck out on 23rd June, 2021 for non-appearance of the applicant. Unfortunately, the applicant defaulted to file his rejoinder to respond on these points.

After being alerted on those points of law the issue for determination is whether this application is competent before this court.



It was pleaded under paragraph 8 of the counter affidavit that the main application was dismissed and the order is attached thereto as annexure BOA -5. The annexure reads as hereunder:

AMRI

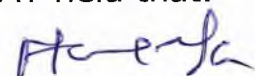
"Kwa kuwa mwombaji alikuwepo mara ya mwisho shauri hili lilipopangwa kusikilizwa leo, lakini ameshindwa kuhudhuria barazani bila taarifa yoyote, basi maombi haya yanatupiliwa mbali chini ya Kanuni ya 11 (1) (b) ya GN No.174 ya 2003. Wajibu maombi No 1 na 2 walipwe gharama zao."

Sgd: G. Kagaruki,

MWENYEKITI

23/ 06/2021

From this annexure it is evident that the main application does not exist. And the application which is being challenged was an interlocutory order seeking for *status quo* to be maintained pending determination of the main application which has already been struck out for nonappearance. Thus, I concur with the counsel for the respondent that so long as the main application does not exist, the application at hand has been overtaken by event. This was the position in the case of **University of Dar Es Salaam Vs Silvester Cyprian and 210 Others**, Civil Application No. 5 of 1995 [1998] TLR 175 in which the CAT held that:



"The application is incompetent as it is interlocutory to Civil Appeal No.2 of 1995 which has already been heard by another panel of justices of the Court."

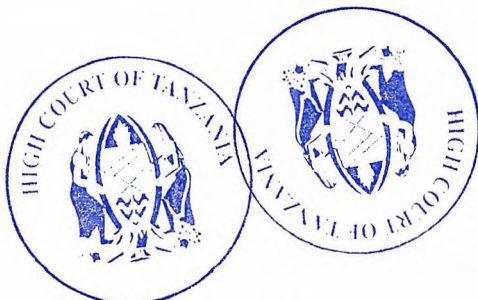
See also the case of **Jonas Joshua Bushambali Vs Equity for Tanzania Ltd (EFTA)**, (DC Civil Appeal 23 of 2020) [2022] TZHC 9998 (21 February 2022) and **Simon Kiles samwel Vs Mairo Marwa Wamsago (t/a Mairo Filling Station)**, Civil Revision No. 8 of 2020 (HC- Musoma).

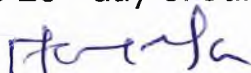
That being the legal position, this application seeking this court to revise the interlocutory order of which its main case was dismissed is overtaken by event so it becomes incompetent. Therefore, the raised issue is answered in negative.

That being said, this application is incompetent and it is hereby struck out. Each party will bear its own costs as the applicant was getting legal aid from the Legal and Human Right Centre.

It is so ordered.

DATED at ARUSHA this 26th day of July 2022.




N.R MWASEBA

JUDGE

26/07/2022