

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IRINGA DISTRICT REGISTRY**

**AT IRINGA**

**LAND REVISION NO. 02 OF 2019**

**EZRA LUGALAMILA ..... APPLICANT**

**VERSUS**

**ANTONY CHAKA ..... RESPONDENT**

**(Originating from the decision of the District Housing and Land  
Tribunal for Iringa District at Iringa in Application No. 29 of 2015)**

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**RULING**

Date of Last Order: 30/06/2022 &  
Date of Ruling: 15/07/2022

**S.M. KALUNDE, J.:**

In this application the applicant, EZRA LUGALAMILA, is seeking to revise the decision of the District Housing and Land Tribunal for Iringa District at Iringa (henceforth "**the DLHT**") dated 28<sup>th</sup> November, 2018 in Application No. 29 of 2015 (henceforth "the suit"). The application is preferred by way of chamber summons under the provisions of section 43(1)(a) of **the Land Disputes Courts Act [Cap. 216 R.E. 2019]**. The application is supported by an affidavit sworn by the applicant. In resisting the application, the respondent lodged a counter affidavit dully sworn by the respondent himself. Together with the counter affidavit the respondent lodged a Notice of Preliminary Objection based on the following point of law to the effect that: the application is bad in law for being preferred by way of an application for revision instead of an appeal.

By consent of the parties, the preliminary objection was argued by way of written submissions. All submissions were duly filed in accordance with orders of the Court. submissions of the respondent were duly prepared and filed by **Mr. Hafidhi Mohamed Mbinjika** learned advocate. Unrepresented, the applicant filed his own submissions.

In support of the preliminary objection Mr. Mbinjika argued that being aggrieved by the decision of the DLHT, the applicant filed an application for revision instead of an appeal. In his view, the applicant had an automatic right of appeal thus he ought to have filed an appeal instead of an application for revision. In support of his argument the counsel cited the case of **Transport Equipment Ltd vs Devram P. Valambhia** [1995] TLR 161 which was cited in the case of **Hassan Ng'anzi Khalfan vs Njama Juma Mbega (Legal Representative of the Late Mwanahamisi Njama) & Another** (Civil Application 218 of 2018) [2020] TZCA 32 (20 February 2020) for an argument that the law is now settled that an application for revision does not operate as an alternative to appeal.

Submitting further, the counsel insisted that an application in lieu of an appeal may be commenced in very exceptional circumstances. He added that, through his affidavit, the applicant had failed to demonstrate any special circumstance for preferring a revision instead of an appeal. For that view he cited the case of **Mansoor Daya Chemicals Ltd vs National Bank of Commerce**

(Civil Application 464 of 2014) [2020] TZCA 183 (15 April 2020 TANZLII) where it was emphasised that a right of appeal has to be pursued first unless there are sufficient reasons amounting to exceptional circumstances which will entitle a party to resort to the revisional jurisdiction of the Court. by way of conclusion the counsel prayed that the application be dismissed with costs.

The respondent's reply was brief, he argued that he opted to file an application for revision instead of an appeal because he felt that the DLHT erred in dismissing his case whilst the suit before the DLHT proceeded *ex parte* against the respondent who had failed to appear before the DLHT to defend the appeal. In addition to that the applicant submitted that an application for revision was preferred because the impugned decision contained an error material to the merits of case. She prayed that the preliminary objection be dismissed with costs.

In rejoining the counsel for the respondent replied that the matter before the DLHT did not proceed *ex parte* but rather the respondent's case was closed after the withdrawal of the counsel for the respondent. He reiterated his submission in chief and maintained the application lacked merits and ought to be struck out.

Having gone through the records and submissions of the parties the main issue begging for my determination here is whether the present application is competent. However, before delving into determination of the preliminary objection I have state at the very outset that the determination of the point raised by Mr. Mbinjika on

the propriety of this application is of vital importance and worth of determination before going into the merits of the application. I say so because I am live that the law is now settled that revisional powers of the Court are not an alternative to its appellate jurisdiction. The above view was pronounced in the case of **Halais Pro-Chemie v. Wella A.G.** [1996] TLR 269, wherein the Court Appeal relied on its two previous decisions in **Moses Mwakibete v. The Editor - Uhuru and Two others** [1995] TLR 134 and **Transport Equipment Ltd v. Devram P. Valambhia** (supra) and stated thus:

*"Except under exceptional circumstances, a party to proceedings in the High Court cannot invoke the revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court."*

The abovementioned stand has been conscientiously followed by the Court of Appeal in its subsequent decisions including in: **Mantrac Tanzania Ltd v. Junior Construction Co. Ltd & 3 others**, Civil Application No. 552/16 of 2017, **Kempinski Hotels S.A v. Zamani Resorts Limited & Another**, Civil Application No. 94/14 of 2018, **Felix Lendita v. Michael Long'idu**, Civil Application No. 312/17 of 2017 and **Yara Tanzania Limited v. DP Shapriya & Company Limited**, Civil Application No. 345/16 of 2017 (all unreported), to mention but a few. In all the above authorities, the Court has pronounced itself in no uncertain terms that, unless there are exceptional circumstances, the revisional jurisdiction of the Court should not be resorted to as an alternative to its appellate

jurisdiction. Guided by that position I will now proceed to the determination of the objection raised.

In the present case, it is evident from the affidavit filed in support of the application deposed by the applicant as well as her reply to the submission in chief, that the applicant, is being dissatisfied with the decision of the DLHT in Application No. 29 of 2015. This is in accordance with paragraphs 7, 8, 9 and 10 of the affidavit which reads as follows:

- "7. **That,** the Honourable Chairman declared that the Disputed Land is belong to the Respondent and ordered me to pay costs while he didn't defense his case and no proof thereof.*
- 8. **That,** the Honourable Chairman failed to consider the evidence adduced by me and my witness.*
- 9. **That,** basing on facts above, I has discovered that Land Application No. 29 of 2015 has been decided differently and unjustly.*
- 10. **That,** I have been aggrieved by the decision of the District Housing and Land Tribunal by ordering me to pay costs and leave that Disputed Land, takes measure to pray for revision before this Honourable Court on the decision delivered by the Chairman on 28/11/2018."*

From the above quoted excerpt of the affidavit, it is clear that the applicant believes that the decision of Honourable Chairman declaring the respondent to be lawful owner of the disputed property and ordering him to pay costs was unjust and failed to consider the available evidence. Looking at the contents of paragraphs 7, 8, 9 and 10 of the affidavit they outlines grounds of appeal more than setting

out any special circumstances calling for this Court to exercise its revisional powers.

It is also apparent from the records that the decision of the DLHT in Application No. 29 of 2015 was delivered on **28<sup>th</sup> November, 2018**, and the decree was certified as ready for collection on **28<sup>th</sup> March, 2019**. The records also show that the present application was filed on 22<sup>nd</sup> January, 2019. From the above set of facts, it is unmistakable that by the time the present application was filed the applicant was well within the timeframe to lodge an appeal. He could have as well lodged the appeal after receipt or collection of the decree. However, he did not elect that route instead he lodged an application for revision. As correctly pointed out by Mr. Mbinjika, there is nothing in the applicant's affidavit to show that there are any especial circumstances in the present case or that appellate route had been blocked.

The issue then is whether, in light of the above circumstances, the present application is competent. On this, I agree with Mr. Mbinjika that the route taken by the applicant to file an application for revision instead of an appeal was uncalled for. On my part, on the strength of the above cited authorities, I am satisfied that, in the present circumstances, the applicant had an absolute right of an appeal instead he lodged an application for revision. Through his affidavit and submissions, the applicant has failed to demonstrate any justification why she could not pursue her right of appeal or that the

appeal process has been blocked in any way. Simply put, the present application, has been taken as an alternative to an appeal.

In **Transport Equipment Ltd vs Devram P. Valambhia** (supra) the Court of Appeal Ramadhani, J.A (as he then was) stated:

*"The appellate jurisdiction and the revisional jurisdiction of this Court are, in most cases, mutually exclusive. If there is a right of appeal then that has to be pursued and, except for sufficient reason amounting to exceptional circumstances, there cannot be resort to the revisional jurisdiction of this Court."*

Similarly in **Moses Mwakibete v. The Editor - Uhuru and two others** (supra) the Court observed that:

*"Before proceeding to hear such an application on merits, this court must satisfy itself whether it is being properly moved to exercise its revisional jurisdiction. The revisional powers conferred by subsection (3) were not meant to be used as an alternative to the appellate jurisdiction of this court. In the circumstances, this court, unless it is acting on its own motion, cannot properly be moved to use its revisional powers in subsection (3) in cases where the applicant has the right of appeal with or without leave and has not exercised that option ... "*

The above said, I confident that the impugned decision could have been challenged by way of an appeal to this Court. In the prese case, the applicant has not brought forward any exceptional circumstances that would legally entitle her to resort to the revisional powers of this Court, instead of its appellate jurisdiction. I am satisfied the application before me

is incompetent and bad in law for being preferred as an alternative to an appeal. For the reasons I have endeavored to assign above, I sustain the preliminary objection raised by the counsel for the respondent and strike out this application with costs.

Order accordingly.

**DATED** at **IRINGA** this **15<sup>th</sup>** day of **JULY, 2022.**



A handwritten signature in blue ink, appearing to read "S.M. Kalunde", is written over the printed name.

**S.M. KALUNDE**

**JUDGE**