

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**LAND REVISION NO. 02 OF 2021**

(Arising from EXECUTION NO. 35 OF 2016, THE DISTRICT LAND AND HOUSING TRIBUNAL OF  
KOROGWE DATED 16.11.2017)

**OTHMAN BILE----- APPLICANT**

**VERSUS**

**IBRAHIM ABILLAH FOSIK----- RESPONDENT**

**JUDGEMENT ON REVISION**

**Mansoor, J:**

**Date of JUDGEMENT- 29<sup>th</sup> JUNE 2022**

The Applicant has filed an application for Revision of the execution proceedings carried out by the District Land and Housing Tribunal for Korogwe, Execution Application No. 35 of 2016. The decision under which the revision is sought was delivered on 16 November 2016, but on 02 August 2021, Hon. Judge Mtulya had granted the Applicant extension of 14 days from 2<sup>nd</sup> August 2021 to file the Application for Revision. This was under Misc. Land Application No. 30 of 2019. This present



application was filed on 12<sup>th</sup> August 2021, well within the 14 days given.

The application was being attended by Madina Othman Bile holding power of attorney for the Applicant which was signed by the Donor Othman Bile giving the power of attorney to Madina Othman Bile and this Power of Attorney was registered with the Registrar of Titles on 22<sup>nd</sup> March 2022.

Service to the respondent proved unsuccessful and so the application was determined *ex parte* and by written submissions.

The brief background of the matter is that Othman Bile filed an Application No. 19 of 2015 before the District Land and Housing Tribunal against Amina Farah, Fardosa Farah, Adidi Ahmed, Rehema Ally, Batuli Omari, Samweli Mwaimu, Omari Ngogo Senzira, Adinani Hamisi, Hossen Abdallah, Mwinjuma and Selemani. He was claiming for ownership of a house located at plot no. 5 Block F, New Town Korogwe, herein shall be referred to as "the disputed property." The respondents did not file defences, and so a default judgement was entered

in terms of Order VIII Rule 14 (1) of the Civil procedure Code.

This section provides:

14.-(1) *Where any party required to file a written statement of defence fails to do so within the specified period or where such period has been extended in accordance with sub rule 3 of rule 1, within the period of such extension, the court shall, upon proof of service and on oral application by the plaintiff to proceed ex parte, fix the date for hearing the plaintiff's evidence on the claim.*

(2) *Where before ex-parte judgment has been entered pursuant to sub-rule (1) the court may, if the defendant assigns good cause, set aside the order to proceed ex parte, upon such The Civil Procedure Code [CAP. 33 R.E. 2019] 117 terms as the court may direct as to costs or otherwise.*

(3) *The decree obtained under this rule shall not be executed until after the expiry of the period of sixty days from the date of judgment.*

Before the Civil Procedure Code was revised, the Tribunal was not empowered to enter default judgement in matters which did not involve money and matters which involved money a default judgement could only be entered on matters whose value is Tshs 1000 only. Sub rule 2 of Order VIII Rule 14 read:

*(2) In any case in which a defendant who is required under subrule (2) of rule 1 to present his written statement of defence fails to do so within the period specified in the summons or, where such period has been extended in accordance with the proviso to that sub-rule, within the period of such extension, the court may-*

*(a) where the claim is for a liquidated sum not exceeding one thousand shillings, upon proof by affidavit or oral evidence of service of the summons, enter judgment in favour of the plaintiff without requiring him to prove his claim.*

*(b) in any other case, fix a day for ex parte proof and may pronounce judgment in favour of the plaintiff upon such proof of his claim.*

The Tribunal ought to have heard the case *ex parte* and not to enter a default judgement. That was an error on the part of the Tribunal, and this Court under the Revision powers given by section 43 of the Land Disputes Courts Act, Cap 216, R: E 2019 hereby quashes the Default Judgement entered by the District Land and Housing Tribunal for Korogwe in Land Application No. 19 of 2015. A party who wishes to pursue the matter afresh, regarding the ownership of the disputed property may do so at the appropriate forum, and subject to limitations.

Having quashed the Default Judgment entered on 1<sup>st</sup> of December 2015 by Hon Makombe, the Chairperson of the District Land and Housing Tribunal in Land Application No. 19 of 2015, the execution proceedings which emanated from the original Land Case No. 19 of 2015 are also quashed and set aside as the decree obtained was obtained irregularly by the Tribunal.

In any case, the Chairperson of the Tribunal had powers to set aside the default judgement upon an application by the party, not an application by an objector. The objector ought to have filed objection proceedings under Order XXI Rule 57 of the Civil Procedure Code. It should also be noted from the proceedings that Ibrahim Abdillah Fosiki, the respondent herein, was never made a party to Land Case No. 19 of 2015 and was never an objector under Order XX1 Rule 57 of the CPC, and no decision was pronounced in his favour or against his favour by the Tribunal. He was not a party in Land Application No. 19 of 2015. He was never a party in Misc. Land Application No. 35 of 2016 (which is the execution proceedings under which the Applicant have asked this Court to Revise). This Court wonders as to how and when Ibrahim Abdillah Fosik became a party to the proceedings before the lower Tribunals, as the records does not show at all that he was joined in any of the proceedings before the Tribunal. Suffice it to say that the Applicant brought a wrong party as the respondent in this application for Revision.

Now, since all the proceedings at the District Land and Housing Tribunal were tainted with irregularities, they are all quashed and set aside. Since the main Land Case No. 19 of 2015 was quashed and set aside, it follows therefore that all the subsequent proceedings including the execution proceedings (Application for Execution No. 35 of 2016) emanating from land Case No. 19 of 2015 have been quashed and set aside. I am aware that the Applicant was aggrieved only by the execution orders, and he filed the present application under Section 41 and Section 43 (1) and (2) of the Land Disputes Courts Act, Cap 216 R: E 2019. The Applicant filed for revision of the proceedings of the District Land and Housing Tribunal for Korogwe in Execution Proceedings 35 of 2016 and asked this Court to revise and nullify the entire proceedings of that Tribunal for it involved injustices and contained material irregularities. The Application was made under Section 43 (1) (a) and (b) of the Land Courts Disputes Act, 2002. However, since even the original proceedings (Land

Application No. 19 of 2015,) in which the Applicant herein was given a default judgement, and since the Judgement was given with irregularities and in total violation of the procedures, that Default Judgement as well is quashed and set aside.

Section 43 of Cap 216 empowers this Court to call for the records of the lower Tribunals in any case in which no appeal lies if such Subordinate Tribunals appears to have acted in the exercise of their respective jurisdiction illegally or with material irregularities.

Section 43 of the Land Disputes Courts Act provide as follows:

- (1) *In addition to any other powers in that behalf conferred upon the High Court, the High Court (Land Division)*
  - (a) *shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay.*




*(b) may in any proceedings determined in 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 own 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 therein as it may think fit.*

Section 43 (1) (a) of the Land Disputes Courts Act gives the High Court power to call for records and give directions, and (b) gives power to the High Court to revise any proceedings determined in the District Land and Housing Tribunal in the exercise of its **original, appellate** or **revisional** jurisdiction. Thus, the High Court has powers under section 43 (1) (b) of the Land Disputes Courts Act to revise any proceedings of the District Land and Housing Tribunal exercising its original, appellate or revisional jurisdiction. However, section 43 (1) (a) allows this Court to call for records and revise any order passed by the subordinate Tribunals

Consequently, under the powers given to this Court under section 43 of Cap 216, Suo moto and for the above reasons, the Default Judgement entered in Land Application No. 19 of 2015, and its subsequent proceedings, orders and the execution proceedings are hereby quashed and set aside. The Applicant may seek for appropriate remedies at the appropriate forum for determination of ownership of the disputed property. The Applicant shall not have costs of this Application as the Revision was determined exparte.

**DATED at TANGA this 29<sup>th</sup> day of JUNE 2022**



  
**L. MANSOOR**  
**JUDGE,**  
**29<sup>th</sup> June, 2022**