

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

LAND REVISION NO. 21 OF 2021

(Arising from Misc. Application No. 201 of 2018 from District Land and Housing Tribunal of Morogoro before, Hon. Mbega)

VENANCE BENEDICT MINDE APPLICANT

VERSUS

MUSA ALLY LWAYO (Administrator of the

Estate of Mwalimu Lwayo) 1ST RESPONDENT

HUSSEIN MWALIMU LWAYO.....2ND RESPONDENT

LEP AUCTIONEERS COMPANY.....3RD RESPONDENT

RULING

Hearing date on: 21/6/2022

Ruling date on: 10/8/2022

NGWEMBE, J.

This ruling arises from an application for revision against a decision made out of objection proceedings preferred by a non-party to the original Misc. Land Case No. 35 of 2018. The land case was between Musa Ally Lwayo versus Hussein Mwalimu Lwayo. The decision was in favour of the applicant one Musa Ally Lwayo. The applicant herein being a non-party to that dispute, preferred an objection proceeding instituted at the District Land and Housing Tribunal for Morogoro, recorded as Misc. Application No. 201 of 2018 challenging the verdict of Misc.

Application No. 35 of 2018. Unfortunate may be to the applicant; the tribunal dismissed the objection proceedings. Being aggrieved with that decision, the applicant herein, preferred an application for revision in this court inviting this court to call upon the original records and examine its correctness, legality or propriety of the said proceedings and revise it accordingly.

According to the applicant, this application is founded under section 43 (1) (a) (b) & (2) of the **Land Disputes Courts Act Cap 216 R.E. 2019**. For clarity, the contents of the section is quoted hereunder:-

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

(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"

(2) In the exercise of its revisional jurisdiction, the High Court shall have all the powers in the exercise of its appellate jurisdiction"

This section provides general powers of this court over land tribunals, be it, revisional or appellate jurisdictions. The citation of this section is common in all land applications and land appeals from the District Land and Housing Tribunals to this court. However, the question is whether this application for revision against the decision of the District Land and Housing Tribunal is competent in law?

To answer this question, the applicant's advocate answered in affirmative in his humble arguments in support of the application, while the respondent's advocate answered in negative. Apart from the genesis of this matter, the learned advocate Benjamin Karume conceded that his client instituted an objection proceeding at the District Land Tribunal, registered as application No. 201 of 2018. However, the tribunal refused to hear and determine the application, thus necessitated into this application for revision. Thus, justified that this application is competent and capable of being determined by this court.

To justify his argument, he referred this court to **Civil Appeal No. 249 of 2020 between Sosthenes Bruno & Another Vs. Flora Shauri; and in the case of Katibu Mkuu Amani Fresh Sports Club Vs. Dodo Ubwa Mamboya & Another, Civil Appeal No. 88 of 2002**. Insisted that the applicant was not given chance to be heard, therefore, the tribunal failed to investigate the matter and decide according to law. Rested by inviting this court to allow the application and accordingly revise the trial tribunal's decision.

In response thereof, advocate Allan Kabitina, resisted the application by tracing the genesis of this application as from Misc. application No. 201 of 2018 which same was made under Order XXI Rule

57 (1) and section 95 of CPC. Proceeded to ask equally an important question that whether the application at hand is competent? He posed an answer that the only available legal remedy to the applicant is found in the same Order XXI in rule 62 of CPC.

Insisted that the consent judgement was between Musa Mwalimu Lwayo and Musa Ally Lwayo, both were administrators of the deceased estate namely Mwalimu Lwayo. The execution of the consent judgement was done on 31/8/2018 by the 3rd respondent (Court Broker) to hand over the suit land according to the deed of settlement. Referred this court to the case of **Sembuli Ali Ndagiwe Vs. Mwezi Ramadhan, Land Revision No. 1 of 2021**. Also referred this court to the **Civil Application No. 294/16 of 2017 between National Housing Corporation Vs. Peter Kassidi & 4 Others**.

Rested by insisting that the only available remedy upon final determination of the objection proceedings is to institute a fresh suit. The option of appeal or revision do not arise. Thus, this application is an abuse of the court process, hence be dismissed with costs.

In rejoinder, advocate Benjamin rejoined that, the application is competent because the respondents had no authority to administer over the estate of the deceased. Therefore, there was illegality over the whole matter, thus makes this application for revision inevitable.

Considering the rival arguments of learned counsels, I am attracted to recap just briefly on the genesis of this application. It is evident that the applicant herein instituted an objection proceeding before the District Land and Housing Tribunal, which was registered as Misc. Land Application No. 201 of 2018. Such application was against the current

respondents. As rightly argued by the advocate for the respondents, that application was founded under Order XXI Rule 57 (1) & (2) and section 95 of CPC. *The sought orders were to invite the tribunal to investigate the ownership of the suit land which has been ordered to be attached; and second the landed property subject to attachment be released and be ordered to revert into the ownership of the objector/applicant.*

Having considered the objection proceedings, the tribunal found it improper to determine it, while the executable decree was entered by the High Court. The applicant was advised to file an objection proceeding before the High Court, which decreed the executable decree. Consequently, the objection was refused.

Instead of complying with the tribunal's advice, the applicant preferred this application against the decision of that tribunal. This time the applicant cited section 43 (1) (a) (b) & (2) of Land District Courts Act. The question remained whether the decision founded under objection proceedings is subject to appeal or revision? This question is answered by quoting Order XXI Rule 57 as well as rule 62 of CPC.

Rule 57 "Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the execution of the claimant or objector and in all other respects, as if he was a party to the suit:

The contents of this rule leave no slight doubt that, the applicant herein was right to file an objection proceeding against attachment of

that landed property, which he has vested interest. The question is whether, that right is exercised to the court or tribunal executing the court decree? This question was asked by the Court of Appeal in the case of **Sosthenes Bruno & Another Vs. Flora Shauri** (Supra) at page 13 where the Court issued two principles; **first** the objector, third party to the court proceedings, is permitted to access the court in order to object to any attachment of the property in which he has interest; **second**, the rule vests jurisdiction in the court that passed a decree to hear the objector on his objection as if he was a party to the suit.

The second rule is in line with the tribunal's advice to the applicant as referred above. That the applicant was advised to institute a fresh objection proceeding to the court issued the executable decree. To my understanding that advice was valid and was in line with the applicable rule enunciated by the Court of Appeal referred above.

It is evident and settled rule of procedure that once the decision is founded on objection proceeding, it is final and conclusive as per rule 62 quoted hereunder: -

62.** Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the **order shall be conclusive.

This rule had clear interpretation by the Court of Appeal in the case of **Thomas Joseph Kimaro Vs. Apaisaria Martin Carl Mkumbo and Another [2002] T.L.R. 369**. The remedy of appeal or revision is not

available rather the only remedy is to institute a fresh suit in a court of competent jurisdiction.

I tend to agree with the learned advocate for the applicant that the trial tribunal did not investigate the claim by the objector. In fact, the tribunal was right, to refuse to investigate the claim of the objector because, the Land and Housing Tribunal was only assigned to execute the High Court's decree. The question on validity or jurisdictional issues ought to be asked to the court issued that executable decree (see the case of **Sosthenes Bruno & Another Vs. Flora Shauri**).

Out of curiosity, one may ask whether land disputes equally apply the procedural rules provided for in the Civil Procedure Code? The answer is provided for under section 51 (1) of the Land Disputes Courts Act which section is quoted:-

Section 51.- (1) *"In the exercise of its jurisdictions, the High Court shall apply the **Civil Procedure Code** and the **Evidence Act** and may, regardless of any other laws governing production and admissibility of evidence, accept such evidence and proof which appears to be worthy of belief"*

It is therefore, settled law that land disputes equally apply Civil Procedure Code as well as Evidence Act. In the case of **National Housing Corporation Vs. Peter Kassidi (Supra)**, at page 9 the Court of Appeal was firm on this point as quoted hereunder: -

"Whereas objection is preferred and an order determining that objection is subsequently made, in terms of Rule 62 of the same Order, the only remedy

available to the party against whom that order is made is to institute a regular suit to prove his claim. Put in other words, after the decision on an objection proceeding has been made by a competent court, there is no remedy for appeal or revision"

In similar vein, whoever attempts to invoke revisional powers and or appellate jurisdiction against the decision arising from objection proceedings must meet with prohibitory order as provided for by the statute. Accordingly, this application for revision is, by operation of law invalid.

Having so said and for the reasons so stated, this revision lacks merits same is dismissed with costs.

Order accordingly.

Dated at Morogoro in Court Chambers this 10th August, 2022



P. J. NGWEMBE

JUDGE

10/8/2022

Court: Ruling delivered at Morogoro in Chambers on this 10th day of August 2022 in the presence of the 1st and 2nd Respondent and in the absence of applicant and 3rd Respondent.

SGD: S.J KAINDA
DEPUTY REGISTRAR

10/8/2022

