

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

AT ARUSHA

LAND REVISION NO. 14 OF 2021

*(Arising from Misc. Application No. 305 of 2020 in the District Land and Housing
Tribunal for Arusha at Arusha,)*

ANNA AWINO..... APPLICANT

VERSUS

ALEX PAULO TOWO..... RESPONDENT

RULING

Date of last Order: 3-8-2022

Date of Ruling : 20-9-2022

B.K.PHILLIP, J.

The applicant herein moved this Court by way of chamber summons made under section 41(1) and 43 (1) (a)(b) and (2) of the Land Disputes Courts Act, [Cap. 216 R.E 2019] to invoke its revisional powers and revise the judgment of the District Land and Housing Tribunal for Arusha at Arusha (Herein referred to as "DLHT"). The application is supported by an affidavit sworn by the applicant. The respondent filed a counter affidavit in opposition to the application.

Before venturing into the nitty-gritty of the application, let give a brief background to this matter. Sometimes in 2017 the applicant filed Land Application No. 379 of 2017 claiming for ownership of land, which was dismissed for want of prosecution on 2nd December 2020. Undaunted, the applicant filed another application vide Miscellaneous Application No. 305 of 2020 seeking to set aside the dismissal order and restoration of the said Land application No.379 of 2017. The main reason advanced by the applicant before the DLHT for failure to appear on the date

scheduled for hearing of the aforesaid Land Application No.379 of 2017 was that she was sick. Unfortunately, the same did not sail through. It was dismissed for lack of merit. The applicant did not appeal against that decision. He has now filed this application for revision of the aforesaid decision.

This application was argued by way of written submission. Mr. Richard Evance Manyota, learned advocate appeared for the applicant whereas Fredrick Isaya Lucas, learned Advocate represented the respondent.

In his submission Mr. Manyota argued that the DLHT erred in law for failure to give appropriate consideration and weight to the medical report and the affidavit sworn by Dr. Joseph Munga of Mount Meru Hospital who attended the applicant which were annexed to the applicant's application in support of her application for setting aside the dismissal in Land Application No. 379 of 2017. He faulted the DLHT's finding that the attached Medical report was just a medical certificate which was not worth being relied upon to prove the applicant's sickness. Mr. Manyota maintained that sickness has been adjudged as among good causes for failure to appear in Court. He cited the case of **Emmanuel Maira Vs District Executive Director Bunda District Council, Civil Application No.66 of 2010**, (unreported). He beseeched this Court to grant this application.

In rebuttal, Mr. Isaya's submission was to the effect that the decision of DLHT is correct because the applicant failed to prove that on the hearing she was sick. No proper medical certificate was annexed to the applicant's application to substantiate her assertion.

In addition, it was Mr. Isaya's argument that revision is not an alternative to an appeal. He argued that the applicant upon being aggrieved by the impugned decision was required to appeal against it. However, he did not file any appeal and opted to file the instant application which not tenable under the law. To bolster his argument he cited the decision of this court in the case of **Salehe s/o Shaban Tangila versus Johari d/o Mabruki, PC Civil Appeal No. 20 of 2021** and the case of **Nondo Kalombora t/a N.J. Petroleum and Another versus Broadgas Petroleum (T) Limited and 3 others, CAT** (both unreported).

In conclusion of his submission Mr. Isaya prayed for the dismissal of this application with costs. Mr. Manyota did not make any rejoinder.

Having analyzed the submission made by the learned Advocates, I find it imperative to start with the issue on the propriety of this application raised by Mr. Isaya, that is, whether application for revision is tenable where the applicant has a right of appeal against the impugned decision. First of all, it is apparent that the Ruling and Drawn order issued by the DLHT is appealable pursuant to section 41(1) and (2) of the Land Disputes Courts Act, [Cap. 216 R.E 2019]. The law same reads as follows;

*41.-(1) Subject to the provisions of any law for the time being in force, **all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.***

*(2) **An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:***

Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days”.

(Emphasis Added)

Thus , there is no doubt that the applicant had a right of appeal against the impugned decision. In this application the applicant did not state why she did not appeal against the impugned decision. There is a plethora of authorities in which our Courts have re-stated the position of law , that is, revision is not an alternative to appeal. In the case of **Salehe s/o Shaban Tangila** (supra) this Court said following;

*"The second question for determination is the propriety of the application for revision. It is trite law that where there is a right of appeal, an application for revision cannot stand for revision is not an alternative of an appeal (see the case of **Felix Lendita versus Michel Long'idu, Civil Application no. 312/17 of 2017..**"*

For the foregoing reasons this application is not maintainable in law. Under the circumstances, I will not consider the arguments on the merit of this application since I am constrained to strike it out for being incompetent as I hereby do. This application is hereby struck out. Since the application was filed under the legal aid scheme, each part shall bear his/her own costs. It is so ordered.

Dated this 20th day of September 2022




B.K.PHILLIP

JUDGE