

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

LAND CASE REVISION NO. 2 OF 2022

(From the Decision of the District Land and Housing Tribunal of Moshi District

At Moshi in Land Case No. 14 of 2021

EVARIST MUSHI APPLICANT

VERSUS

EDWARD PETER CHUWA..... 1ST RESPONDENT

INDEPENDENT AGENCIES & COURT

BROKER LTD 2ND RESPONDENT

3/8/2022 & 2/9/2022

RULING

MWENEMPAZI, J:

The applicant has made this application for this court to call, examine and revise the records of the Miscellaneous Application No. 434 of 2021, 409 of 2021 emanating from Application No. 14 of 2021 and determine their propriety, rationality, reasonability and legality; that this court be pleased to issue necessary orders and costs to be borne by the Respondents.

The application is supported by an affidavit sworn by Evarist Mushi, the applicant herein named. The 1st Respondent is opposing the application and he has filed a counter affidavit and a notice of Preliminary Objection with the following points of objection:-



1. That this application is time barred.
2. That the application is bad in law and unmaintainable for being an omnibus application seeking to revise four different proceedings and decisions of the District Land and Housing Tribunal
3. That the Honourable Court has no jurisdiction to entertain the applications.
4. That the application is bad in law for the joinder of a party who is not a party in Misc. Application No. 409 of 2021 before the District Land and Housing Tribunal
5. The application is bad in law for failure to include the decision, order or proceedings in Applications No. 434 of 2021 and 409 of 2021 which are sought to be revised.
6. The application is bad in law and a nonstarter for failure to attach the purported order of extension of time to apply for revision.
7. The application is bad in law for being accompanied by an affidavit that contains falsity.

The second respondent also filed a notice of Preliminary objection raising two points:-

1. The 2nd Respondent has been improperly joined in the application
2. That the court has no jurisdiction.

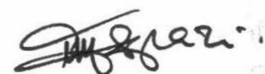
This ruling was for determination of the preliminary objection. At the hearing the applicant was being represented by Ms. Magdalena Kaaya, learned advocate working under the auspices of Kilimanjaro Elite Attorneys and Consultants and the Respondents were being served by Mr. Edward Chuwa, Advocate and the 1st Respondent and Ms. Anna Lugendo, Advocate for the 2nd Respondent.

This application was scheduled to proceed with hearing by way of written submission. On the 2nd August 2022, the respondents filed their rejoinder and it was scheduled for mention on the 3rd August, 2022. On that date the case was scheduled for ruling on the 1st September, 2022. On the date, when I was about to hand over the ruling for delivery, the court clerk informed me that there was a judgment delivered in another case by the same parties before Honourable S.H. Simfukwe, Judge. The appeal was registered as Land Appeal No. 45 of 2021. The parties were Evarist Mushi as appellant and Edward Peter Mushi as respondent. I therefore request a copy and adjourned delivery of ruling.

It came to my knowledge that the applicant had appealed against the decision in Misc. Land Application No. 410 of 2021 which originating from Land Application No. 14 of 2021 of the District Land and Housing Tribunal for Moshi at Moshi.

In the appeal No. 45 of 2021 the appellant was challenging the decision of the District Land and Housing Tribunal of Moshi in Miscellaneous Application No. 410 of 2021 in the District Land and Housing Tribunal where the applicant applied for extension of time to file an application to set aside ex-parte judgment in Land Application No. 14 of 2021. The Tribunal dismissed the application for want of merit.

In the judgment of this court on appeal delivered on 16th August, 2022 it was decided that the tribunal ought to have granted an order for extension of time. This court, Honourable S.H. Simfukwe, Judge went further to invoke powers under Section 79 of the Civil Procedure Code, Cap. 33 R.E. 2019 and nullified the ex parte judgment, decree and proceedings of the trial tribunal in Application No. 14 of 2021.



It has thus been ordered that the appeal is allowed and the matter sent back to the trial tribunal for determination of the main application inter parties.

Since this application for revision is a Ruling in Miscellaneous Land Application No. 434 of 2021 and 409 of 2021 which is an application for stay of execution of the decree in Land Application No. 14 of 2021. Application for execution of the decree in Land Application No. 12 of 2021 delivered on the 17th December, 2021 being originating from the ex-parte judgment and decree in the Land Application No. 14 of 2021 in the District Land and Housing Tribunal of Moshi at Moshi before Hon P.J. Makwandi, chairman, and since the said ex-parte judgment, decree and proceedings of the trial tribunal in Application No. 14 2021 have been nullified on the basis of illegality apparent on the face of the tribunal's record, I find this application being overtaken by events.

Under the circumstances and reasons shown this application is struck out with no order as to costs. It is ordered accordingly.

Dated and delivered at Moshi this 2nd day of September, 2022.



T. M. MWENEMPAZI
JUDGE

Ruling in court this 2nd September, 2022 delivered in the presence of the applicant, Ms. Magdalena Kaaya and Mary Kway for the applicant and in absence of the respondent.



T. M. MWENEMPAZI
JUDGE