

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LAND REVISION NO 03 OF 2022

(Arising from the Land Application No. 93/2020 and Land Application No. 25 of 2020
from of District Land and Housing Tribunal at Kigoma)

EMMANUEL KAYANDA HOSEA.....1ST APPLICANT

HOPE JAFFAR KAWAWA2ND APPLICANT

VERSUS

SOPHIA ERNEST RINTENGE1ST RESPONDENT

SPECIOZA DOMINICK SENTOZI2ND RESPONDENT

DAGRAS HOSEA KAYANDA3RD RESPONDENT

RULING

2/9/2022 & 20/9/2022

L.M. Mlacha,J

This revision was opened suo mottu by the court following a complaint lodged by Mr. Hope Jafari Kawawa. The gist of the complaint was that the District Land and Housing Tribunal for Kigoma (the DLHT) had acted arbitrary and contrary to the Law by refusing to receive an amended application which it had allowed to be made in Application No. 93/2020. The applicant in this application was Emmanuel Kayanda Hosea (Administrator of the estate of the late Hosea Kayanda Ntamalengelo) and Mr. Hope Jafari

Kawawa was his counsel. The respondents were Sophia Ernest Ritenge, Specioza Dominick Sentozi and Dagrass Hosea Kayanda. Whereas Mr. Hope Jafari Kawawa was counsel for the applicant and the first respondent had the services of Mr. Silvester Damas Sogomba, others stood in person.

Upon the receipt of the complaint, the court ordered a revision to be opened which was done. The parties were summoned and required to address the court on two areas before the revision is done.

1. Whether the chairman directed himself properly to refuse to receive the amended application.
2. Any other issues arising from the records.

Hearing of the revision was done on line through our virtual court service. Mr. Hope Jafari Kawawa and Emmanuel Kayanda Hosea spoke from Dar es salaam, Mr. Silvester Damas Sogomba was in his office at Kigoma while Sophia Ernest Ritenge, Specioza Dominic Sentozi and Dagrass Hosea Kayanda were in Kibondo District court.

It was the submission of Mr. Hope Jafari Kawawa that a party has a right to amend the pleadings under rule 16 of the District Land and Housing Tribunal Regulations and order VI rule 17 of the Civil Procedure code Act, cap 33 R.E

2019 provided that there is no miscarriage of justice to the other side. He added that the power to amend is at the discretion of the court but such discretion has to be exercised judiciously. He went on to say that the chairman of the DLHT refused to receive the amended application wrongly. He did not exercise his power judiciously. He went on to say that the day when he refused to receive the amended application he received another amended application in application No. 25/2021 which had similar Circumstances. Counsel did not give reasons for the refusal. He used double standards. He was discriminative. He referred the court too **Martino Nashokigwa v. Marcus Mandamu and 2 others** [2014] TLR 417 and **Morogoro Canvas Mills Ltd v. Tanesco** [2012] TLR 245 saying an amendment can be done at any stage of the proceedings provided that there is no injustice to the other side. Counsel submitted that the amendment has benefits to both parties because it avoids multiplicity of suits. He invited the court to find that there was a breach of principles of natural justice in this case. He argued the court to order the chairman of the DLHT to receive the Amended Application.

Mr. Emmanuel Kayanda agreed with Mr. Hope. He had nothing to add.

It was the submission of Mr. Silvester Damas Sogomba in reply that the chairman of the DLHT refused to receive the Amended Application because of breach of procedure. Counsel referred the court to events which happened between 19/12/2021 and 8/3/2022. He told the court that Mr. Hope was a counsel in the case but asked to disqualify himself in the case saying he had an interest in the matter. He then tried to proceed to act in the matter something which was refused. The court told him that he cannot pray to amend the application because he had already pulled himself from the case. He asked the court to remove the withdrawal records and hear him but he was not allowed. He interpreted this as a denial of justice. Counsel had no problem with the cases and provisions cited by Mr. Hope but had the view that Mr. Hope was in contempt of court because he wanted to force the court to do what he needed.

Mr. Sogomba went on to tell the court that even the complaint letter was written without authority because, he had no locus standi in the matter anymore. It was his client who had to complain, not him. He added that Mr. Hope could not even specify the name of the chairman because the DLHT have two chairmen. Counsel agreed that an amendment of pleadings can be

done at any stage but argued that the party seeking to amend must follow the procedure. He said that the complaint is vague and must be struck out.

Submitting in rejoinder, Mr. Hope agreed that the chairman told him that he could not pray to amend after pulling himself from the conduct of the case but hastened to say that the prayer to amend the application was done by Mr. Emmanuel Kayanda Hosea, not him. He said that this revision is properly before the court and must be allowed.

I plan to divide my discussion to two parts. The introductory party and the revision itself. In the introductory part I will talk about the power of the court in revision. The power of revision of this court in land matters is contained under section 43 of the Land Disputes courts Act Cap 216 R.E 2019.

Section 43 (1) read thus:

"43 (1) In addition to any other powers in that behalf conferred upon the High Court, the High Court (Land Division)".....

Section 43 (1) (a) have the general powers of supervision of the DLHT. The court may, at anytime, call and inspect the records of the DLHT. It may give directions after the inspection as it may deem fit so to do and the DLHT is bound to comply with the directions. Subsection (1) (b) gives the modalities.

The court may exercise its powers of revision on an application which have been made by a party to the proceedings or on **its own motion**. The later case is what is usually referred to as the court "**suo mottu**". The court can act suo mottu to open a revision file after receiving a complaint or information showing that there is an error material to the merits of the case involving injustice to any of the parties. In Both situations, the court have power to revise the proceedings and decisions and give directions as it may deem fit.

The court may receive complaints and informations from parties, relatives and administrative offices like the office of the Regional Commissioner, District Commissioner, Members of Parliament, TAKUKURU etc. It is not necessary that the complaint or information must come from the parties. They come from any source. The court may also detect a problem during inspect or through inspection reports of the Resident Magistrate Incharge. Once the complaint or information about an illegal practice is received by the Judge Incharge or the Deputy Registrar, a quick inquiry will be made to see if it calls for the exercise of revision powers. If it worthy, the Judge Incharge will direct the opening of a revision file. He will then narrow the complaint or information to few points which will guide the court in the course of revision.

Parties will then be called and be availed with a copy of the complaint or information so received and the points raised by the court. They will be given a chance to address the court on the points so raised before the court go through the records in the course of revision. The court will then make its findings taking into account what has been submitted by parties and give directions to the DLHT. The DLHT will be bound to comply with the directions.

Similar powers are contained under section 44 of the Magistrates court Act, cap 11 R.E 2019. The court have power to inspect and revise the proceedings and decisions of the district courts and courts of a resident magistrate. It may give directions which must be complied with.

The practice in the High Court is the same as the practice of the DLHT in respect of proceedings of the ward tribunal in their mediation jurisdiction and the practice of the district court in respect of proceedings of primary courts in the exercise of their Civil and criminal jurisdictions. Both the DLHT and the district courts have powers of supervision and revision. They may act on an application made by a party or suo mottu on its own motion. They have power to quash the proceedings and decisions of the lower tribunals or courts, as the case may be, and give directions which must be complied with.

I had time to examine the proceedings of the DLHT in Land Application No. 93/2020. It is true that Mr. Hope was a counsel for Mr. Emmanuel Kayanda Hosea. While in court on 19/11/2021 before F. Chinuku chairperson, he addressed the court saying:

“Naomba kufanya marekebisho katika maombi. Pia naomba kujitoe kama wakili wa kesi hii. Ni hayo tu”

Literally meaning that he prayed to amend the application and prayed to withdraw as a counsel for the applicant in the case.

Mr. Mathias responded as follows:

“Sidhani kama maombi ya wakili yako sawa. Kama akijitoe hana tena nafasi ya kuomba marekebisho. Ni hayo”

Literally means that if the counsel has withdrawn himself, he has no room to seek to amend the application. The court made the following order:

“Amri: Maombi ya wakili na mleta maombi kujitoe kwenye shauri yanakubaliwa. Kuhusu kurekebisha maombi (pleadings) sio sawa wakili aliyejitoe kurekebisha maombi ambayo hayamhusu tena. Imeamriwa hivyo”

This literally means that a counsel who withdraw himself cannot pray to amend because he is not in the case any more.

Thereafter the applicant rose up and addressed the court as follows:

“Ninaomba kuleta upya maombi yaliyokuwepo awali kwa vile wakili amejitoa ili yasisomoke kama ameyaandaa wakili”

Mr. Mathias was recorded saying.

“Hatuna pingamizi”

The court made the following order:

“Amri: (1) Muombaji afanye marekebisho aliyofanya na ayalete

(2) Kutajwa tarehe 16/12/2021”

This literally means that the applicant prayed to amend the application to remove the record that it had been prepared by the counsel who withdraw himself. There was no objection from Mr. Mathias. The prayer was granted. He was ordered to amend and file the amended application. The case was called again on 16/12/2021 but there is no record that the amended application was filed. It was set for mention on 8/3/2022. The present

revision was opened on 4/2/2022 so the parties could not appear at the DLHT on 8/3/2022.

Going through the record of the DLHT and before this court, one can see an interesting phenomenon. Mr Hope withdrew from the conduct of the case saying he had an interest but proceeded to be present in the DLHT pressing it to get the orders of amendment. He was refused but could not end there. He proceeded to this court and lodged the complaint which is the basis of this revision. I think that wisdom demanded that having pulled himself from the conduct of the case, he was to retire completely and leave the matter to the applicant or another counsel. He is reminded to do so in future.

What about the record of the DLHT? I don't see if there was anything wrong with the record of the DLHT save for the interference of Mr. Hope. I will therefore direct the DLHT to receive the amended application so long as the amendment is limited to the removal of the name of Mr. Hope as the one who drew it. I will also direct Mr. Hope to refrain from the conduct of the matter permanently. He should not write or make any physical appearance at the DLHT. The applicant (Emmanuel Kayanda Hosea) should appear in person or engage another advocate other than Mr. Hope Jafari Kawawa to assist him. The application is granted. No order costs.

It is ordered so. No order for costs.



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L.M. Mlacha

Judge

20/9/2022

Court: Ruling delivered on line through virtual court in the presence of Mr. Emanuel Kayanda Hosea at IJC Dodoma and the respondents in Kibondo District Court. Right of Appeal Explained.

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L.M. Mlacha

Judge

20/9/2022