

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. LAND APPLICATION No. 23 OF 2021

(C/F Land Application No. 17 of 2015 and Misc. Land Application No. 54 of 2020 of the District Land and Housing Tribunal for Manyara at Babati)

ELIZABETH SAPA1ST APPLICANT

SIMON MESIAKI.....2ND APPLICANT

VERSUS

KHATIBU JUMANNE.....RESPONDENT

RULING

12th July 2022 & 29th September 2022

TIGANGA, J.

This is an application for revision made by the two applicants namely Elizabeth Sapa and Simon Mesiaki hereinafter collectively referred to as the applicants but when referred separately they are referred to as the 1st and 2nd applicant, respectively. They moved this court by the chamber summons and the affidavit sworn by both applicants. They moved this court under section 41(1) of the Land Disputes Court Act, [Cap 216 R.E 2019]. They asked this court to call for and revise the record in Land Application No. 17

1 

of 2015 and Misc. Application No. 54 of 2020, both of the District Land and Housing Tribunal for Manyara, at Babati. They also prayed for the costs of the application and other reliefs as this Honourable court deems fit to grant.

The affidavit filed in support of the application put forth the background of the application and the reasons which this court is called upon to consider in granting the application.

The application was opposed by the respondent, Khatibu Jumanne, who affirmed and filed the counter affidavit in opposition of the application. The application was argued orally by the parties. Whereas the applicants fended for themselves, unrepresented, the respondent had the service of Mr. John J. Lundu, learned Counsel. In the submission in chief, the 1st applicant begun with the background of the dispute between the parties, that, the dispute is over the farm which was allocated to them by the village authority. They submitted that, although the tribunal has not decided the case, the applicants are not confident with the chairperson of District Land and Housing Tribunal, hence they prayed the court to decide on that matter.

They further more submitted that, the case between them is not new, it was once before the High Court before Bongole J, who directed that, they

A handwritten signature in black ink, appearing to be 'John J. Lundu', written in a cursive style.

had to start afresh before the trial tribunal. When they went back to the tribunal, instead of starting before the ward tribunal, the matter was filed before the District Land and Housing Tribunal, however in their views the Chairman of the said tribunal does not seem to do justice, because the chairman gave the stop order while in fact, he had no justification to do so.

In their further views they said, their complaint before this Court is that they are not confident with the Chairman and they think that justice will not be done. They in the end prayed before this court to do justice as they did not harvest their crops last year.

In reply submissions, the learned Counsel for the respondent submitted that, the law requires that the chamber summons moving the court for revision must be accompanied by an affidavit and the copy of the decision which is sought to be challenged. According to him, in this case, the application has not been supported or attached with a copy of the judgment or the ruling sought to be challenged.

He further submitted that, the application has not been supported by the submission which the applicants have made as the content of the affidavit is not supported by the submissions made by them. Regarding to



the complaint that Hon. Bongole J directed the matter to start in the ward tribunal, he submitted that the case which was filed before the DLHT is new, it is not the one which was decided by Hon. Bongole J. this is based on a fresh cause of action because the applicant trespassed into the land afresh.

On that base therefore, the District Land and Housing Tribunal can entertain the matter. He further submitted that, the applicants have to wait for the District Land and Housing Tribunal to decide. He concluded by praying for this court to dismiss the application with costs.

In rejoinder, the applicants submitted that, they did not trespass in the farm of eight acres, they prayed and urged as the complaint before this court is that the Village Authority allocated them that particular farm. Lastly they reiterated their complaint that they have no confidence with the Chairman hence they pray for justice.

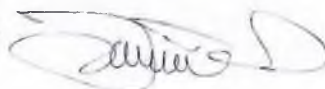
Gathering from the application and the submissions made by the parties, I find the issue likely to be framed for determination before this court is whether this application is meritorious.

Having passed through the submissions made by both parties, I find it crucial to commence with the issue raised by Mr. Lundu that the applicants

did not attach copies of proceedings as well as the decision sought to be revised in this application. This argument is premised on the fact that in this application the applicant applies this court to revise Land Application No. 17 of 2015 and Misc. Land Application No. 54 of 2020. The truth or otherwise is not far to fetch, it can be ascertained by perusing a copy of the application. In my such endeavor, I have taken my time to peruse the application, I find a number of court decision attached including Misc. Land Application No. 54 of 2020, but I did not find Land Application No. 17 of 2015 attached.

This means one of the order sought to be revised was not attached to the application by the applicant. In law, the requirement to attach the impugned order is not optional but rather a mandatory requirement which when contravened, renders the matter to be fatal. In the case of **Britannia Biscuits Limited vrs National Bank of Commerce Limited and Another, Civil Application No. 195 of 2012** (unreported), the Court held that;

"It is a settled practice that the party who seeks to move the court in revision has to attach, in the notice of motion, a copy of the proceedings as well as the decision or order sought to be revised."



Taking inspiration from the interpretation of the Court of Appeal Rules but while mindful as well that, the decision by the Court of Appeal of Tanzania binds this court I find that the requirement to attach the copy of the order sought to be revised is a matter of necessity.

On insistence, I would also like to rely on another decision of the Court of Appeal in the case of **VIP Engineering and Marketing Limited vs Mechmar Corporation (Malaysia) Berhard of Malaysia**, Civil Application No. 163 of 2004, the court had this to say;

"Since the three volumes are excluded from the revision record, at this juncture it is unnecessary for us at this stage to consider the merits of this matter or otherwise of the other matters."

Basing on the above legal position it is my considered view that, without attaching the copy of the order sought to be revised the application becomes incompetent. I am aware that the order sought to be revised are two, and one of them, that is Misc. Land Application No. 54 of 2020. Having so realized, I have taken time and passed through the order complained of by the applicant, I find that the order is nothing but an interlocutory one, which was issued restraining the applicant from using the land pending

determination of the main suit. In law no appeal or revision lies on orders which are interlocutory and which do not have the effect of finally determining the case. See **Yusuph Hamisi Mushi & Another vs Abubakari Khalid Hajj and 2 Others**, Civil Application No. 55 of 2020. As the order in Misc. Land Application No. 54 of 2020 was interlocutory, its revision is unmaintainable. In the upshot, I hereby strike out this revision application for being incompetent. Given the nature of the application, and since the original land dispute is still pending, for avoidance of multiplicity of the applications, I order the costs to follow events in the case before the trial tribunal.

It is accordingly ordered

DATED at **ARUSHA** on the 29th day of September 2022.




J.C. TIGANGA

JUDGE