

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

LAND REVISION NO.5 OF 2021

(C/F Misc. Land Review No.313 Of 2020 Originated from Misc. Application No.214
And Maombi No.49/2019 Maboglini-Kata)

FIDELIS ABDI MSANGI.....APPLICANT

VERSUS

PAMELA STEVEN.....RESPONDENT

Last Order: 12th July, 2022

Date of Ruling: , 13th October, 2022

JUDGEMENT

MWENEMPAZI, J.

By a chamber summons supported by the affidavit deposed by Fidelis Abdi Msangi (applicant), the latter calls upon the court to revise the decision passed by the District Land and Housing Tribunal for Moshi (herein referred to as DLHT) in the application for review registered as application No. 313 of 2020.

The application is made under section 43(1)(b) of the Land Dispute Courts Act No.2 of 2002 now Cap 216 R.E.2019 and it has been opposed by counter affidavit filed by the respondent.

The brief facts giving rise to this application whose origin is the District Land and Housing Tribunal of Moshi (DLHT) vide Misc. Land Review

No.313 of 2020 Originated from Misc. Application No.214 of 2020 And Maombi No.49/2019 Mabogini-Kata. It stands out that the applicant applied for execution before DLHT for handover of the suit land to realise the decree by Ward Tribunal that awarded her the land in question. The respondent being aggrieved by execution order filed for review in the same DLHT vide Miscellaneous land Review No.313 of 2020 that estopped execution and granted leave to the respondent to file an appeal or revision against the decision of Mabogini Ward Tribunal.

Aggrieved the applicant has now come before this court seeking for revision of the ruling of the DLHT that estopped execution and granted leave to appeal to the respondent herein. The parties agreed to argue the application by way of written submissions and both parties appeared in person.

The applicant while submitting in support to the application prayed the court to adopt her affidavit to form part of her submission and added that the grounds for seeking review as per memorandum of review before DLHT aimed at showing dissatisfaction to execution order in quest to move the tribunal. He challenged the DLHT order granting the respondent leave to appeal against the decision of Ward Tribunal within thirty days while no such prayer was before it as being unprocedural. He further elaborated that the respondent never appealed against the Ward Tribunal decision in an Application Case no.49/2019 and she ought to have applied for enlargement of time before DLHT, before the latter awarded her the thirty (30) days extension within which to file an appeal or revision.

Concerning the order to stop execution as issued by DLHT, execution which the same tribunal had granted, he challenged the same as being

unjustly issued and unprocedural. Ultimately, he urged this court to examine as to correctness and legality of the DLHT decision and decide accordingly with costs.

In reply thereof, the respondent argued that the applicant failed to answer on the grounds which she(respondent) had raised in DLHT in Misc. Application No.313/2020; Appeal.no.51/2021 and no.5/2021. She further added that the decision of DLHT was properly and fairly reached

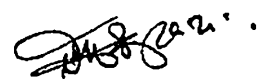
In rejoinder, the applicant reiterated his position.

I have given a deep thought into the matter and having gone through the DLHT proceedings and ruling, and after reading both parties' submissions, I find one issue calls for determination of this court; *Whether there are enough reasons/grounds for revision.*

I have to start by citing the relevant law under which the application is anchored and see if the same has been complied with before going to the determination of the same. Section 43(1)(b) of the Land Disputes Courts Act, cap 216 R.E.2019 provides;

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

(b) may in any proceedings determined in the district land and housing tribunals 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.



From the above provision, for the application for revision to issue as the law puts it, the following conditions must be fully met.

(i) There must be a decision by the DLHT.

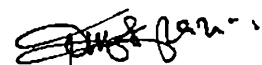
(ii) The DLHT must have appeared to exercise its jurisdiction with an error material to the merits of the case involving injustice.

The applicant critically argued that the DLHT acted illegally. The reason being that the tribunal granted leave to the respondent to file an appeal while that was not prayed in the review application. She also challenged an order to stop execution which the same tribunal had granted. The respondent unfortunately was unable to respond to these points.

Now, as per DLHT records, the respondent filed the memorandum of review seeking an order of the DLHT to review the decision of Mabogini Ward Tribunal in land case no.49/2019. However she did not cite the enabling provision to move the DLHT. Again, there are no reliefs which the review sought to grant. Unfortunately, the DLHT granted leave to appeal out of time and stayed execution in the same application. The purported leave was not something which was asked for so that the court could entertain and order accordingly. That is to say in law there has been no application to DLHT for leave to appeal or seek revision.

On top of that an application for review and application for leave to appeal out of time are two independent applications which ought to have been entertained separately.

The applicant is asking for one prayer, that is to revise the proceedings and order of the DLHT. The finding of the Honorable Chairman before granting an application at page 1 of the ruling, stated as follows;



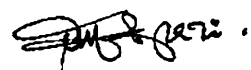
"... Kwa kuwa maamuzi ya kumpatia haki Fidelis Abdi Msangi yalitolewa na Baraza la Kata Ilkiwa na mamlaka kamili ya kutoa Hukumu hiyo, haki ya kupinga Hukumu hii ilitakiwa ilewe kwa njia ya rufaa au marejeo (Revision) na sio masahihisho (review). Hivyo ombi hili la "review" haliwezi kisheria kutumiwa kusahihisha hukumu ya Baraza la Kata"

The above was not the end of it, at page 2 the DLHT went on thus;

" Ombi hili linakataliwa kwa ruhusa (leave) kwa mwombaji kuleta ombi la kupinga hukumu ya Baraza la Kata kwa njia ya rufaa au "revision"

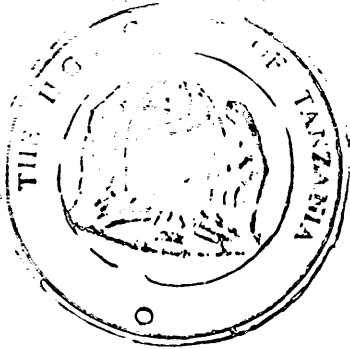
The application was explicitly praying for review. The DLHT came out with quite a different order different from what was prayed as observed earlier. The question is whether the DLHT exercised its jurisdiction properly? The answer would appear to be negative. This is because parties are bound by their pleadings; arguments and or submissions are geared to support the pleadings and not vice versa; cases are decided based on pleadings that are brought before the court and the rule that nobody can give what he does not have. See the case of **Hood Transport Company Limited vs East African Development Bank** Civil Appeal No.261 of 2019 CAT(Tanzania) which cites with approval the case of **NHC vs Property Bureau (T) Ltd**, Civil Appeal No.91 of 2007(CAT)

That being said it cannot be concluded that DLHT exercised its powers with legality. It is the considered view of the court that in exercise of its jurisdiction, the DLHT illegally and with material irregularity granted an application that was not brought before it. That being the case the



application is allowed with costs. The order of DLHT dated 27th July, 2020 to grant leave to appeal and stay execution are hereby set aside.

It is so ordered.




T. M. MWENEMPAZI

JUDGE

13TH OCTOBER, 2022

Judgment Delivered this 13th day of October 2022 in the presence of parties.

Right of Appeal Explained.


T. M. MWENEMPAZI

JUDGE

13TH OCTOBER, 2022