

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

MISC. LAND APPLICATION NO. 14 OF 2022

OMARI SALUM ABDALLAHAPPLICANT

VERSUS

ROBINSON JOHN KAYUNI

DOTTO HUSSEIN KAOBA

.....RESPONDENTS

(Arising from the Order of the District Land and Housing Tribunal, Dodoma)

In

Land Application No.67 of 2022

.....

RULING

27thSeptember&11thNovember,2022

MDEMU, J:.

This is an application for revision of the order of the District Land and Housing Tribunal in Land Application No.67 of 2022. The latter is an application for execution. According to the chamber summons preferred under the provisions of section 43 (1)(a) and (b) of the Land Disputes Courts Act, Cap.216 which is supported by the affidavit of the Applicant, there are six grounds through which this application is premised. The main grounds of complaint are for this court to intervene through revision on the following improprieties and illegalities in the conduct of execution proceedings. **One**, the Application for execution is not signed by the decree holder, **two**, that

the decree itself was not attached to the application for execution and **three**, that, the Applicant was not served thus illegally the tribunal proceeded to determine the application ex-parte.

On 27th of September, 2022, appeared before me Mr. Geoffrey Wasonga and Mr. Komba, Advocates for the Applicant and the Respondents respectively arguing this application. Mr. Wasonga prayed first to have the affidavit of the Applicant adopted to form part of his submissions when submitted in support of the application. According to Mr. Wasonga, in paragraphs 1 through 4 of the affidavit, there are three issues calling attention of this Court. **One** is that the Applicant was not informed of the hearing date of an application for execution, **two** is failure to attach the decree and **three**, the application for execution was not signed by the decree holder.

As to attachment of the decree, Mr. Wasonga submitted that, the Respondent attached only the judgment which is contrary to Order XXI, Rule 9 of the Civil Procedure Code, Cap.33 requiring the Applicant decree holder to attach a decree. Regarding application for execution not initiated by the decree holder, Mr. Wasonga cited form No.3 to GN. No.174 of 2003 requiring the decree holder and no one else to make application for execution. In the

instant application, Mr. Kesanta is the one who signed the application for execution. He thus sought the application be granted as prayed for.

In reply, Mr. Komba submitted first to have the counter affidavit of the Respondent be adopted to form part of his submissions in reply. In his view, paragraphs 5, 6, 7 and 8 of the affidavit violates Order XIX, Rule 3 (1) of the Civil Procedure Code, Cap.33 restricting an affidavit not to confine itself on hearsay information. He added that, other informations are from the advocate who never filed an affidavit to that effect.

As to ex-parte hearing of an application for execution, Mr. Komba sought the remedy was to approach the District Land and Housing Tribunal for setting aside the said ex-parte decision. It is on those premises the Applicant would have been heard for reasons of nonappearance. In his view, revision is exercisable where there is no any other remedy, which is not the case here as the remedy open to the Applicant was to set aside ex-parte hearing.

Irregularities as to failure to attach a decree and an application being signed by an advocate instead of the decree holder; in his view, was to arise in the tribunal when determining application for execution. He concluded

that, the Applicant was served with summons but did not object within fourteen days as required. He thought therefore this application be dismissed for want of merits.

In rejoinder, Mr. Wasonga almost reiterated his stance in submissions in chief. He added that, there is no proof of service as summons was not annexed to the application. He finally re-joined that, it is not mandatory in revisions to resort to setting aside ex-parte decision in the lower tribunal. What is important in revision as alluded by Mr. Wasonga is presence of irregularities and illegalities in the proceedings. This is what calls for intervention of the High Court, Mr. Wasonga concluded.

Having heard the parties, the contentions in the affidavit is on impropriateness of the proceedings. In the counter affidavit, the fact is wanting of any. Of course, going by submissions of Mr. Komba, it appears he is labouring on competence of the application by his observation that, this is not a fit case for revision. Before I proceed that far end, let the enabling provisions cited in the application be reproduced as here under:

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

(a) shall, exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;

(b) may, in any proceedings determined in the District Land and Housing Tribunal 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.

(2) In the exercise of its revisional jurisdiction, the High Court shall have all the powers in the exercise of its appellate jurisdiction.

My understanding in the above provisions is that, in section 43(1) (a) of Cap.216, the High Court, *suo moto*, in exercise of general powers of

supervision over District Land and Housing Tribunals, may call for and inspect the records of such tribunal and give directions as it considers necessary. It was wrong therefore for the Applicant to move this court under that section.

Regarding section 43(1)(2) of Cap.216, a party may apply to court for revision. Again, the Applicant also moved this Court for the purpose. The question to be asked is whether the Applicant may apply for both supervisory and revisional jurisdiction of the High Court at once. In **Farida Bugozi Mikindo vs. Abigael Laban Kauga & Another [2013] T.L.R. 195** on this procedure adopted by the Applicant, it was observed that:

*It is obvious from the **contents of the chamber summons** that the Applicant applied to the court to exercise both supervisory and revisional powers to grant the prayer. That is clearly not practicable. The tribunal in the decision has passed the stage which this court can exercise its supervisory jurisdiction. The case having been determined, this court can exercise only its appellate or revisional jurisdiction, subject of course to whether the decision is appealable or otherwise (emphasis supplied).*

Given this legal position, revision is exercisable where the matter has been determined. It can be done if it appears that there has been an error material to the merits of the case involving injustice. In the record, there is an order of the District Land and Housing Tribunal dated 15th of February, 2022 which is reproduced as hereunder for easy of reference:

Amri

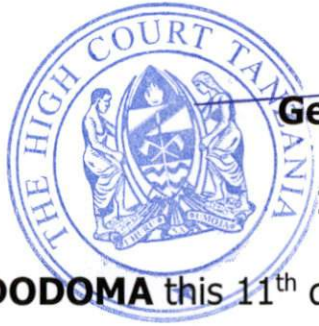
Uamuzi tarehe 02/03/2022

Sgd.

15/02/2022

There was no decision made by the District Land and Housing Tribunal through which the complained irregularities or illegalities may be considered errors apparent material to the merits of the case involving injustice. That notwithstanding, it is not for this court to choose which remedy is open to the Applicant between supervisory jurisdiction and revisional jurisdiction of the High Court over the District Land and Housing Tribunal applied by the Applicant. It was for the Applicant to be certain and properly guide the Court in the application of the legal recourse open to redress the complained illegalities. That said, this application is hereby struck out with costs.

It is so ordered.



Gerson J. Mdemu
JUDGE
11/11/2022

DATED at DODOMA this 11th day of November, 2022



Gerson J. Mdemu
JUDGE
11/11/2022