

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND CASE REVISION NO. 8 OF 2022**

*(Originating from Misc. Application No. 52 of 2020 Gwae J., arising from Land Appeal No. 5 of 2020 Masara, J., Originally from Land Case No. 02 of 2018 in District Land and Housing Tribunal for Manyara at Babati.)*

**GODFREY LIKINDISHILU ..... 1<sup>ST</sup> APPLICANT**

**DAUDI MUKANE ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**ELIYAHU ISRAEL..... RESPONDENT**

**RULING**

19<sup>th</sup> October & 15<sup>th</sup> November, 2022

**TIGANGA, J.**

This is an application for revision preferred under the provisions of Sections 43(1) and (2) of the Land Disputes Courts Act, [Cap. 216 R.E 2019] and 95 of the Civil Procedure Code, [Cap. 33 R.E 2019]. It was made through the chamber summons supported by the 16 paragraphed affidavit sworn by John Kivuyo Lairumbe.

The applicant seeks for revision of the decision of Land Application No. 02 of 2018 which was issued by the District Land and Housing

Tribunal for Manyara at Babati herein referred to as "DLHT". It seeks for the court to examine the record of the judgment, proceedings, orders and decree in the said Land Application for the purpose of satisfying itself as to the correctness, legality and or propriety of the decision emanating therefrom. The applicants also pray the Court to grant costs and any other reliefs which this court deems fit and just to grant.

The factual background of the matter is as brief as follows; the respondent herein filed an application before the DLHT against the applicants for trespassing to his two pieces of land measuring  $4\frac{3}{4}$  and  $1\frac{1}{4}$  acres respectively, both located at Kifaru village in Babati District. He claimed to be declared the lawful owner of the said two pieces of land. Instead, the DLHT held in favour of the applicants who were the respondents in the DLHT. This decision aggrieved the respondent who appealed against the judgment and decree in the DLHT before this Court (Masara, J.). Upon determination of the appeal, the High Court vide Land Appeal No. 05 of 2020 quashed and set aside the decision and orders emanated therefrom and the respondent was declared the lawful owner of the two pieces of land. Consequent to those findings, the applicants were ordered to vacate the suit land with immediate effect.

Following such decision, the respondent went back to the DLHT to execute the order of the High Court so that the applicants can give vacant possession. Instead of complying with the judgment of the High Court, the applicants filed an application for stay of execution pending determination of Miscellaneous Application No. 52 of 2022 which was later on withdrawn by the applicants for being overtaken by event. In such withdrawn application, the Court ordered the applicants to within 14 days either file review of the decision of the DLHT or Revision of the said decision. Basing on that order, the applicants filed this application. With leave of the court and consent of the parties, the application was heard by way of written submissions. The applicants were represented by John Kivuyo Lairumbe whereas the respondents appeared in person, unrepresented.

In support of the application, Mr. Lairumbe started by adopting the contents of the affidavit sworn by himself. He says, the record on Land Application No. 02 of 2018 do not show that, the applicants were given the right to be heard. Instead, there appears several orders issued on 29<sup>th</sup> April 2022 and which appointed Kibaigwa a Tribunal Broker to evict the applicants.

Also, Mr. Lairumbe, submitted further that, this application is meritorious because, in the case of **Hallais Prochenie versus Wella AG** [1996] TLR 269 some important principles were pointed out under which revision can be made, which are; irregularities, if the appeal has been blocked by any judicial processes, if the order for decision is not appealable and that revision is not an alternative to appeal.

In this application, the applicant complains that, in execution, the applicants were given only two days to vacate, instead of 14 days which is contrary to the law and that, they are challenging the notice given.

Submitting against that point of complaint, the respondent said, the DLHT properly followed the procedure, because it was executing the decision of the High Court in appeal. That he waited for five months before executing the decree because there was application No. 48 of 2021 asking for the leave to appeal to the Court of Appeal.

That on 07<sup>th</sup> November, 2021 the applicants went to the DLHT to file the application for stay of execution. That, the application No. 48 of 2021 which was for leave to appeal to the Court of Appeal was struck out on 04<sup>th</sup> November, 2021.

The respondent further said that, on 10<sup>th</sup> November, 2021 he was heard ex parte and the decision was scheduled to be delivered on 02<sup>nd</sup> January, 2022. He said also that, on 02<sup>nd</sup> August 2021 the applicants informed the tribunal that, there was a case No. 48 of 2021 which was pending before the High Court but when he went to seek legal advice from the legal and human right centre, he was advised that, the Notice of Appeal does not stay execution if there is no application for stay of execution before the Court of Appeal.

That after complaining to the Deputy Registrar she told him that, there was no case No. 48 of 2021 pending before the High Court, thus, he returned to the DLHT for continuing with execution. He also said that, the notice which was given was not for two days but it was for months. Lastly, he prayed the court to dismiss the application with costs.

In rejoinder, Mr. Lairumbe, save for few issues raised in elaboration of the matter he submitted in chief, he reiterated his position in the submission in chief. From the summary of the application at hand, the record and the submissions filed in support and against the application, I find one main issue for discussion and determination which is whether this application stands a chance of success.

It must be known here that, the decision sought to be revised by this court in accordance with the affidavit sworn by Mr. Lairumbe is that which is emanating from Application No. 2 of 2018. This is justified by the chamber summons plus the 16<sup>th</sup> paragraph of the applicants' affidavit which reads as follows:

*"That, this chamber application has in the interest of justice which requires the Revision of the entire proceedings and orders, decree emanating from the original file in land Application No. 02 of 2018, I the District Land and Housing Tribunal of Manyara at Babati."*

And the first prayer in the chamber summons is written as hereunder:

*"That, this Honourable Court be pleased to exercise the general powers of supervision over the District Land and Housing Tribunal and this Honourable Court be pleased to call and examine the records of judgment, proceedings and Orders, Decree, in the Land Application No. 02 of 2018 of the District Land and Housing Tribunal of Manyara at Babati, before H.E. MWIHAVA (Chairman) for purpose of satisfying itself as to the correctness, legality or propriety of the decision and revise proceedings thereon."*

This is with concomitant with the rule that parties are bound by their own pleadings as clearly propounded in the case of **Lawrence Surumbu Tara versus The Honourable Attorney General & 2**

**Others**, Civil Appeal No. 56 of 2012 CAT at Arusha (Unreported) it was held that:

*"Since parties are bound by their pleadings, the appellant cannot raise this complaint at this stage. So, we find that this ground of appeal is an afterthought and we accordingly dismiss it."*

Basing on such authority and quotations hereinabove, from paragraph 16<sup>th</sup> of the affidavit filed in support of the application, it is certain that, the decision and decree sought to be revised by the applicants are that from the Application No. 02 of 2018. It is also not disputed that the said decision was appealed against in this Court via Land Appeal No. 5 of 2020 (Masara, J.)

The very pertinent question to be answered before in this application is determined is whether, this court is empowered to revise the decision which has already been determined by this court in appeal.

The guiding provisions of the section 43(1)(b) of the Land Disputes Courts Act, [Cap. 216 R.E 2019] provides as follows:

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

*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.”*

Reading the above provision of the law, it is apparent that, the High Court is legally mandated to revise the proceedings and decisions determined in the DLHT. The decision which has already been determined by this court through appeal remains in no way of not being revised by this court. The decision is no longer that of the DLHT but of the High Court. In fact, this Court in Land Appeal Case No. 05 of 2020 (Masara, J.) quashed the decision and set aside the orders emanated therefrom. That means, even that decision of the DLHT is no longer into existence. In such circumstances, what remains binding is that which is decided by this Court in Land Appeal No. 05 of 2020. In the event, it is my settled view that, whenever, the decision of the lower court or tribunal has been already determined by the High Court, the High Court ceases to have jurisdiction of determining it by way of revision. The binding wisdom of the Court of Appeal of Tanzania in the case of **Christopherson Company Limited versus Tanga Cement**



**Company Limited**, Revision No. 3 of 2008 can be of great assistance in the circumstance of this nature where it was observed that:

*"The application in the instant matter is not incidental to the hearing and determination of an appeal, because the appeal has already been determined in Civil Appeal No. 133 of 2006. It is important to note that section 4(2) of the Appellate Jurisdiction Act applies to proceedings from the High Court to be revised during the hearing of an appeal. Currently, there is no appeal before us, it has already been disposed of.*

Basing on that authority and reasoning, it is properly sounding that this application in this court has been misconceived and therefore cannot be of merits. If the applicants were dissatisfied with the decision and decree in Land Case Appeal No. 05 of 2020 the only possible channel was to go to the Court of Appeal of Tanzania to challenge the said decision and not to bring revision in this court. However, before penning off, I would like to consider the orders given by this Court (Gwae, J.) in Misc. Application No. 52 of 2022. I am so considering because, these orders are the basis for the applicants to file this revision according to Mr. Lairumbe's submission and therefore calling the attention of this Court to take judicial notice of them. The second part of the orders provides:

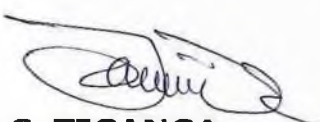
*"The applicants may go back to the District Land and Housing Tribunal for review purposes within 14 days from today if they so desire or file an application for revision to this court."*

In my opinion, Mr. Lairumbe misapprehended the facts of the said advisory order. This is because, the application which was sought to be challenged in this Court via Misc. Application No. 52 of 2022 (Gwae, J.) was that of Miscellaneous Civil Application No. 48 of 2021 aiming at executing the decree in Land Appeal Case No. 05 of 2020. Not Land Application No. 2 of 2018 as he wants this court to believe and act upon. That said, this application lacks merit for being misconceived. It is hereby dismissed with costs.

It is ordered accordingly.

**DATED at ARUSHA** on this 15<sup>th</sup> day of November 2022.



  
**J.C. TIGANGA**

**JUDGE**