THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

MISC. LAND APPLICATION NO. 15 OF 2022

(Originating from the District Land and Housing Tribunal for Iringa, at Iringa in Application No. 104 of 2021).

BETWEEN

ERASTO NGAILO..... APPLICANT

AND

BLASTUS ALLEN MGIMWA..... RESPONDENT

RULING

25th August & 17th November, 2022

UTAMWA, J:

The applicant, ERASTO NGAILO was aggrieved by a ruling (impugned ruling) of the District Land and Housing Tribunal (DLHT) which denied

admission of a sale agreement sought to be tendered in evidence by his witness. He has now come to this court seeking for the following orders:

i. That, this honourable court be pleased to call for the records of Application No. 104 of 2021 before the Iringa District Land and Housing Tribunal and revise the Ruling of Hon. A.J Majengo, Chairman dated 01st March 2022 by quashing the order drawn therefrom.

ii. That, costs of this application to be provided for,

iii. Any other order(s) this honourable court may deem fit to grant

The applicant's application has been brought under section 41(1) and 43(1)(a) and (b) of the Land Disputes Courts Act, Cap. 216 RE. 2019 (The LADCA). It was supported by an affidavit of Mr. Amandi Isuja, the applicant's counsel. The affidavit deposed that, the applicant was the respondent in the Application No. 104 of 2021 before the DLHT. When the application came for hearing, a defence witness number 1 sought to tender the sale agreement in evidence. The same was objected by the opposing side on the ground that it was not among the documents listed in the application and the applicant had not served the document to the respondent's side.

The respondent, BLASTUS ALLEN MGIMWA on the other hand filed his counter affidavit objecting the applicant's application. The counter affidavit was sworn by Ms. Joyce Francis, the respondent's counsel. The counter affidavit disputed the fact that the applicant had filed the list of

additional documents before the DLHT and averred that the applicant is aware of the procedure for service of documents to the opposing side.

The respondent also lodged the notice of preliminary objection that the applicant's application is incurably defective and incompetent for offending section 79(2) of the Civil Procedure Code, Cap. 33 RE. 2002 (The CPC). The applicant did not concede to the PO, hence this ruling.

At the hearing of the preliminary objection, both the applicant and the respondent were represented by their advocates mentioned above. The hearing of the preliminary objection proceeded by way of written submissions.

In support of the preliminary objection, the respondent's counsel submitted that the applicant has moved the court under section 41(1) and 43(1)(a) and (b) of the LADCA without citing section 79(2) of the CPC. It is these provisions of the CPC which give revisional powers to this court. Section 43(1)(b) of the LADCA gives revisional powers to this court, but section 51(1) allows the use of the CPC. She thus, urged the court to use section 79 of the CPC in deciding the matter.

The respondent's counsel further contended that, section 79(2) of the CPC provides that, no revision shall be made in respect of any preliminary or interlocutory order unless such decision or order has the effect of finally determining the suit. The applicant's application is thus, incompetent since the impugned ruling did not finally determine the matter before the DLHT. To buttress this position, she cited the cases of

Christian Kalinga v. Paul Ngwembe, Misc. Land Application No. 26 of 2020, High Court of Tanzania (HCT) at Iringa (unreported), **Morogoro Ceramic Wares Ltd (under receivership) v. George Carlo & 17 Others, Civil Revision No. 151 of 2002, HCT at Dar es Salaam** (unreported) and **Henry Lyimo v. Eliabu Matee (1991) TLR 93.** She thus, urged this court to dismiss the application with costs for being incurably defective and incompetent for offending section 79(2) of the CPC.

The advocate for the applicant submitted that, the respondent's preliminary objection is based on dead law since the learned advocate cited Revised Edition 2002. He faulted the learned advocate for the respondent for relying upon section 51(1) of the LADCA and section 79(2) of the CPC which were never preferred by the applicant. He submitted further that, the present application is for revision under section 41 and 43(1)(a) and (b) of the LADCA and not under section 79(2) or 51(1) as argued by the respondent's counsel. The provisions of law cited by the applicant in the chamber summons essentially allows applications from any party seeking appeal or revision of proceedings for any error committed by the DLHT on its original jurisdiction due to any material error which may occasion injustice to the merits of the case. In his view, the provisions do not limit the nature of the order to be revised, i.e. whether final or interlocutory.

It was a further contention by the applicant's counsel that, section 45 of the LADCA carries the overriding principle of justice. It provides that, interlocutory orders of the DLHT can be revised by this Court and the same shall be reversed when it appears to have the likelihood of occasioning

failure of justice resulting from any error, omission or irregularity in the proceedings before or during the hearing due to improper admission or rejection of evidence. The DLHT thus, erroneously rejected the sale agreement, between the applicant and the buyer. In his view, the rejection occasioned injustice to the applicant and goes to the root of the case as the said sale agreement is an important piece of evidence.

The learned advocate for the applicant also submitted that, the rejection of the sale agreement as an exhibit was against the law under Regulation 10(1) and (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 (GN. 174 of 2003). This was because, service to the opposite party was effected before the commencement of the hearing. This is also supported by the respondent in his submissions when he agreed that, the applicant had filed the list of additional documents and waited on the date of hearing to serve the respondent's counsel. The refusal to admit the document, if not revised would occasion injustice to the applicant.

It was also the argument by the applicant's counsel that, there is a conflict between the LADCA and the CPC. The LADCA allows applications for revision against interlocutory orders under the above cited provision, whereas the CPC prohibits them under section 79. He termed this as conflict between substantive and procedural law. He provided a definition of substantive and procedural law as defined under the Black's Law Dictionary, 8th Edition. He further argued that, the rules of procedure are intended to be a handmaid to the administration of justice and they must

therefore be construed literally to render the enforcement of substantive rights effective. He supported his contention by citing the case of **Saiyad Mohd v. Abdulhabib (1988) AIR SC 1624** which held that, where there is conflict between procedural and substantive law then substantive law should prevail. He distinguished the **Christina Kalinga case** (supra) and **Morogoro Ceramic case** (supra) cited by the respondent as not applicable in the present application.

The applicant's counsel thus, urged the court to dismiss the preliminary objection raised by the respondent with costs for being lack of merits.

By way of rejoinder submissions, the respondent's counsel reiterated the contents of her submissions in-chief. She added that, substantive and procedural laws are inseparable as substantive laws define the rights and procedural laws define the procedure for seeking the said rights. The applicant ought to have waited for the final determination of the matter so that he could challenge the impugned ruling. Otherwise the applicant is wasting the precious time of the court. She also urged the court to apply the provisions of both the CPC and the LADCA in reaching into a fair decision. She therefore, urged the court to dismiss this application with costs and direct the parties to go back to the DLHT to finalise the matter.

I have considered the respondent's preliminary objection, rival submissions by both parties, the record and the law. The main issue for determination based on the respondent's PO is *whether the ruling of the*

DLHT denying admission of a document is in law, subject to revision by this court.

In my view, the parties do not dispute that the impugned ruling was in fact, interlocutory in nature. The dispute arises where the applicant contends that the CPC cannot apply in the present application because the LADCA is a specific law and does not prohibit appeals or revision against any order of the DLHT be it final or interlocutory. On the other hand, the respondent contends that the present application is incompetent basing on section 79(2) which bars revisions against preliminary or interlocutory orders.

Indeed, my perusal of the LADCA did not discover any provisions corresponding to those of section 79(2) of the CPC which prohibits revisions against interlocutory orders. The GN. No. 174 of 2003 cited erlier does not also set such a prohibition. It only, under the proviso to regulation 22 prohibits appeals against any ruling on a preliminary point of law or on any interlocutory application which have no effect of finally deciding the case. In my settled view therefore, the above provision only restrict appeals, and not revisions against interlocutory applications and preliminary point of law. It is also worth noting here that, appeals and revisions are two different statutory creatures in law.

Now, since the LADCA does not embody any provision prohibiting revisions against interlocutory orders like the CPC, it cannot be said that the provisions of the CPC prohibiting such revisions must apply to the matters governed by the LADCA. In my view, the law makers might have

intended to enact such distinct laws for a purpose of a close supervision of the DLHT proceedings by the High Court. I am fortified in this view by section 43(1)(a) and (b) of the LADCA which gives this court mandate to supervise the DLHT and revise any proceedings conducted by it. The term "proceedings" is defined under section 2 of the LADCA to include any matter whether final or interlocutory.

Had the law makers intended to enact in the LADCA provisions which are in *pari material* to those of the CPC which prohibits revisions against interlocutory orders, nothing could have obstructed them to do so. It cannot thus, also be said that there is a conflict between the LADCA and the CPC as contended by the applicant's counsel. Under the above arrangement of the law, this court cannot, in this matter resort to the CPC as suggested by the learned counsel for the respondent.

In fact, parties must be reminded of an important legal principle on legislative arrangements in this land. Indeed, where there is a specific law guiding on some matters, then such matters must be exclusively governed by such specific law and not by the general law, unless the specific law is silent and there is need for resorting to the general law. I underscored this position of the law in the case of **Victor Vedasto Rugemalila v. Regina Leonard Urio, Civil Revision No. 17 of 2015, High Court of Tanzania, at Dar es salaam** (unreported), and I reiterate the same position in the matter at hand.

In deciding the **Victor Vedasto case** (supra), I was fortified by the envisaging in the case of **Zabron v. Amon (1971) HCD n. 95.** In these

two precedents, it was decided that, the provisions of the CPC as the general law on procedure, had been wrongly applied in matters related to the then Affiliation Act, which was a specific Act guiding on affiliation matters. Though the two precedents did not relate to land matters like the one under discussion, the principle they underscored apply to the matter at hand by parity of reasons. This is because; the CPC is the general procedural law while the LADCA is the specific law in the matter at hand.

My view just underscored above, has a support of the Court of Appeal of Tanzania (The CAT) in the case of **KABDECO v. WETCU Limited, Civil Application No. 4 "A" of 2014, CAT at Tabora** (unreported). In that precedent, the CAT held that, since the LADCA had made specific provisions for the preference of appeals to the CAT regarding land disputes, then section 47(1) (of the LADCA) was the enabling provision for seeking leave to appeal to the CAT by a party who is aggrieved by a decision of the High Court in a land matter and is desirous of appealing to the CAT. The CAT further held that, it is wrong to invoke the provisions of section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 (as the general law on appeals to the CAT) for that leave. Citing the provisions section 5 (1) (c) of the Appellate Jurisdiction Act renders the application incompetent for wrong citation. The CAT also underscored the above position in the cases of **The Board of Trustees of the National Social Security Funds (NSSF) v. Grace Lumelezi, CAT Civil Appeal No. 38 of 2015, CAT at Tabora** (unreported) and **Jovin Mtagwaba and 85 others v.**

Geita Gold Mining Limited, Civil Appeal No. 13 of 2014, CAT at Mwanza (unreported).

Furthermore, in the case of **Dero Investment Limited v. Heykel Berete, Civil Appeal No. 92 OF 2004, CAT, at Dar es Salaam** (Unreported) the same CAT held that, despite the provisions of section 47(3) and 48 (2) of the LADCA which provide that the provisions of the Appellate Jurisdiction Act apply in appeals to CAT regarding land matters, leave to appeal to the CAT is obtainable under section 47(1) of the LADCA only and not under section 5 (1) (c) of the Appellate Jurisdiction Act. Again, the principle underscored in the precedents cited above related to the procedure of obtaining leave to appeal to the CAT in land matters, apply *mutatis mutan*dis in the present mater by parity of reasons, though this matter at hand concerns revision against interlocutory orders under the LADCA. This is because, in the matter at hand, there is also a general law (The CPC) and the specific law (the LADCA itself).

These precedents of the CAT just cited above indeed, underscore the legal principle I highlighted above that, where there is a general law and a specific law, what applies (in a matter before the court) is the specific law.

It must also be noted here that, the precedents by the CAT I have just cited above are binding to this court, other courts and tribunals subordinate to it (the CAT). This is by virtue of the doctrine of *stare decisis*, see **Jumuiya ya Wafanyakazi Tanzania v. Kiwanda Cha Uchapishaji cha Taifa [1988] TLR. 146.** I must therefore, strictly follow these precedents.

Owing to the reasons shown above, I determine the main issue posed above affirmatively that, the ruling of the DLHT denying admission of a document is in law, subject to revision by this court. The application is thus, competent before this court and it may thus, be heard for purposes of testing its merits.

Having held as above, I overrule the preliminary objection raised by the respondent. However, I will not grant costs to the applicant at this stage since the matter is still pending for hearing. I thus, direct that the issue of costs shall be considered at the hearing of the application. It is so ordered.

JHK UTAMWA

JUDGE

17/11/2022