

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND REVISION NO. 3 OF 2021

*(Arising from LAND APPLICATION NO. 91 OF 2016 OF THE DISTRICT LAND AND HOUSING
TRIBUNAL FOR TANGA DATED 04TH DECEMBER 2020)*

NANI ALLY HASSAN.....APPLICANT

VERSUS

SALUM JUMA KOMBO.....1ST RESPONDENT

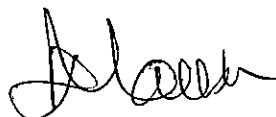
OMARI MOHAMED LIKU.....2ND RESPONDENT

JUDGMENT

Date of Judgment: 27th April 2022

Mansoor, J.

Briefly, the revision arises from the decision of the District Land and Housing Tribunal for Tanga dated 4th December 2020 in Land Application No. 91 of 2016. The land in dispute is measuring 20 meters by 24 meters located at Mwakidila B Area, Pangani Road in Tangasisi Ward, in Tanga City, herein referred to as "the disputed land".



Both parties agree that the disputed land belonged to Mzee Shekue who died before independence. The Applicant claims that her parents were given the disputed land by Mzee Shekue since 1940s, and they have been occupying the land since then. The 1st respondent claims ownership of the land simply because he belongs to the clan of Mzee Shekue, and he sold the land to the 2nd respondent. When the 2nd respondent started erecting a structure on the land, the applicant herein resisted, and this is when the dispute arose. Then Salimu Juma Kombo, the 1st respondent herein filed a case at Tangasisi Ward Tribunal against Nani Ally Hassan. The Ward Tribunal declared Nani Ally Hassan the owner of the disputed land by long possession as her family has been occupying that piece of land since 1940s.

Aggrieved by the decision of Tangasisi Ward Tribunal, Salim Juma Kombo filed an appeal at the District Land and Housing Tribunal for Tanga, appeal No. 67 of 2014. In the appeal, Salim Juma Kombo was found to be an incompetent person to pursue the case on behalf of Mzee Shekue, as he did not have the letters of

administration for Mzee Shekue's estates thus, the proceedings and Judgement of Tangasisi Ward Tribunal were quashed and set aside.

Then Nani Ally Hassan filed a fresh case at the District Land and Housing Tribunal, Application No. 91 of 2016, against Salum Juma Kombo and Omari Mohamed Liku, this case was dismissed since there was another case Application No. 14 of 2016 filed by Omari Mohamed Liku which was heard and decided *ex parte* by the District Land and Housing Tribunal for Tanga. Land Application No. 14 of 2016 was filed by Omari Mohamed Liku vs Nani Ally Hassan, Kiere Ruba Mohamed, Mohamed Ruba Mohamed, Ally Ruba Mohamed, and Salehe Ruba Mohamed. It was filed in the Tribunal on 10th March 2016. Omari Mohamed Liku claimed to have purchased the disputed land from Salimu Juma Kombo, the administrator of Juma Shekue Selemani on 30th October 2014. Omari Mohamed Liku claimed that the respondents in that application invaded his land on 10th June 2015, and destroyed the plants planted on the land, and on 20th November 2015, the respondents in that case started digging or constructing a septic tank on the disputed land and encroached into the disputed land. Again, on 29th February 2016,

the respondents in that case continued the destruction of trees on the disputed land. The case No. 14 of 2016 was determined *ex parte* and an *ex parte* judgment was entered, and in that Judgement Omari Mohamed Liku was declared the lawful owner of the suit land located at Mwakidila B, Pangani Road, Tangasisi Ward within Tanga City. This Judgement was entered on 12th June 2016, and to date it has never been reversed. Application No. 91 of 2016 was filed in the Tribunal on 8th December 2016, after the judgment in Land Application No. 14 of 2016 over the same piece of land was already pronounced.

In fact, the Applicant is not challenging the decision of Land application no. 91 of 2016, which was dismissed for being *res judicata* to Land Application No. 14 of 2016. The Applicant is challenging the findings of Land Application No. 14 of 2016, for ease of reference, I shall reproduce below paragraph 2 of the Applicant's submissions made at page 3, he says:

"Your Honor, the intention of this submissions is to show to this honorable court, how the 1st and 2nd respondent herein carried out the fraudulent design of the highest

order for deceiving the DLHT in Application No. 14 of 2016 that they concluded a lawful sale transaction of the disputed land on 30th October, 2014, when in fact the sale for the same was made on 14th November, 2010, before the 1st respondent herein being appointed the administrator of the estate of the Late Juma Shekue Selemani. The purpose of the 1st and 2nd respondent's fraudulent act is to dispossess the Applicant's herein the disputed land where she has been residing with her children to date. The land which was assigned to her by her mother who unfortunately passed away in year 2015."

Not only that the Applicant is challenging the Application No. 14 of 2016, which was an *ex parte* judgement entered against the applicant and 4 others, as correctly submitted by counsel Warehema Kibaha, the applicant is challenging the sale of the disputed land between the 1st and the 2nd Respondents. The sale was confirmed by the Tribunal in Land Application No. 14 of 2016, and the 2nd respondent herein was declared the owner of the

disputed land through Land Application No. 14 of 2016. The Land Application No. 91 of 2016 , not only that it was res judicata to land Application no. 14 of 2016, but again the proper way to challenge Land Application No. 14 of 2016 is to apply to set aside the exparte judgment and the issue on legalities and appropriateness of the sale of land by the 1st respondent to the 2nd respondent, and whether the 1st respondent had legal title to pass it over to the 2nd respondent could have been determined in Land Application No. 14 of 2016. If Land Application No. 14 of 2016 remains unchallenged, all the subsequent proceedings after the decision in Land Application No. 14 of 2016 will be res judicata and unmaintainable before any Tribunal or any court of law.

As submitted by Counsel Warehema Kibaha for the respondents, Land Dispute No. BK/TGSS/B.7/01/2014 determined by the Tangasisi Ward Tribunal which was filed by Salim Juma Kombo against Nani Ally Hassan was for a different land known as "ur by up 12" which was sold by the 1st respondent i.e. Salim Juma Kombo to one Salim Daruweshi, a different purchaser. In any case that decision of Tangasisi Ward Tribunal was already quashed and set

aside by the District Land and Housing Tribunal in Land Appeal No. 67 of 2016 because Salim Juma Kombo did not have locus standi to sue for the estate of the Late Mzee Shekue. This means that there is no judgement or decree existing in the case before Tangasisi Ward Tribunal as that judgment and proceedings were quashed and set aside by the District Land and Housing Tribunal in Land Appeal No. 67 of 2016.

The applicant also seemed to challenge the Probate Cause i.e., Probate Case No. 248 of 2014, whereby the Primary Court appointed Salim Juma Kombo as the administrator of the estate of the late Juma Shekue Selemani saying that the grant was given after the expiry of almost 54 years since the death of Juma Shekue Suleimani who passed since 5th July 1960. Probate causes could only be challenged by the heirs in the original probate court which appointed the administrator, and the appointment could not be revised in an application for Revision of the case emanating from the District Land and Housing Tribunal. This application is totally misplaced.

Again, it is not true that the suit land was sold to the 2nd respondent by the first respondent while Land Appeal No. 67 of 2016 was still going on, as the Appeal No. 67 of 2016 was for challenging the piece of land which was sold to one Salim Darweshi and which was the subject matter in the Land Case entertained and decided by Tangasisi Ward Tribunal, whose proceedings and judgement have been quashed and set aside.

I have read and considered the arguments raised by both sides in their written submissions, and the question to be determined is whether the application for Revision of land Application No. 91 of 2016 which is held to be res judicata to Land Application No. 14 of 2016 can be revised by the High Court under the provisions of Section 43(1) (a) & (b) and (2) of the Land Disputes Courts Act, 2002 or Section 79 of the Civil Procedure Act, Cap 33 R: E 2002.

Section 43 of the Land Disputes Courts Act provides as follows:

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

- (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.

Apart from section 43 of the Land disputes Courts Act the provisions of Section 79 (1) (c) of the CPC empowers this Court to call for the records of the lower Tribunals in any case in which no appeal lies if such Subordinate Tribunals appears to have acted in

the exercise of their respective jurisdiction illegally or with material irregularities. For clarity, I shall also refer to the case of **Abdu Hassan vs. Mohamed Ahmed (1989) TLR 181**, Hon Katiti J (as he then was) held that "the High Court Revisional Powers under Section 79(1) of the CPC are limited to cases where no appeal lies and issues such as whether the subordinate courts has exercised jurisdiction not vested or, if vested, whether it has failed to exercise the same or has acted illegally or with material irregularity.

The argument by the Applicant is that the respondents in this application have practiced fraud by filing Land Application No. 14 of 2016 before the District Land and Housing Tribunal. The Judgment in Land Application No. 14 of 2016 issued by the District Land and Housing Tribunal is an appealable order or it could also be set aside, and so it does not fall under the ambit of Section 79 (1) of the Civil Procedure Code, 1966, hence this court is not properly moved to revise the proceedings of Land Application No. 14 of 2016. If at all, the court is to revise the proceedings of Land Case No. 91 of 2016, then the proceedings of Land Application No. 14 of 2016 will not be affected as the Applicant specifically in his

application has moved the Court to revise the proceedings of Land Application No. 91 of 2016 made on 4th December, 2020, whose judgement was to the effect that the Tribunal did not have the jurisdiction to decide on the subject matter since the subject matter was already determined by the same Tribunal in Land Application No. 14 of 2016.

The applicant ought to have applied to set aside the *exparte* judgment entered in Application No. 14 of 2016, but the present application for revision cannot be overstretched to be used to revise the judgement passed in Land Application No. 14 of 2016. Again, this application for Revision cannot be overstretched for revising the proceedings of Tangasisi Ward Tribunal and the Appeal No. 67 of 2016, since these proceedings were already quashed and so they do not exist anymore. These proceedings cannot be used to revise the orders of appointment of the administrator by the Probate Court. Again, since there was already an appeal against the judgement of Tangasisi Ward Tribunal, which appeal had the effect of quashing the proceedings of the Ward Tribunal, thus the High Court cannot entertain an application for revision over the same

matter in which the appeal was preferred and already determined.

The Applicant herein instituted a fresh case which was Application No. 52 of 2016, this application was rejected for failure to disclose a cause of action. Again, she filed a fresh case at the District Tribunal, Application 91 of 2016 filed by the Applicant herein over the same subject matter claiming fraud in the sale transaction of the subject matter, the Trial Tribunal dismissed this application for there was a case no 14 of 2016 which had determined over the same subject matter.

From the submissions of the parties, and the records of the lower tribunals, indeed the earlier Land Dispute No. 14/2016 which was conducted to its finality and a decree obtained was never challenged by either an appeal or revision and no revision can lie over that decision in this present application.

Section 43 (1) (a) of the Land Disputes Courts Act gives the High Court power to call for records and give directions, and (b) gives power to the High Court to revise any proceedings determined in

the District Land and Housing Tribunal in the exercise of its ***original, appellate or revisional*** jurisdiction,

A combined reading of the said two sections may be stated thus High Court can only exercise its revisional powers on a suit not on collateral proceedings, only when the lower tribunal is exercising its original or appellate or revisional proceedings. The High Court can only exercise revisional powers when moved. The applicant moved the court to revise the proceedings of Land Application No. 91 of 2016 but in his submissions, he alleges matters which were decided in another case altogether. In this matter there was a judgment passed by the District Land and Housing Tribunal, Land Application No. 14 of 2016 and this decision was not appealed to the High Court, thus the Judgment of the District Tribunal became final, and no issue shall be called in question in original suit, which no appeal or revisions lied.

The decision by the District Tribunal in Land Application No. 14 of 2016 was final and conclusive and that puts an end to the matter since no appeal was preferred to the High Court against the Judgment of the District Tribunal thus nothing can be called in

question in respect to Land Application No. 14 of 2016. In fact, it is the Applicant who practiced irregularities and abused the court processes by filing fresh suit while he was aware that there is judgement passed by the competent tribunal over the same subject matter to which no appeal was filed to challenge it.

For the above stated reasons, the Application for Revision No.3 of 2021 filed by the Applicant herein is dismissed, with costs.

It is so ordered.

DATED AND DELIVERED AT TANGA ON 27TH APRIL 2022




L. Mansoor,

JUDGE

27/04/2022