THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(IRINGA DISTRICT REGISTRY)

AT IRINGA

LAND REVISION NO. 01 OF 2021

(Originating from Misc. Land Application No. 24 of 2014 and Originated from Application No. 24 of 2014)

MAKAMBAKO SACCOS ..... 1ST APPLICANT

GAUDENCE HIRUKA ..... 2ND APPLICANT

VERSUS

PETRO MWANDEMELE ..... 1ST RESPONDENT

ELIDE A. SANGA ..... 2ND RESPONDENT

Date of Last Order: 17/02/2022
Date of Ruling: 08/03/2022

RULING

MATOGOLO, J.

The applicants in this application namely, Makambako Saccos and Gaudence Hiruka have filed before this court an application for revision of the decision of the District Land and Housing Tribunal for Njombe in Misc. Land Application No. 24 of 2014.

The application is by chamber summons made under S. 43(1)(b) of the Land Disputes Courts Act, [Cap. 216 R.E. 2019] and supported by an affidavit taken by Gaudence Hiruka.

In their chamber summons the Applicants are praying the following:-

(1) To call for and inspect the records in Misc. Application No. 24 of 2019 of the District Land and Housing Tribunal for Njombe and examine it to satisfy itself to the propriety and legality of the ruling and drawn order dated 31/03/2021 and give directions in the interest of justice.

   (a) This court be pleased to make an order that the judgment subject of execution was inexecutable for being emanated from illegal proceedings contrary to clear provisions of Section 23(1) and (2) of the Land Disputes Courts Act together with Regulation 19(2) of the Land Disputes Courts (the District Land and Housing Tribunal Regulations), 2003.

   (b) This court be pleased to order that the judgment subject matter of execution was incapable of execution for being delivered by the Tribunal not vested with jurisdiction for want of proper quorum as required by law.

   (c) That this court be pleased to declare that the applicants were denied fair trial on the reason that assessor was allowed to cross-examine during the proceedings.

In his affidavit the deponent basically stated what is contained in the chamber summons. That is illegalities of the judgment of the District Land and Housing Tribunal on which the execution proceedings are based.

After being served with the application documents, the Respondents raised Notice of Preliminary objection on point of law in which they raised two points as follows:-

1. *The application is bad in law for being filed as an application for revision instead of appeal.*
2. *In the alternative, the application is misconceive for being vague and some grounds of revision are brought out of time.*

The Preliminary objection was argued by written submissions. Submitting in respect to the 1st point of objection, Mr. Marco Kisakali, learned advocate for the Respondents argued that, after being dissatisfied with the decision of the executing tribunal, the Applicants were supposed to file an appeal. But they referred this revision contrary to the dictates of law governing execution in the trial District Land and Housing Tribunal. He said part V Regulations 23 to 32 of the Land Disputes Courts (The District Land and Housing Tribunal), Regulations 2003 provide for execution of decrees and orders, Regulation 24 in particular which provides:-

"Any party who is aggrieved by the decision of the Tribunal shall subject to the provision

of the Act, have the right to appeal to the High Court".

He said a party who is dissatisfied with the decision or order of the executing trial Tribunal has a right to appeal and not revision. He said the Applicants have misconceived on their application. Mr. Kisakali argued that this court lacks jurisdiction to entertain the application for revision against a party who is dissatisfied with the executing tribunal.

The learned counsel submitted that parties to the case cannot choose a forum to entertain their rights where there is clear forum provided by law. This position was held in number of cases for instance ***SHYAM THANKI AND OTHERS VS. NEW PALACE HOTEL [1972] HCD 92.***

He said as stated above, the revision is brought normally to a party who has no right to appeal or appeal process was blocked but will not be filed as an alternative to appeal as it was held in the case of ***FELIX LENDITA VS. MICHAEL LONG'IDU,*** Civil Application No. 312/17 of 2017, CAT, (unreported).

Regarding second ground of preliminary objection, Mr. Kisakali submitted that the application is vague in the sense that, it is not specifically pleaded as whether at this juncture the Applicants were aggrieved with Misc. Application No. 24 of 2019 which was dealing with the execution or the Application No. 24 of 2014 which was dealing with the main suit/case.

He said the Applicants brought their complaint on both applications where the date of delivery of the decisions were far different, and a party who is dissatisfied have specific time to approach this court. He submitted that the judgment in Application No. 24 of 2014 was delivered on 23rd June, 2017, the Applicants did not appeal for almost more than 3 years and coming to this court now is inordinate delay. He said the time frame for a party who wishes to make a revision where has that avenue is only limited within 60 days. This is in accordance to the decision of the Court of Appeal in the case of ***HALAIS PRO-CHEMIE VS. WELLA, ATTORNEYS GENERAL (1996) TLR 269.***

He said if the Applicants wished to apply for revision against the decision in Land Application No. 24 of 2014 within which its judgment was delivered on 23rd day of June, 2017, ought to have filed the same within 60 days and not after almost 1095 days. He prayed for the application to be dismissed with costs.

In his reply submission Mr. Emmanuel Clarence learned advocate submitted in respect of the first limb of objection that the Respondent's counsel contended that the Applicants have an avenue for appeal as it is statutory provided under Regulation 24 of the Government Notice No. 174 of 2003 and that revision is not an alternative to appeal.

The learned counsel maintained that, notwithstanding that principle that revision is not an alternative to the appellate jurisdiction and that right to an appeal is creature of statutes which he subscribe, however the point of convergence with the counsel for the Respondents is the invitation that

the remedy for a person aggrieved with the ruling of the District Land and Housing tribunal in application for execution is an appeal and not revision. He maintained that for one to challenge ruling emanated from Application for execution, the proper way is by revision.

He said Regulation 24 of the Government Notice No. 174 of 2003 provides for right of appeal against the decision of the tribunal. However the said right, mandatorily subject to the provision of the Act. Therefore for one to invoke the said regulation, first the Principal Act, (The Land Disputes Courts Act, Cap. 216 R.E. 2019), should provide for the right of appeal against the particular decision. In the instant case he said the issue is whether the Principal Act provides for right of an appeal against the ruling of the District Land and Housing Tribunal emanate from application for execution. He argued that the Principal Act has not provided that in a ruling of the Tribunal on application for execution has statutory right of appeal. He said it is settled principle of statutory interpretation that since the said regulation 24 relied upon by the Respondent is couched in mandatory term that right to an appeal is subject to the provision of the Act and that since the Principal Act is silent on the right of appeal against a ruling emanated from execution order, therefore in law regulation 24 of G.N. No. 174 of 2003 cannot come into play in the instant application.

The learned counsel argued, the right to an appeal against the ruling in an application for execution by the Njombe District Land and Housing Tribunal not statutory provided, therefore the Applicants remedies available against the execution order or proceedings include applying for revision of

the execution proceedings, litigate the question relating to the execution under section 43(1)(b) of the Land Dispute Court Act. He also referred the case of ***Kalebu Kuboja Mjinja vs. Shadrack Daniel Tembe***, Civil Appeal No. 24 of 2020, HC Musoma (unreported).

In the second limb of objection on the allegation that the application is vague and not clear as to whether the Applicants intend to challenge the Mic. Application No. 24 of 2019 or Application No. 24 of 2014, the learned counsel for the Applicants submitted that, the ground is baseless as the documents initiating this application is the chamber summons supported by an affidavit where as in the chamber summons the Applicants specifically has indicated that the spirit of the application is to challenge Misc. Application No. 24 of 2019. On the argument that the application is out of time filed more than sixty days, the learned counsel submitted that the decision in Misc. Application No. 24 of 2019 was delivered on 31/03/2021 and the present application for revision was filed on 17/05/2021 well within times thus the question of time does not arise.

Mr. Emmanuel Clarence learned advocate for the Applicants concluded his submission by stating that the learned counsel for the Respondent in his submission mislead the court. He attended the matter as an appeal contrary to what has been presented by the documents. More so, the grounds contained in the affidavit whether qualifies for revision or not that goes to the merits of the application. The crucial questions raised in the applications whether illegal decision can be executed. He said all cases relied up on by the counsel for the Respondents are inapplicable as they do not tally with

the facts in issue. He prayed for the preliminary objection to be dismissed with costs.

In rejoinder, Mr. Kisakali reiterated what he submitted in his submission in chief but emphasized that revisional jurisdiction by this court is not automatic for a party who is aggrieved by a decision. He can only do so if where the right to appeal is not available or blocked by judicial process. He also distinguished the case of ***Kalebu Mjija*** (supra) in which Kisanya, J. at page 2 paragraph 5 stated that under the Civil Procedure Code [Cap. 33 R.E. 2019], the code does not provide for right to appeal to a person aggrieved by the execution proceedings the same can be challenged through revision. But for the case at hand there is a specific law, Regulation 24 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations G.N. No. 174 of 2003 on that aspect. On the second point of objection the Applicants are seeking to challenge the decision /judgment to has illegality whose execution had been done by the trial tribunal. The judgment itself was delivered on 23/06/2017. Mr. Kisakali cited the case of ***Enock Shaban Mhusi (Administrator of the Estate of The Late Shabani Chengula Mhusi) vs. Faustine Mkongwe & 2 Others***, Land Revision No. 01 of 2020.

I have carefully read the rival submissions by the learned counsel from each side. While Mr. Kisakali learned advocate for the Respondents based his objection on regulation 24 of GN. No. 174 of 2003 which provides for right of appeal to the applicants on matter relating to land, Mr. Emmanuel Clarence learned advocate on his part has argued that although

the named regulation provides for right of appeal but the parent Act does not provide for such right of appeal, thus the Applicants have the right to seek revisional order of this court. Upon carefully reading the chamber summons as well as the supporting affidavit and the submissions by the parties, what is contained in the chamber summons, the supporting affidavit and what was submitted by the learned counsel for the parties particular the Applicants advocate it appears there is a confusion as to what actually is sought to be revised. In his submission counsel for the Applicants appears to complain about the execution orders. However in the chamber summons as well as the supporting affidavit the complaints are directed to the judgment of the trial tribunal in Land Application No. 24 of 2014 which was delivered on 23/06/2017. If the Applicants complaints are hinged on the judgment of the tribunal dated 23/06/2017, the Applicants cannot use the ruling in Misc. Application No. 24 of 2019 as an umbrella but the complaint is against the decision given way back on 23/06/2017, and which the Applicants in their application ask this court to revise it. Reading through the chambers summons although at the beginning Applicants refer to Misc. application No. 24 of 2019 which was an application for execution of the decree in Land Application No. 24 of 2014 delivered on 23/06/2017, but the following paragraphs are all in respect of Land Application No. 24 of 2014 which are sought to be revised. The Applicants have the following prayers:-

(a) That, this court be pleased to make order that the judgment subject of execution was in executable for being emanated from

illegal proceedings contrary to Section 23(1) and (2) of the CAP. 216.

(b) *To order that the judgment subject matter of execution was incapable for execution for being delivered with the tribunal not vested with jurisdiction for want of proper quorum, and*

(c) *The court to declare the applicants that were denied fair trial for the reasons that assessor was allowed to cross-examine during the proceedings.*

As one can see in whatever way this court can step in and deal with the application, will be dealing with the judgment of the trial tribunal and in no way will exclusively deal with the application for execution. Under such circumstance, and for whatever reason the Applicants were bound to appeal against the complained of decision for which there is a right of appeal provided by law under regulation 24 of G.N. No. 174 of 2003. Upon going through the Applicants affidavits as taken by Gaudence Hiruka there is nowhere irregularities of the ruling of the Misc. Application No. 24 of 2019 was disclosed which would call intervention by this court for purpose of revising the same. All illegalities and irregularities mentioned are in respect of the judgment of the trial tribunal as listed in the chamber summons as well as the supporting affidavit particularly in paragraphs 4, 5, 6, 7 and 8. There is nowhere the Applicants disclosed illegalities or irregularities of the ruling in respect of the execution proceedings. It follows therefore that if the irregularities and illegalities complained of are in the judgment of the trial tribunal, the judgment which is appealable, why didn't the Applicants

appeal against it. By bringing the present application in a pretext of challenging the ruling in execution proceedings, the Applicants intend to challenge the judgment of the trial tribunal through the back door but wrongly opted for revision instead of an appeal. It is a general principle of law that where a party who is aggrieved by a decision and has right of appeal provided by law, he cannot invoke revisional jurisdiction of this court as an alternative to appellate jurisdiction. There are several decisions of this court as well as the Court of Appeal on this position of the law. In the case of ***Said Ali Yakut and 4 Others vs. Feisal Ahmed Abdal***, Civil Application No. 4 of 2011, at page 7 the court held:-

> *"where a party has a right of appeal he cannot properly move the court to use its revisional jurisdiction".*

Again in the case of ***Transport Equipment Ltd vs. Devram P. Valambhia [1995] TLR 161***, the Court of Appeal of Tanzania held:-

> *"(i) The appellate jurisdiction of the Court of Appeal of Tanzania are, in most cases, mutually exclusive, if there is a right of appeal then that right has to be pursued and, except for sufficient reasons amounting to exceptional circumstances there cannot be resort to the revisional jurisdiction of the Court of Appeal.*
>
> *(ii) The fact that a person, through his own fault, has forfeited his right of appeal cannot amount to exceptional circumstances".*

In the application at hand the Applicants have not mentioned what can amount to exceptional circumstances.

The Applicants are therefore bound by the general principle of law that revision is not an alternative to appeal.

The cases cited by Mr. Emmanuel Clarence in support of his arguments are distinguishable as the circumstances of the present case are different to the circumstances of the cited cases. Thus I find merit in the first point of objection.

Regarding to the second point of objection on time limitation which was preferred as an alternative to the first point, I would have ended there after conclude on the first point of objection. However, I find no harm to address it also the same is based on the fact that the application by the Applicants is misconceived for being vague and some grounds of revision were brought out of time.

The argument here is that it is not specifically pleaded as whether at this juncture the Applicants were aggrieved with the ruling in Misc. Application No. 24 of 2019 in respect of the execution of the decree or Land Application No. 24 of 2014 which was dealing with the main suit.

The learned advocate for the Respondents argued that the judgment in the main suit was delivered on 23/06/ 2017. The Applicants did not appeal for over 3 years. But the time frame for revision where a party has that avenue is only within sixty (60) days. In his reply submission learned counsel for the Applicants contended that what is complained of is indicated

in the documents initiating, the application, that is the chamber application supported by an affidavit, and the gist of the application is to challenge Misc. Application No. 24 of 2019 ruling which was delivered on 31/03/2021 while the present application was filed on 17/05/2021 well within time. Upon going through the trial tribunal records, it is true the ruling in Misc. Application No. 24 of 2019 was delivered on 31/03/2019. However, the complained of judgment was delivered way back on 23/06/2017.

If the Applicants' complaints are hinged on the trial Tribunal judgment as appears in their prayers in the chamber summons and the supporting affidavit, they cannot use the umbrella of the ruling in execution of the decree as the decree itself was issued back on 23/06/2017.

By doing so the Applicants are trying to challenge that decree as we have said earlier, through the back door while they had an opportunity to challenge the same by appeal immediately during the period provided by the law. The Applicants have therefore to bring their application as the targeted decision and or proceedings to be revised is that of the main suit which was delivered on 23/06/2017 while the present application as said was filed on 17/05/2021 that is more than three years from the date of the impugned judgment was delivered. But the period for filing revision is limited to 60 days as it was held in the case of ***Halais Pro- Chemie vs. Wella Attorneys General [1996] TLR 269***, cited by Mr. Kisakali. See also the case of ***Tima Haji vs. Amiri Mohamed Mtoto & Another***, Civil Revision No. 61 of 2003, High Court Dar es Salaam (unreported). That said

therefore the notice of preliminary objection is sustained. The application is dismissed with costs.

It is so ordered.

F. N. MATOGOLO

JUDGE

08/03/2022

Date: 08/03/2022

Coram: Hon. F. N. Matogolo – Judge

1st Applicant:
2nd Applicant: Absent

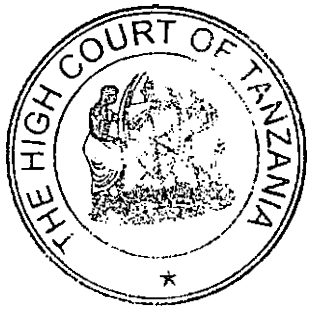
1st Respondent:
2nd Respondent: Mr. Marco Kisakali – Advocate
C/C: Charles

Mr. Marco Kisakali – Advocate:

My Lord I am representing the Respondents. My Lord the matter is for ruling of the preliminary object. We are ready.

COURT:

Ruling delivered.



F. N. MATOGOLO

JUDGE

08/03/2022