

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)
AT MTWARA

APPLICATION FOR REVISION NO. 1 OF 2021

(Originating from Application for Execution No. 538 of 2021 of Mtwara District Land and Housing Tribunal)

YUSUFU HAMISI CHIVANTILA..... APPLICANT

VERSUS

ASIA CHIKOTA MNALIMA..... RESPONDENT

Date of last order: 11/05/2022

Date of Ruling: 31/05/2022

RULING

MURUKE, J.

The applicant, Yusufu Hamisi Chivantila is in this court seeking Revision of the records of the District Land and Housing Tribunal for Mtwara at Mtwara in Misc. Application No. 538 of 2021. Application made under section 79(1) (c) of Civil Procedure Code, Cap. 33 R.E 2019 and section 43(1) (b), (2) of the Land Disputes Courts Act, Cap. 216 R.E 2019. The application is supported by an affidavit affirmed by Yusufu Hamisi Chivantila. Seeking revision by this court on the following grounds.

1. That, this Honourable court may be pleased to invoke its revisionary powers by calling and examine the records of Misc. Application No. 538 of 2021 of Mtwara District and Housing

Tribunal for the purposes of satisfying itself as to its correctness, legality, or propriety of the order.

2. That, costs of this application be provided for by the respondent.
3. That, any other relief(s) this Honourable court deem fit and just to grant.

The brief history of the dispute is that appellant sued by one Fatu Mnasi Hamisi before the Ward Tribunal of Nandwahi, claiming for the land which she said belonged to her. The trial tribunal determined the dispute and entered judgment in favour of respondent(appellant). Respondent (Asia Chikota Mnalima) *Administratrix of Fatu Mnasi Hamisi* then lodged an application for execution before the District Land and Housing Tribunal for Mtwara at Mtwara in Execution No. 538 of 2021. The tribunal allowed application with costs. The applicant aggrieved hence this application.

On the hearing of this application, both parties appeared in persons. Applicant asked this court to adopt his affidavit in support of his application as submission in chief. Prayer that was not objected by the respondent. Grounds for application are provided at paragraph (1) to (5) of the affidavit. Applicant stated that, he was not satisfied with decision and orders of the District Land and Housing Tribunal in application for Execution No. 538 of 2021 in which the trial Chairman awarded and declared with costs to the respondent as the lawful owner of the disputed land properties. Respondent filed counter affidavit to refuse contents of applicant affidavit.

I have carefully considered both applicant affidavit and respondent counter affidavit. It is a position of the law that, any party who aggrieved by the decision or order of lower court may seek his remedies to the

upper court by way of appeal or revision. However, each remedy depends on the nature of decision or order which party intend to challenge. Revision may only be exercised by aggrieved party where the remedy to appeal is not available. This position was reiterated by Court of Appeal in the case of Baghayo Gwadu Vs. Michael Ginyau, Civil Application No. 566 of 2017 (unreported) the court had this to say;

“Is commonly knowledge that under section 4(2) and (3) of the Appellate jurisdiction Act (Cap.141 R.E 2002), the court is vested with power of revision. The court has always been unsympathetic to those who tried to move it to entertain any matter seeking to impugn the decision of the High Court by way of revision where the right of appeal is available.”

Any person who aggrieved by the decision or order of lower court appeal is the appropriate remedy. The record of both trial tribunal and first appellate tribunal is very clear. The findings of the trial tribunal were as follows;

Baada ya kutafakari mwenedo wa shauri hili, Baraza limeona mdaiwa anahaki katika shauri hili kwa sababu zifuatazo:-

Maelezo aliyo yatoa mdaiwa kuwa shamba amewekezwa na Hamisi Mnasi ambae ni shahidi wake No.2 na kuonyesha hati ya uthibitisho kuwa shamba amewekezwa, na shahidi wake kuthibitisha katika maelezo yake kuwa shamba amewekeza yeye kumwekeza mdaiwa kwa kumshauri dada yake Fatu Mnasi ambae ni mdai.

..... hivyo Baraza limebaini kuwa shamba hilo bado ni la urithi halijagawanywa bali lilikuwa linahudumiwa kwa zamu, hivyo Baraza linampa ushindi ndugu Yusuph H. Chivantila afanyie kazi shamba

hilo kuanzia tarehe hii ya leo 25/07/2016. Hadi ifikapo miaka minne yani hadi 2020.

According to the records above, the appellant(respondent) was ordered to use the disputed farm only for four years, then after the expiration of four years the disputed land were to be handled over to respondent (Fatuma Mnasi). On 2nd August, 2021, respondent (Asia Chikota Mnalima) *Administratrix of the estate of the late Fatu Mnasi Hamisi* filed an application for execution to enforce the decision and order meted by the trial tribunal. What I have discovered from the records is that, the appellant (Yusuph Hamisi Chivantila) was not declared to be the owner of the disputed land, but he was only ordered to exercise his rights to use the disputed land for four years only because there is evidence that, they have entered into lease agreement between PW2(Hamisi Mnasi) appellant's brother and Yusufu Hamisi Chivantila then respondent, to use disputed land for four years. If the appellant dissatisfied with that decision and orders of trial tribunal supposed to appeal against such decision to the District Land and Housing Tribunal within 45 days. Under section 20(1) of the Land Disputes Courts Act, Cap. 216 R.E. 2019, provides that;

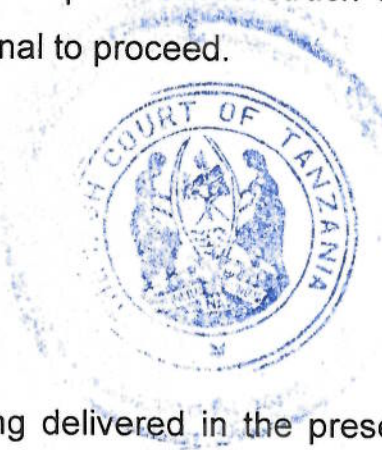
“Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing Tribunal within forty-five days after the date of the decision or order against which the appeal is brought.”

The appellant never challenged the decision of trial tribunal until when respondent filled an application for execution before the District Land and Housing Tribunal on 2nd August,2021. In the case of **Attorney General Vs. Oysterbay Villas Limited and Kinondoni Municipal**

Council, Civil Application No. 168/16 of 2017(unreported) court stated that;

“The application for revision can be exercised by a party who has no right to appeal or the party who was not party to a case and he has no right to appeal.”

In the instance application, the appellant was in a position to file appeal before the High Court but unjustifiable he opted to file revision which is not proper. This application is incompetent. Filing application for revision while there is a right to appeal is abuse of court process that renders the application incompetent. It is my considered opinion that, the proper remedy for the applicant, was to file an appeal and reasons for revision he adduced would be the grounds of appeal. Therefore, this application is incompetent thus struck out with costs. Execution order of the trial tribunal to proceed.




Z.G. Muruke

Judge

31/05/2022

Ruling delivered in the presence of Applicant and Respondent both in persons.




Z.G. Muruke

Judge

31/05/2022