

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

**(LAND DIVISION)**

**(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**LAND REVISION NO. 5 OF 2020**

**SANARE LEMOMO.....APPLICANT**

**VERSUS**

**SHUKU SWALEHE..... RESPONDENT**

**JUDGEMENT ON REVISION**

**Mansoor, J.**

**25<sup>TH</sup> MAY 2022**

In this Revision, Sanare Lemomo, the Applicant is represented by Advocate Mpandangongo while the respondent Shuku Swalehe is unrepresented. The dispute is over the land located at Matindini Area, Kibaya Village in Misima Ward in Handeni District in Tanga.

The Applicant claims to have purchased 25 acres of land from Hamza Sefu Mgondo on 15<sup>th</sup> December 2005, and the sale agreement was in writing. The Sale Agreement was admitted by the Trial Tribunal as the exhibit which shows that the land sold to the Applicant was only 12 acres contrary to the pleadings. The



Applicant claimed that the respondent trespassed into 5 acres of his land in 2017, and the respondent has been claiming ownership of the 5 acres of land. Thus, the dispute is only on the 5 acres of the land. The parties herein have their land next to each other, they are neighbors.

The Trial Tribunal visited the locus in quo and found that the land owned by the Applicant is fenced, and this land in dispute is outside the fenced area and Tribunal had questioned that if the land in dispute the applicant's land, then, why he did not fence it, why left the land in dispute outside the fenced area. Again, the Trial Tribunal said the Applicant's Sale Agreement which was produced in Court shows that he only owns 12 acres, and the rest of the land does not belong to him. That the Applicant never proved that he owns more than 12 acres he had purchased in 2005.

Then, on 15<sup>th</sup> May 2019, the Tribunal issued a Judgement in favor of the respondent but made an error in the conclusion. Instead of declaring the respondent the owner of the disputed land, it declared the Applicant the owner of the disputed land. It be minded that the disputed land is only five (5) acres which is outside the

boarders of the 12 acres land belonging to the Applicant. The reasoning of the judgement differed with the conclusion, and that, was an error apparent on the record, or a slip of the pen and the law allows the error to be corrected. Then, after realizing there was an error apparent in the judgement, the Tribunal Suo moto corrected the error on 19<sup>th</sup> August 2019, and the Judgement was accordingly corrected, thereby declaring the respondent the owner of the 5 acres land which is the disputed land.

The Applicant has been aggrieved by the decision to correct the error and filed the revision asking the court to revise the proceedings of the Trial Tribunal in Land Application No. 28 of 2017 and claims that there were two contradicting judgments on the same case issued by the same Chairperson of the Tribunal, Hon. Makombe. The Court revisited the records, and saw that there were no two judgements, but there was correction of errors in the original judgement.

Therefore, the provisions of Sections 96 of the Civil Procedure Code, Cap 33 R:E 2019 are applicable to the present case under consideration. Section 96 of the Code of Civil Procedure gives

power to the Court to correct clerical or arithmetical mistakes in judgments, decrees, or orders. It further gives power to the Court to correct errors arising in judgments, decrees or orders arising from any accidental slip or omission. It provides:

*Section 96. Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the court either of its own motion or on the application of any of the parties.*

This power conferred by section 96 can be exercised by the Court at any time. Further, the power may be exercised by the Court either on its own motion or on the application of any of the parties. Where there was a clear case of clerical or arithmetical mistake or of an error arising from an accidental slip or omission in the judgment, decree or order, the Court could correct the mistake or error independent of the fact that the same mistake or error could have been corrected by a Court of appeal or by review.



The Judgement which was corrected clearly shows that the Applicant's claim should not have been allowed by the learned Chairman, as it is contrary to the way he evaluated the evidence on the prior pages before he reached the conclusion. There is ample authority for the proposition that under section 96 it is open to the Court to correct mistakes and do justice in the case.

Courts have been given powers to correct mistakes arising due to arithmetical or clerical mistakes or errors due to accidental slip or omissions which may be enumerated below: -

- (i) to correct such mistakes committed by the Court;
- (ii) to correct such mistakes though committed by the parties in their pleadings and carried into judgment, decree or order passed by the Court on its basis.
- (iii) to correct even those mistakes which arise in the pleadings of the parties on account of some such mistakes occurring in the document which forms foundation of the suit provided that no third party has acquired a vested interest in the subject - matter of the suit during intervening period.



For the above stated reasons, the Tribunal correctly exercised powers to correct the errors, and the court is never functus officio to exercise the powers to correct errors and there can never be said that the corrected judgement is the second judgement and the judgement which was errored was the first judgement. It is apparent that there were no two judgments in the matter as claimed by the applicant, therefore, the revision has no merits, and it is dismissed with costs.

**DATED AND DELIVERED AT TANGA ON 25<sup>TH</sup> MAY 2022**



  
**L. Mansoor,**

**JUDGE**

**25/05/2022**