

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA
LAND APPEAL NO. 42 OF 2022

(C/F Miscellaneous Land Application No. 227 of 2021 in the District Land Housing
Tribunal for Manyara at Babati)

THERESIA JOHN

(Administratrix of the estate of the late JOSEPHINA JOSEPH).....APPELLANT

VERSUS

SISILIA DAWIDORESPONDENT

JUDGMENT

17/11/2022 & 24/01/2023

GWAE, J

Aggrieved by the decision of the District Land and Housing Tribunal for Manyara at Babati (DLHT) delivered on 23rd March 2022, the appellant Theresia John, an administratrix of the estate of the late Josephina Joseph (deceased) has filed this appeal subject of this judgment. Her grounds of appeal are two namely;

1. That, the whole ruling and drawn order of the DLHT involves serious irregularities and painted with illegalities and gross abuse of the court process
2. That, the trial tribunal failed to properly evaluate evidence, hence arrived at a wrong verdict

In the DHLT the appellant filed an application for extension of time within which she would be able to file an application for revision in Dispute No. 22 of 2011 at Dareda Ward Tribunal. However, the DLHT dismissed it with costs at the preliminary stage as the respondent's preliminary objection on two points namely; that, the application was overtaken by event and that, the appellant was a stranger to the former proceedings, was sustained.

Before this court, Mr. Erick Mbeya, the learned counsel, represented the appellant whilst the respondent appeared in person. Mr. Mbeya supported the 1st ground of appeal by stating that, the impugned decision of the DLHT's chairperson was illegal since there was no reason given for sustaining the respondent's PO. Hence, leaving the appellant puzzled. He cited the decision of this (**Miyambina, J**) in the case of **Bahati Moshit/a Ndonu Filing Station vs. Camel Oil (T)**, Civil Appeal No. 216 of 2018 (unreported) where it was held inter alia;

"The essences of giving reasons in judicial decisions are inter alia five; One, reason makes litigants to know the extent of how their arguments have been understood and analyzed by the court. Two, reasons foster judicial accountability and minimizing arbitrariness. Three, reasons facilitate certainty in the law by assisting members of legal fraternity and general public to know how cases of similar nature may be decided. Four,

reasons are the basis for the appellate court to know if the decision was with apparent error. Five, reasons make the litigants to know the magistrate or judges' basis of the decision"

The counsel for the appellant also argued that, the points of law raised required ascertainment of fact/proof. He also argued that a stranger in proceedings especially in an application for revision can be entertained by our courts. He invited this court to refer to the following decisions of the Court of Appeal of Tanzania when facing similar situation; **Mgeni Seif vs. Mohamed Yahaya Khalifani**, Civil Application No. 104 of 2008 (unreported) where it was held that, the only avenue available for an intervener is, an application for revision as opposed to an appeal and also **Attorney General vs. Tanzania Ports Authority and two others**, Civil Application No. 87 of 2016 (unreported).

The appellant's advocate also submitted that, an illegal order or decision cannot be overtaken by event. Hence, he added that illegalities involved in the Application No. 22 of 2011 cannot be shelved on the ground that the execution of the ward tribunal award has already been carried out. He urged this court to adhere to the decision of this court in the case of **Rai Mwema Company Limited vs. The Minister of Information**,

Arts and Sports and Two others, Misc. Civil Application No. 21 of 2020 (unreported).

In his response to the appellant's written submission, the respondent argued that, the points of law that were raised were purely points of law as the same were aimed at challenging the competence of the application. He went on arguing that the case of **Bahati** (supra) is irrelevant to this one since the decision of the DLHT was clear and certain adding that, there is no illegality in the decision via Application No. 22 of 2011 and that, the respondent is currently enjoying the fruits of the award procured in his favour. According to the respondent, the appellant's proceedings are aimed at endless litigations on the same subject matter leading to chaos and unnecessary costs for the parties.

In his rejoinder, the appellant sought an order expunging the respondent's reply to her written submission on the ground that he has inserted wrong parties and words "Criminal Appeal No. 2 of 2022". More so, the status of the respondent has been wrongly marked as applicant as opposed to what is in his Memorandum of Appeal.

Rejoining to the submission by the respondent in respect of the grounds of appeal, the respondent stated that, an illegality has no limit as plea of illegality vitiates plea of being overtaken by event.

Having briefly explained what the parties have argued for and against this appeal, I am now supposed to determine the following; One, whether the DLHT was justified to hold that, the application before it, was overtaken by event. And, two, whether the appellant had locus standi to lodge the application for extension of time within which to file an application for revision while she was not a party to the proceedings via Application No. 22 of 2011view. I am of the view that, this application centers only in the 1st ground since the 2nd ground is all about analysis of evidence which is not the case in applications for extension of time.

Before tackling the above issues, It is apposite if a respond a bit to the appellant's rejoinder submission with effect the respondent's submission be expunged due to the purported wrong citation of status of the applicant and respondent as that, of applicant and the alleged citation of a Criminal Appeal No. 2 of 2022. As I have gone through the respondent's reply duly filed in court, the court's records do not back these types of the appellant's complaints. Hence, unsupported since the respondent's reply to the Appellant's written submission bears the heading and the status of the parties as appearing in the appellant's petition of appeal. It is however advisable to know that, proper records are the ones with court's file and not otherwise.

Regarding the **1st issue**, I think it was wrong for the learned chairperson to hold that, the application before him was incompetent due to the reason that, the execution of the award had already been carried out by the District Commissioner. I certainly share this view with the appellant's counsel for the reason that, an application for extension of time to file an application revision or to file an appeal would not be overtaken by events of execution being carried out unless it was an application for stay of execution. I thus concur with my learned brother, **Tiganga, J** through the case of **Mihumo Luchagula vs. Abel M. Ikombe**, Misc. Land Appeal No. 39 of 2020 (unreported), a judicial decision cited by the appellant's counsel where it was stated and I quote;

"The fact that, the decree of the Ward Tribunal had already been executed could not in any way take the jurisdiction of the District Land and Housing Tribunal to hear and determine the appeal properly."

Basing on the reasons and decision cited above, I am not persuaded with the respondent's assertion that, the DLHT's chairperson was justified in holding that, since the award of the Ward Tribunal was executed, then the appellant's application was therefore improper before the DLHT. An execution of a decree or award, as the case may be, cannot bar the court or tribunal from hearing and determining an appeal or an application for

revision or extension of time before it as the case here. This issue, is thus answered in affirmative.

As to **the 2nd issue**, whether the appellant had locus standi in instituting the application for extension of time in order to file an application for revision. It is clearly undisputed fact by both parties that, the appellant was desirous to apply for revision of a decision emanating from a case where she was not a party (Application No. 22 of 2011) duly filed in the Dareda Ward Tribunal.

I am of the view that, had the appellant filed an application for extension of time to file an appeal, that alone would have rendered her application incompetent before the DLHT since she could not have a locus standi. The position in filing an appeal is different from where she is after filing an application for revision of a judgment or an order. An application for revision gives a room for an intervener to apply for revision as a third party to the impugned proceedings. The Court of Appeal of Tanzania stressed this position of the law in **Attorney General's case** (supra) where it was stated;

“Accounting for a situation where one can be joined as an intervener, a person who was not a party to the proceedings below can challenge the impugned decision by way of revision”.

Being guided by the above cited judicial precedent and being aware that, a stranger or a person who was not a party in judicial proceedings may challenge a judgment or an order and its decree or drawn order by way of an application for revision as opposed by way of an appeal. Therefore, I find the merit of this ground.

Since the 1st and 2nd issue above were the basis of the decision of the DLHT, I therefore do not find an compelling reason to further dwell to other issues raised by the appellant in the course of her submission via her counsel.

In the upshot, I find the merit of this appeal. Consequently, I allow it with costs and order that, the appellant's application for extension of time before District Land and Housing Tribunal at Babati be heard on merit.

It is so ordered

DATED at ARUSHA this 24th January 2023



M. R. Gwae,
Judge
24/01/2023