

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF MANYARA

AT BABATI

LAND REVISION NO. 1 OF 2022

(Originating from Application No. 12 of 2021 of the District Land and Housing Tribunal for Manyara at Babati)

KONSTANTINE ADOLFU.....APPLICANT

VERSUS

MARTIN ADOLFU.....1ST RESPONDENT

SIXFRID ROGATI.....2ND RESPONDENT

JIBRIL ADOLFU.....3RD RESPONDENT

RULING

8th & 8th May, 2023

Kahyoza, J.:

Konstantine Adolfu, the administrator of estate of the Adolfu Lohay Sluqho (the applicant) sued **Martin Adolfu**, **Sixfrid Rogati** and **Jibril Adolfu** in the District land and Housing Tribunal (the DLHT) seeking among other things a declaration that the respondents should surrender ownership of the suit land to him.

The second and third respondents resisted the claim. The first respondent did not file defence.

It is on record that before the DLHT sat to determine the main application it awarded costs to the second and third respondents' advocate for the applicant's prayer to adjourn the hearing on 2.8.2022. The chairman not only did he award costs of adjournment but also he taxed the same at Tzs. 300,000/= . On 8.11.2022 the chairman ordered the amount to be paid before the application is heard. The order for applicant to pay the costs of adjournment to the second and third respondents' advocate did not amuse the applicant, hence he instituted the current application for revision.

Before hearing the application on merit, I invited the applicant and the respondents to address this court on the competence or otherwise of the application. The applicant told this court that he was not in the position to address this Court until he consulted a lawyer.

On the other hand, Mr. Masanja learned advocate who appeared for the second and third respondents submitted that the application was not properly before the court as the applicant was seeking to challenge the tribunal's lawful order. He added that the applicant was applying delaying tactics. He prayed the application to be dismissed.

Indisputably, the applicant's claim is still pending before the tribunal. The record shows that the application was fixed for mention on 27.2.2023 to give time to the applicant to pay the adjournment costs. It is therefore, clear that an application for revision has been instituted against an interlocutory order. It is beyond dispute that no appeal or revision lies against any interlocutory order. This position is provided under section 74(2) of the Civil Procedure Code, [Cap. 33. R.E. 2022] (the CPC). It states-

"(2) Notwithstanding the provisions of subsection (1), and subject to subsection (3), no appeal shall lie against or be made in respect of any preliminary or interlocutory decision or order of the District Court, Resident Magistrate's Court or any other tribunal, unless such decision or order has effect of finally determining the suit."

An interlocutory order as defined by Halsbury's Laws of England (4th Ed.) vol. 26 para. 506 is-

*"an order which does not deal with **the final rights of the parties**, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure; or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed interlocutory." (emphasis is added).*

It is clear from the above definition that; an interlocutory order or decision gives **no final decision on the matters in dispute**. The order subject of this application for revision as stated earlier, did not determine the rights of the parties or close the doors to any of the parties. It is therefore, not final and conclusive. The Court of Appeal also considered what is meant by the term final and conclusive in **University of Dar es Salaam Vs Silvester Cyprian & 210 Others** [1998] TLR 175 where it cited with approval the definition by John B. Saunder in work titled "**Words and Phrases Legally Defined**", 2nd Ed. Vol. 3 at page 82 as follows-

*"These applications only are considered **interlocutory which [do] not decide the rights of parties**, but are made for the purpose*

*of keeping things in status quo till the rights can be decided,..
(emphasis added)*

In the end, I find that the order for the applicant to pay adjournment costs did not determine the rights of the parties or close the applicant's door to prosecute the application, it is **an interlocutory order. It is not** final order. I am of the firm view that, the district land and housing tribunal's order compelling the applicant to pay costs of adjournment before the tribunal fixes a hearing date is not subject to revision. Consequently, I find the application incompetent and dismiss it with costs.

Dated at Babati this 8th day of May, 2023.



**John R. Kahyoza,
Judge**

Court: The Ruling delivered the presence of the applicant and the seconds and third respondents and their advocate, Mr. Masanja. B/C Ms. Fatina present.

John R. Kahyoza, J.

8.05.2023