IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF KIGOMA

AT KIGOMA

MISC. LAND APPLICATION NO.31 OF 2022

(From the decision in Misc. Land Application No. 97 of 2022 in the DLHT for Kigoma arising from Land Appeal No.41 of 2015 in the HC at Tabora and originating from Land Application No.44 of 2014 in the DLHT of Kigoma)

HAMIS MDIDA ..... 1st APPLICANT

SAID MBOGO ..... 2nd APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF

ISLAMIC FOUNDATION ..... RESPONDENT

Date of Last Order: 27/04/2023

Date of Ruling: 05/05/2023

RULING

MAGOIGA, J.

The applicants, filed this application for revision in respect to Misc. Land Application No. 97 of 2022 against the order dismissing the preliminary objections dated 19/09/2022 which was delivered by the District Land and Housing Tribunal for Kigoma. The application was supported by the affidavit of Ms. Edna Aloyce, learned advocate for the applicant.

Upon being served with the application, the respondent through Mr. Method Raymond Gabriel Kabuguzi, learned advocate filed a counter affidavit resisting the grant of this application and simultaneously raised a preliminary objection to the effect that the instant application is barred

under section 79 (2) of the Civil Procedure Code, [Cap 33 R.E.2019] for being an interlocutory order.

When this application was called on for hearing of the preliminary objection, the applicants were represented by Mr.Kevin Kayaga, learned advocate, while the respondent was enjoying the legal services of Mr. Method R.G. Kabuguzi, learned advocate.

Mr. Kabuguzi arguing the preliminary objection gave the history of the instant application that it arises from an interlocutory order of the District Land and Housing Tribunal for Kigoma in which the Tribunal overruled the preliminary objection which was raised against the execution proceedings instituted in order to execute the decree of the High Court in Land Appeal No.41 of 2015. According to Mr. Kabuguzi, the execution has always faced string of applications, and so far, no notice has been filed to institute an appeal to the Court of Appeal of Tanzania.

According to Mr. Kabuguzi, much as the order subject of this revision is an interlocutory order, same is legally barred under section 79 (2) of the Civil Procedure Code, [Cap 33 R.E. 2019] unless the said order has the effect of determining the rights of the parties. The order subject of review did not determine any rights of the parties nor determine the matter to its finality, hence, not allowed, insisted Mr. Kabuguzi.

In support of the above stance, the learned counsel for respondent cited the case of **Yusuf Hamis Mushi and another Vs. Abdulkari Khalid Haji, Civil Application No. 55 of 2020 CAT (DSM) (Unreported)** and strongly urged this court to uphold the preliminary objection and proceed to dismiss this application with costs.

Unmoved by submissions by Mr. Kabuguzi, Mr. Kayaga argued that the preliminary objection is baseless because the revision was made under section 43 (1) (b) of the Land Disputes Courts Act, [Cap 216 R.E 2019], hence, not barred and the said provisions do not limit the powers of the High Court in revision over the proceedings in the District Land and Housing Tribunal (to be referred herein as "DLHT") on issues determined on merits only but even on interlocutory orders. According to Mr. Kayaga, this application is proper and not barred. In support of this position the learned advocate cited the case of **Erasto Ngailo Vs. Blastus Allen Mgimwa, Misc. Land Application No. 15 of 2022 HC (Iringa) (Unreported).**

Further arguments in rebuttal were that, an issue here is jurisdiction which is fundamental and same must be express and not implied and no provision in [Cap 216 R.E 2019] which state so. When probed by Court why he cited section 79(1) (a) (b) and (c) of the CPC in his chamber summons in light of section 51 of [Cap 216 R.E.2019], Mr. Kayaga was

quick to point out that section 51 of [Cap 216 R.E.2019] applies in respect of taking evidence and no more, hence, this Court is clothed with jurisdiction unless expressly barred. In support of this, he cited the case of **Tanesco Limited Vs. Shaffi Nuru (legal representative of the late Hassan A. Jambia, Civil Appeal No. 2 of 2018, CAT (DSM) (Unreported).**

Mr. Kayaga went on arguing that, where the wording of a statute is clear, the literal meaning should be applied without bringing anything. In support of this stance, the learned advocate for the applicants cited the case of **Dangote Industries Limited Vs. Warnercom (T) Limited, Civil Appeal No. 13 of 2021, CAT (DSM) (unreported).**

On the above reasons, the learned advocate for the applicants invited this court to find the objection baseless and proceed to overrule it with costs.

In rejoinder, Mr. Kabuguzi stood to his guns that the preliminary objection is merited and went on distinguishing the decision in Ngaile Case (supra) as different in our situation in all respects. According to Mr. Kabuguzi, no rights of the parties have been determined and all cases cited by the learned counsel for applicants have different circumstances, hence, distinguishable.

Mr. Kabugizi pointed out that section 51(1) of [Cap 216 R.E. 2019] allow the use of CPC when there is a lacuna and the intention of the parliament

was that it should apply accordingly alongside with Cap 216 the landed interlocutory rulings inclusive.

Having carefully heard and followed the rivaling submissions on this point by learned advocates for parties', I have noted that; **one,** there is no dispute that the order subject of this application was an interlocutory order, and **two,** that the instant application was, among others, made under section 43(1) (b) of [Cap 216 R.E.2019] read together with section 79 (1) (a) (b) and (c) of the CPC.

However, what is in serious dispute between the learned advocates for parties', is whether the same is barred or not and the applicability of section 79(2) of the CPC read together with section 51(1) of Cap 216 of the laws.

While Mr. Kabuguzi is of the strong view that much as the order is interlocutory order, then, same is barred under section 79(2) of the CPC read together with section 51(1) of the Cap 216. On the other hand, Mr. Kayaga is of the strong view that the same do not apply here because there is no such express provisions under Cap 216 and the provisions of section 51 of Cap 216 have no such express wording barring the entertainment of the application of this nature.

For better and easy disposing of this point, let me start with the import of section 51 of [Cap 216 R.E 2019]. For easy of reference, it provides as follows:

> ***"Section 51(1) In the exercise of its jurisdictions, the High court shall apply the Civil Procedure Code and the Evidence Act and may, regardless of any other laws governing production and admissibility of evidence, accept such evidence and proof which appear to be worthy of belief." (Emphasis mine).***
>
> ***"(2) The District Land and Housing Tribunal shall apply the Regulations made under section 56 and where there is inadequacy in those Regulations it shall apply the Civil Procedure Code."***

Going by the literal wording of the above provision of the law is clear that has several express implications, which are; **one,** the CPC is applicable both in the High Court and in the DLTH, in the first place and in the second place in the DLHT where there is inadequacy in the Regulations respectively. And **two, CPC and Evidence Act** are applicable in the production and admissibility of evidence when dealing with evidence, in the second place. Therefore, the arguments by Mr. Kayaga that the section 51(1) of the CPC only deals with admissibility of evidence is, with

respect to Mr. Kayaga, misconceived, erroneous and misleading. In the respective opinion of this Court, the said provision was intended that the High Court in exercise of its jurisdiction to apply the provisions of the CPC when exercising its jurisdiction, including the revision jurisdiction.

With the above finding on the applicability of section 51(1) of the CPC in the DLTH and in the High Court, there is no gainsaying that, much as the order subject of this application was an interlocutory order, same is without much ado, barred under section 79 (2) of the CPC. The said section for easy of reference provides as follows:

"Section 79 (2) Notwithstanding the provision of subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of the court unless such decision or order has the effect of finally determining the suit."

Going by the wording of the above quoted provision, it is the respective opinion of this court that, an application for revision can only lie or be made before this court, if, and only if, the interlocutory order has the effect of finally determining the suit. In this application, no such argument was put forward. Also, it should be noted that, the High Court in exercise of its jurisdiction under the provisions section 43 (1) of Cap 216 has to read together section 51(1) of the same Act. Therefore, the arguments

by Mr. Kayaga that, section 79(1) was cited out of context are but misconceived and not true in the circumstances of this application because the revision in section 43(1) is limited to error material to the merits of the case while the affidavit in support of the application is talking of illegality and material irregularity which shows that same was made to be read with section 79 (1) of Cap 33 which is wider and broad on matters to be revised than what section 43(1) of the Cap 216 provides.

It should as well be noted that to agree with Mr. Kayaga's arguments, will be to condone the objective of Act No. 25 of 2002 which was intended to ensure speed expedition of trials particularly with regards to civil suit against uncalled delays resulting from the time spent in prosecuting an interlocutory order which do not finally determine the suit.

Further the arguments of Mr. Kayaga that no express provision in [Cap 216 R.E.2019] barring the revision and as such the court is vested with jurisdiction are but, with respect to Mr. Kayaga, misconceived, erroneous and the issue here is not that the High Court has no jurisdiction to revise the DLHT decisions but same has to be subject to meeting the conditions set out in that provision; namely, final determination of the matter. In my respective, opinion, the provisions of section 79(2) of the CPC were not meant to take away the revision jurisdiction of the High Court but to filter

what is to be revised in the light of the objective of the parliament in enacting the provisions of Act No. 25 of 2002.

In the upshot and for the reasons given above, the preliminary objection raised by Mr. Kabuguzi is merited. Consequently, I uphold the same and proceed to strike out this application with costs.

It is so ordered.

Dated at Kigoma this 5th day of May, 2023.

S. M. MAGOIGA
JUDGE
05/05/2023