IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MWANZA

AT MWANZA

MISC. LAND APPLICATION NO. 11 OF 2022

SIMON RIVAN PETER (as an administrator of the

estate of the late Fredrick Thomas ..... APPLICANT

VERSUS

BERTHA OMARI ..... 1ST RESPONDENT

HELENA KABADI ..... 2ND RESPONDENT

RULING

24/2/2023 & 8/5/2023

ROBERT, J:-

The applicant is seeking revision against the proceedings and an order of the District Land and Housing Tribunal (DLHT) in Land Application No. 122 of 2012 on grounds, among others, that:- the Trial Tribunal violated the rule of natural justice as the applicant was neither summoned to appear and defend his property (Plot No. 11, Block "B", Sengerema Town) which was subject of attachment to realize a decree passed in favour of the first respondent. The application is supported by an affidavit sworn by the applicant.

The applicant, Simon Rivan Peter, lodged this application as the administrator of the estate of the late Fredrick Thomas. In the affidavit sworn in support of this application, he deposed that, the 1st and 2nd respondents herein instituted Land case No. 1 of 2011 at the Ward Tribunal of Ibisabageni followed by Land Appeal No. 31/2011 at the DLHT of Geita in which the late Fredrick Thomas was not made a party to. On 13th June, 2013 the DLHT issued an execution order through Misc. Application No. 122/2012 and appointed one Msetti Auction Mart (T) Ltd to execute the decree of the Tribunal. The execution order mentioned the property liable for attachment as the property of the 2nd respondent while the said property was owned and registered in the name of the late Fredrick Thomas who was neither a party in the application for execution nor served with any summons to appear or show cause as to why the said property should not be attached for sale in execution of the Court decree.

Aggrieved by the decision, ruling and an order emanating from application No. 122 of 2012 the applicant who happened to be out of the prescribed time to file an application for revision, applied successfully for extension of time to file application for revision through Misc. Land Application No. 49 of 2021 delivered by this Court on 23rd December, 2021.

Prior to the hearing of this application, the first respondent filed a Notice of Preliminary Objection on a point of law against the applicant's application to the effect that:-

(i) *The application is incompetent for being accompanied by a defective affidavit;*

(ii) *As the proceedings before the District Land and Housing Tribunal for Geita in Land Application No. 122/2012 were the subject of the High Court Land Appeal Number 20 of 2015 and Miscellaneous Land Case No. 129 of 2013 the current application for revision is not tenable.*

As a matter of practice, the Court invited parties to argue the objections raised ahead of the hearing of the main application, in case the objections are not sustained. At the request of parties, the preliminary objection was disposed of by way of written submissions whereby submissions for the first respondent were prepared by Mr. Silwani Galati Mwantembe, learned counsel for the first respondent whereas Mr. Augustino Edwin Ndomba, learned counsel while engaged by the applicant solely on drafting instructions.

Highlighting on the first point of preliminary objection, Mr. Mwantembe, submitted that, according to the verification clause of the applicant's

affidavit, it is stated that **"what is stated in paragraph 1 to 16 is true to the best of my own knowledge and belief"**. The deponent did not specify which facts or paragraphs in the affidavit are stated on the basis of his own knowledge and which ones are based on his belief or indicate the basis of such belief. He maintained that, as a matter of principle such a blanket verification is not proper in law and it renders the affidavit incurably defective. He referred the Court to the case of **Anatol Peter Rwebangira versus the Principal Secretary, Ministry of Defence and National Service & Another,** Court of Appeal of Tanzania, at Bukoba, Civil Application No. 548/04 of 2018 (unreported) at page 10 – 11 where the Court decided that:-

> *"it is thus settled law that if the facts contained in the affidavit are based on knowledge then it can be safely verified as such. However, the law does not allow a blanket or rather a general verification that facts contained in the entire affidavit are based on what is true according to knowledge, belief and information without specifying the respective paragraph".*

In view of the above position, he submitted that, the affidavit in support of this application is incurably defective such that the Chamber summons lacks a valid supporting affidavit which renders the application incompetent. Hence, he prayed for the same to be struck out with costs.

In response to this point of objection, Mr. Ndomba submitted that, the words appearing in the verification clause of the applicant's affidavit are "knowledge and brief" and not "knowledge and belief" as alleged by the counsel for the first respondent. He maintained that, the word "brief" appearing in the verification clause means "short" or "in-short" and it had nothing to do with the word "belief" alluded to by the counsel for the first respondent. He explained further that, the applicant used the word "brief" to indicate that he had a lot to adduce but in-short/ brief he verified on the facts advanced through his affidavit alone. Hence, he insisted that all facts deposed in the affidavit are based on information from the applicant in person not any other person.

Conversely, he submitted that, in case the Court compares the word "brief" to the word "belief" and finds the verification clause to be fatal then the remedy is to order for amendment of the affidavit by omitting the anomaly. He referred the Court to the case of **Jamal S. Mkumba and another vs Attorney General,** Civil Application No. 240/01 of 2019, CAT at Dar es salaam (unreported) where counsel for the applicant submitted that the words "and belief" appearing in the verification clause were

superfluous as no information in the affidavit is based on belief. The Court decided at page 15 and 16 that:

> *"on account of facts presented to us and for the interest of justice, we think this is one of those cases which demands for substantive justice in its determination. But further to that, we are satisfied that the respondent will not be prejudiced by an order of amendment of the affidavit so as to accord a chance to the applicant to insert a proper verification clause according to law and parties be heard on merit"*

Responding further, he argued that, the case of **Anatol Peter Rwebangira vs The Principal Secretary, Ministry of Defence and National Service & another** (supra) cited by the 1st respondent, is distinguishable from the present case since that case is focused on the verification clause containing the words "and belief" and not "and brief" as it appears in the applicant's affidavit. Alternatively, he submitted that, even if the Court finds anomaly in the use of words "and brief" in the verification clause the trend of cases in the recent decisions has inclined towards seeking justice. He cited the cases of **ABSA Bank Tanzania Limited (Formerly known as Barclays Bank Tanzania Ltd) and another vs Hjordis Fam Mestad**, Civil Appeal No. 80/2020, CAT (unreported) at page 16 where the Court of Appeal observed that:

"we are thus of the view that, having regard to the circumstances of the instant case, and the decisions in the recent cases cited above which had an opportunity to determine the way forward in the wake of a defective certificate of delay, we are of the firm view that invoking the overriding objective principle will inject the much needed oxygen to the instant appeal to give it a new impetus..."

He implored the court to follow what he called the recent decision rule established in the cited case above by ordering the amendment of the affidavit instead of striking out the affidavit for the interest of justice of all parties.

Rejoining on this point of objection, Mr. Mwantembe maintained that the response by the learned counsel for the applicant that the words in the verification clause are "AND BRIEF" and not "AND BELIEF" is an acrobatic interpretation of the verification clause of the affidavit which was crafted by the applicant's counsel himself. He argued that, it is impossible to contemplate what the deponent wanted to say in the verification clause and leave the verification clause proper and in accordance with the legal requirements. He maintained further that, using a purposeful interpretation it is obvious that the deponent verified that what is stated in the affidavit from paragraph 1 to 16 to be true according to his own knowledge and belief.

Submitting further, he contended that even if it is taken that the words used in the verification clause are "and Brief", yet it renders the verification clause to be defective because the law requires that the verification clause must specify which paragraphs are stated upon the deponent's personal knowledge. As the deponent of the applicant's affidavit verified that **"what is stated in paragraphs 1 to 16 is true to the best of my own knowledge and brief"**, he ought to specify which facts or paragraphs are verified to his personal knowledge and which ones are verified to his "brief". As such, he maintained that the applicant's affidavit is incurably defective for having an improper verification clause in view of the position of the Court of Appeal in the case of **ANATOL PETER RWEBANGIRA** (supra) cited by the first respondent above.

With regards to the alternative argument that if the Court finds the word "BRIEF" in comparative to "BELIEF" to be fatal the avenue is to order for amendment of the affidavit, he compared this argument to a chamelenon's habit of changing color in order to fit in particular environment. He maintained that this is an admission by the applicant's counsel that the verification clause is defective therefore he prays for amendment. However,

he argued that praying for amendment after a preliminary objection would have the effect of pre-empting the objection raised.

With regards to the Court of Appeal decision in the case of **JAMAL S. MKUMBA & ANOTHER versus ATTORNEY GENERAL**, he submitted that, the Court of Appeal observed that although what was being attacked in the affidavit was failure by the deponent to specify the source of information, the deponent had personal knowledge of the information contained in the paragraphs under attack. However, he argued that, in the instant application the deponent is the administrator of the deceased's estate and he is the second administrator, after the removal of the first one, therefore the requirements for him to state which facts or paragraphs were known in his personal knowledge is paramount. He maintained that this is the position which the Court of Appeal adopted with approval in the Indian case of **A.K.K. Nambiar Versus Union India** (1970) 35 CR 121 which is quoted at page 11 of the ruling in the case of JAMAL cited by the counsel for the applicant.

He submitted further that, in the case of **JAMAL** (supra) the Court of Appeal did not depart from the position it stated in the case of **ANATOL PETER RWEBANGILA**. The Court of Appeal stated at page 15 of the typed ruling that "Much as we appreciate the stance taken in Anatol Rwebangira's

case, but it is the cherished legal principle that every case is to be decided on its merits having regard to all circumstances of each particular case". He maintained that the circumstances of the present application demands that the deponent ought to have specified the paragraphs which he stated upon his personal knowledge and those which he stated on his belief and the grounds for such belief because the deponent was not a party to the proceedings relating to the ruling which he wants to be revised and even after passing on of the late Fredrick Thomas he was not the immediate administrator of his estate.

Therefore, he submitted that the Court of Appeal position in the case of JAMAL should not be applied squarely in this case because the facts and circumstances are not the same.

As for the case of ABSA BANK TANZANIA LIMITED (supra) he argued that, in his opinion, that decision is misplaced since what was at stake in that case was the propriety of the Certificate of Delay, which is not the case in this application. He maintained that although in the present case counsel for the applicant is trying to move the Court to consider the principle of overriding objective in order to allow amendments of the affidavit, it should be noted that in the case of **ERICK RAYMOND ROWBERG & OTHERS**

versus ELIUS MARCUS & ANOTHER, CAT at Arusha, Civil Application No. 571/02 of 2017 (unreported) the Court of Appeal said the following in respect of the applicability of the principle of overriding objective.

> *"since the coming into force of the above provisions, their applicability has been tested in court in numerous occasions, such as in the case of Njake Enterprises Ltd v. Blue Rock Ltd, Civil Application No. 69 of 2017 (unreported). In yet another case of Martin D. Kumalija & 117 others v. iron ans steel Ltd, Civil Application No. 70/18 of 2018 (unreported) we emphasized the need to apply overriding objective principle with reason and without offending clear provisions of law"*

In view of the quoted position he submitted that the affidavit in support of this application is incurably defective thus making the application incompetent.

From the rival submissions of the parties, it is obvious that the question for determination is whether the affidavit in support of this application is defective or not.

According to Order XIX Rule 3 of the Civil Procedure Code, the law stipulates that an affidavit should be limited to the facts that the deponent can personally prove based on their own knowledge. However, statements of belief can be included in the affidavit only if the reasons behind those

beliefs are provided. Accordingly, Courts in this jurisdiction have consistently required that a verification clause clearly delineate the facts that are verified based on the deponent's personal knowledge, as well as the facts that are verified based on the deponent's sincere belief. Where the source of information is not based on personal knowledge, the source of information should clearly be disclosed (see **Anatol Peter Rwebangira vs The Principal Secretary, Ministry of Defence and National Service and another**, Civil Application No. 548/04 of 2018 (unreported)).

In the cited case, the Court of Appeal of Tanzania explained in detail, at page 10 and 11, the rationale for a verification clause to specify the basis of the deponent's source of information as follows:

> *"It is thus settled law that, if the facts contained in the affidavit are based on knowledge, then it can be safely verified as such. However, the law does not allow a blanket or rather a general verification the facts contained in the entire affidavit are based on what is true according to knowledge, belief and information without specifying the respective paragraphs. In the present application, according to the applicant's verification clause which we have earlier on reproduced, it is not possible to decipher the facts which are true based on the applicant's knowledge and those based on his belief. Therefore, with respect we find Mr. Bitakwate's argument not sound on the specification not being necessary merely because the facts in the applicant's affidavit are based on knowledge and*

belief. ***We say so because one, that is against the rule governing the modus of verification clause in an affidavit; and two, without the specification, neither the Court nor the respondents can safely gauge as to which of the deponed facts are based on the applicant's own knowledge and what are based on belief.*** *In this regard, we agree with the learned senior state attorney that the verification clause of the applicant's affidavit is rendered defective which adversely impacts on the entire affidavit which is also rendered defective."[emphasis added].*

Mr. Mwantembe's objection in the present application pertains to the fact that the applicant failed to specify in the verification clause which paragraphs of the affidavit are true based on his belief, apart from indicating that the entire affidavit is true to the best of his knowledge and belief.

On his part, counsel for the applicant maintained that the entire affidavit of the applicant is verified according to the applicant's personal knowledge since the applicant's affidavit is verified according to his "knowledge and brief" not "knowledge and belief". According to him, the word "brief" is used in the verification clause of the applicant to indicate that the applicant had a lot to adduce but in-short he verified on the facts advanced through his affidavit alone.

In the eyes of this Court, the argument by the counsel for the applicant reeks of a desperate individual willing to resort to every trick in the book to

evade falling into a cunningly laid trap. The applicant must have intended to verify the facts stated in his affidavit based on his "knowledge and belief" and not "knowledge and brief". My assertion is based on the practice or use of specific language within the verification clause for affidavits, as employed in courts, which indicates that deponents affirm the accuracy of the facts stated in the affidavit to the best of their knowledge and belief. Therefore, the appellant's failure to specify the respective paragraphs of the affidavit verified based on his knowledge and those based on his belief rendered the verification clause defective which adversely impacts on the entire affidavit which is also rendered defective.

Despite the possibility that the Court may entertain the argument put forth by the applicant's counsel, contending that the inclusion of the words "and brief" in the verification clause was a deliberate choice intending to signify that the applicant possessed extensive evidence but provided only a concise verification of the facts presented in the affidavit, this Court determines that such a verification clause would introduce ambiguity or confusion regarding the intended meaning of that statement. Consequently, this ambiguity has the potential to undermine the credibility of the affidavit.

That said, the first point of objection is merited. I find the applicant's affidavit to be defective for reasons stated above.

Coming to the second point of objection, Mr. Mwantembe submitted that, as the proceedings before the District Land and Housing Tribunal for Geita in Land Application No. 122/2012 were the subject matter in the High Court in Land Appeal No. 20 of 2015 and in Miscellaneous Land Case Appeal No. 129 of 2013, the current application for revision is not tenable.

He argued that, while in the instant application the applicant is moving the court to revise the proceedings and order of the DLHT for Geita in Land Application No. 122 of 2012, it is important to note that the decision of the DLHT in that application was followed with a ruling and an execution order dated 13th June, 2013 which are attached to the affidavit in support of this application. He noted that, in the said ruling the chairman, among other things, said **"the judgment debtor though notified never showed up to oppose this application"**. He recounted that, after that ruling the late Fredrick Thomas filed Land Application No. 44 of 2014 in which he moved the Tribunal unsuccessfully to nullify the sale ordered in Land Application No. 122 of 2012. Aggrieved with the said ruling, the late Fredrick Thomas filed Land Appeal No. 20/2015. He died before the appeal was heard, then the

administrator of his estate **(Boniface Fredrick)** stepped into his shoes to pursue the appeal. The appeal was dismissed by the High Court (Hon. Gwae, J) on 14th September 2016.

He argued that, since the applicant preferred this application as a person who stepped into the shoes of the late Fredrick Thomas, the first limb of the argument in support of the second point of objection is that, the same person whose appeal was dismissed cannot come again to the High Court by way of Revision.

Further to that, he submitted that, in Land Case Appeal No. 129/2013 the 2nd Respondent (Hellena Kabadi) appealed against the decision of the District Land and Housing Tribunal dated 13th June, 2013. The appeal was allowed by the High Court (Hon. Makaramba, J) on 30th June, 2016. The appeal was against the order of the District Land and Housing Tribunal in Application No. 59B of 2013 in which Hellena Kabadi moved the Tribunal to set aside the execution order passed ex – parte. The execution order was in respect of Application No. 122 of 2012 which is the subject of this appeal. He maintained that, this means that, the ex – parte execution order was the subject matter in the Land Case Appeal No. 129/2013.

On the basis of the facts above, he argued that this application is in respect of an order which has come to this court twice. The first being in Land Appeal No. 20/2015 and the second in Miscellaneous Land Case Appeal No. 129/2013. He maintained that, the High Court cannot be called to exercise its revisional powers after a party has moved the court to exercise its appellate jurisdiction. He made reference to the book tilled MULLA ON THE CODE OF CIVIL PROCEDURE, 15th Edition, where in discussing the applicability of section 115 of Indian Code of Civil Procedure, 1908 which is similar to section 79 of our Civil Procedure Code (Cap 33, R. E. 2019) at page 776 the author had this to say;

> *"The jurisdiction exercised by the High Court under this section is called Revisional Jurisdiction. Even as the section stood before its amendment the powers of the high Court under this section could only be invoked in case in which no appeal lay to the High Court and the case had been decided by any court subordinate to such High Court ....."*

In view of the above position he submitted that this application is an abuse of the court process, not tenable and he prayed for it to be dismissed with costs.

Responding to the second point of preliminary objection, the learned counsel submitted that, an argument similar to the one raised in this point

of objection was introduced through the first respondent counter affidavit in Misc. Application No. 49 of 2021 to resist the application for extension of time which resulted to this application. At the end of submissions from the parties, the Court ignored the same and granted the application. He maintained that, this Court is functus officio in determining a similar issue. He argued that, the first respondent ought to have filed either an appeal or revision to the Court of Appeal in respect of that issue.

Apart from that, he submitted that this point of objection is irrelevant for a number of reasons. First, the referred cases are of a different nature to the one at hand as none of them were intended to challenge the application for execution and its attachment in Land Application No. 122/2012.

Further to that, he argued that, it is a settled principle that execution orders are subject to revision since such orders have an effect of finalizing a matter in dispute. Hence, the present application for revision is proper in law. He referred the Court to the case of **Zubeda Mohamed Marambo vs Said Yahya Mwedi**, Misc Land Appeal No. 55 of 2018, HCT at Tanga (unreported) where the Court observed that:

"...the crucial question to deliberate is whether the execution order by the DLHT had the effect of finally determining the matter. The answer is in affirmative, an execution order is not interlocutory and it could finally determine the matter. In that sense this order falls under appealable matters".

He submitted further that, despite the fact that there are contradicting decisions on whether one should opt for an appeal or revision, in the case of **Nguvumali Farmers Cooperative vs Stanslaus Rweikiza Kagande**, Civil Revision No. 04/2022, HCT at Bukoba (unreported) this Court directed that one can file a revision to challenge execution orders.

As for the argument that there was notification before the execution was taken on board, he maintained that the applicant challenges the execution proceedings, he was never a party to the execution proceedings. He maintained further that, the decisions cited by the 1st respondent are irrelevant in the present matter and were not decided on merit. Hence, they cannot hinder the determination of this application. He argued that, the applicant was condemned unheard throughout the entire execution proceedings and that is the basis for this application.

In his rejoinder, Mr. Mwantembe opposed the argument that the Court is functus officio in determining this point of objection. He argued that, the point raised was not decided conclusively by this court in its ruling for extension of time in Misc. Application Number 49/2021. Therefore it cannot be said that the court is functus officio in deciding on it in this application.

He recounted that Misc. Application number 49/2021 was an application for extension of time to file an application for revision (the instant application). In the Counter Affidavit filed to oppose that application the deponent made reference to Land Appeal No. 20 of 2015 in response to what the applicant had said in paragraph 12, 13,14, and 15 of his affidavit in support of the application for extension of time. In paragraph 12 of the said affidavit, the applicant had stated that the 1st respondent moved the Land Authority in Sengerema District Council to issue a letter to the 2nd Respondent ordering her to surrender the Title Deed of the property in dispute. It is those facts which were responded to in paragraph 5 of the Counter affidavit that the letter from Sengerema District council could not be a ground for revision on proceedings which were dismissed by the High Court in Land Appeal No. 20 of 2015. The Court dealt with the issue whether the applicant had given sufficient reasons for the delay in filing the

application for Revision and did not touch or say anything as to whether the then intended application for revision would be tenable or not. He was of the opinion that the Court didn't deal with this issue in detail because the proper forum to raise and determine the issue is in the application for revision itself. That is why the first respondent raised this point of objection in the present application. He maintained that, in a situation where the point has not been determined the court cannot be said to be functus officio even if such point was raised before. He referred the Court to the case of **Masumbuko Rashid vs Republic [1996] TLR 212** at page 217 the court said the following in respect of the doctrine of functus officio.

> *"I am not aware of any direct authority on this point, but I humbly take the view that where a court, per incuriam, omits to pass a sentence in respect of some counts on which an accused person is convicted, that court should not be deemed to be functus officio with regard to passing a sentence or sentences on remaining counts ..."*

In view of the quoted position, he argued that since the issue raised in the second point of preliminary objection was raised in Misc. Application 49/2021 but not decided or conclusively decided by the court, it cannot be said that this court is functus officio in deciding on that issue.

On the argument that none of the referred applications/suit was intended to challenge the application for execution and its attachment order on Misc. Application No. 122/2012, he submitted that, according to the Chamber Summons in this application the applicant is moving the Court "to call for and examine the records of proceedings and order in Land Application 122/2012". The objection raised is that after the ruling and order as seen in annexure RT3 the late FREDRICK THOMAS filed Land Application No. 44 of 2014 in the District Land and Housing Tribunal for Geita moving the tribunal to nullify the sale which was ordered by the tribunal in its order which is annexture RT3. The ruling in Land application No. 44 of 2014 was against him then he decided to appeal to this court vide Land Appeal Number 20/2015. Therefore the grievances of Fredrick Thomas in respect of the order which is annexture RT3 were heard by the High Court in Land Appeal No. 20/2015. We wish to point out here that the parties in Land Appeal Number 20/2015 were Fredrick Thomas as the Appellant against Samson Masunga, Benson Temba, Bertha Omari, Hellen Kabadi and Msetti Auction Mart as respondents. Samson Masunga and Benson Tembo are the buyers who bought the house in dispute in the auction as a process of execution. That being the case we don't understand when the counsel for the applicant

argues that the Land Appeal Number 20/2015 was not intended to challenge the execution in Miscellaneous Application No. 122/2012. In fact that application was an objection to the execution.

With respect to the decision in the cases of **Zubeda Mohamed versus Said Yahaya Mwedi and the case of Nguvumali Farmers Cooperative versus Stanslaus Rweikiza Kagande** regarding the argument that an execution order by the District Land and Housing Tribunal can be challenged in the High Court by way of an appeal. He admitted that that is the position of law but clarified that, the 1st respondent's point is that as the applicant had already taken the avenue of challenging the execution by way of an appeal, he cannot turn around and come to the same court by way of an application for revision. He maintained that, this was the position in the case of **Moses J Mwakibete vs The Editor – Uhuru, Shirika la Magazeti ya Chama and National Printing Co. LTD [1995]** TLR 134 at page 135 where the Court of Appeal of Tanzania said:

> "The revisional powers conferred by ss (3) were not meant to be used as an alternative to the appellate jurisdiction of this court"

Similarly, in the case of **Transport Equipment LTD vs Deram P. Valambia** [1995] TLR 161 the court held that:

"The appellate jurisdiction and the revisional jurisdiction of the Court of Appeal of Tanzania are, in most cases, mutually exclusive; if there is a right of appeal that right has to be pursued and, except for sufficient reason amounting to exceptional circumstances, there cannot be a resort to the revisional jurisdiction of the Court of Appeal".

Based on the reasons given above he prayed for the points of preliminary objection to be upheld and the application be dismissed with costs.

This Court acknowledges that the appellate jurisdiction and the revisional jurisdiction of the Court are distinct and cannot be exercised be exercised simultaneously. Once an appeal has been initiated concerning a specific matter, it is not permissible to seek recourse to the revisional jurisdiction of the Court (See **Transport Equipment Ltd vs Devram P Valambhia** (1995) 161 and **Moses J Mwakibete vs The Editor Uhuru, Shirika la Magazeti ya Chama & another** (1995)TLR 134).

From the submissions of parties in this matter, it is not disputed that the proceedings before the District Land and Housing Tribunal for Geita in Land Application No. 122/2012 were the subject matter in the High Court in Land Appeal No. 20 of 2015 and in Miscellaneous Land Case Appeal No. 129 of 2013. Having scrutinized the grounds raised in the chamber summons and

affidavital evidence in support of this application, it is not hard to find that the basis of the complaint is Land Application No. 122/2012 at the District Land and Housing Tribunal for Geita.

Considering the objection raised, it is pertinent to note that after the ruling and order in Land Application No. 122/2012 at the DLHT, the applicant subsequently filed Land Application No. 44 of 2014 at the DLHT seeking to invalidate the sale that was mandated in Land Application No. 122/2012. However, this attempt proved unsuccessful. Subsequently, the applicant opted to pursue Land Appeal Number 20/2015 before this Court, contesting the execution instructed in Land Application No. 122/2012. In light of these circumstances, this court determines that the applicant has already utilized the avenue of challenging the execution through the appeal process. Consequently, the applicant cannot subsequently seek redress from the same court through an application for revision.

I am now prepared to assess the argument regarding whether this Court is functus officio in its ability to make determination on this matter. From the submissions of both parties, it appears that an objection was raised against the extension of time to file this revision vide Misc. Application No. 49/2021. The objection stated that the matter sought to be revised was

already the subject of an appeal in previous proceedings. However, the Court apparently ignored this objection and did not render a decision on it.

This Court finds that, if the court did not address or decide on the objection and proceeded to grant the extension of time for filing the application for revision, the situation becomes somewhat different. While the Court should ideally have considered the objection before deciding on the application for extension of time, the fact that it did not address the objection does not automatically render the Court functus officio on that issue. In the circumstances, the party who raised the objection may still have the right to raise the issue at the application for revision, which I consider to be the right time, and inform the Court that the matter sought to be revised was already subject to appeal in previous proceedings. Thus, I find this point of objection to be merited.

In the end, I sustain the points of objection raised by the first respondent and dismiss this application with costs.

It is so ordered.

K.N.ROBERT
JUDGE
8/5/2023