

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

**IN THE SUB-REGISTRY OF MANYARA**

**AT BABATI**

**LAND REVISION NO. 4 OF 2023**

(Arising from the decision of District Land and Housing Tribunal for Babati in Land  
Application No.49 of 2020)

**HIITI BURA SANDA BARAN.....APPLICANT**

**VERSUS**

**SIKU SANDA BARAN.....1<sup>ST</sup> RESPONDENT**

**BURA SANDA BARAN.....2<sup>ND</sup> RESPONDENT**

**RULING**

Date: 30/5/2023 & 21/6/2023

**BARTHY, J.**

The applicant herein above preferred the present application under Sections 43 (1)(a), (b), 41(1) of the Land Disputes Courts Act, [CAP 216 R.E 2019], (hereinafter referred to as the Act), Section 95 and Order XLIII Rule 2 of the Civil Procedure Code [CAP 33 R.E 2022], (hereinafter referred to as the CPC) seeking for the following reliefs namely;

- 1. That, this honourable court be pleased to revise the proceedings and orders of the Land Application No. 49 of 2020 of the District Land and Housing Tribunal for Manyara at Babati.*
- 2. That, this Honorable Court be pleased to nullify the proceedings and orders of the Land Application No. 49/2020 of the District Land and Housing Tribunal for Manyara at Babati.*
- 3. Such further and other relief(s) as the honourable court deems fit and just to grant.*

The application is supported by an affidavit sworn by the applicant himself. On the other hand, only the first respondent lodged counter affidavit to contest the application. The second respondent did not wish to contest the application and therefore he did not file any counter affidavit.

At the hearing of this application, Mr. Godfrey Mlingi learned advocate represented the applicant while Mr. Pascal Peter learned advocate represented

the respondents. The application was disposed of orally.

Before the hearing of the application on merits had commenced, the court *suo motu* raised a concern regarding the competence of the instant application. This was to the effect that, the applicant preferred for this revision instead of lodging an appeal.

Hence, the court invited the parties to address the concern simultaneously with the merits of the application. Parties duly addressed the court on both the competence of the application as well as the merits or otherwise of the application. However, after carefully perusal of the record of the trial tribunal, I reserve the determination on the competence of the application.

On the other hand, with respect to this application at hand, Mr. Mlingi argued that, on 21/11/2022 when the matter was called on for hearing before the trial tribunal, the first respondent raised a preliminary objection regarding the competence of the application made by the applicant before the trial tribunal.

He further submitted that, following the preliminary objection being raised, the trial tribunal struck out the matter, but the record stated nothing about it.

Mr. Mlingi faulted the decision of the trial tribunal to strike out the application for two reasons. First, the preliminary objection was raised by a surprise without a proper notice being served to the applicant, therefore not afforded the fair trial.

To fortify his argument, he referred to the case of **Gabinus Singano v. St. Timoth Pre & Primary School**, Labour Revision No. 8 of 2019 (unreported) in which this court held that, preliminary objection has to be notified to the other party so that he is not taken by surprise.

The second reason being that, the trial tribunal did not determine the said preliminary objection. Thus, it is necessary for the court to exercise its revisional powers to rectify the defects.

Responding to those arguments, Mr. Pascal contended that, the applicant was not taken by surprise, since the preliminary objection can be

raised at any stage. He added that, with the circumstance of that case, the preliminary objection was properly determined by the trial tribunal.

On rejoinder Mr. Mlingi essentially reiterated his submission in chief.

Having gone through the rival submissions of the parties and the records available, it is not in dispute that, on 21/11/2022 when the matter was called on for hearing before the trial tribunal, Mr. Pascal learned advocate who was representing the first respondent raised an objection regarding the competence of the application before the trial tribunal.

He contended that, the matter had already been determined by the Ward Tribunal, hence he prayed for the application to be dismissed for being *res-judicata*. On the other hand, the appellant readily admitted that there was a case, but it was between his grandfather and aunt respectively.

In the application before this court the applicant contended that, following the preliminary objection being raised, the trial tribunal proceeded to dismiss the application.

I have keenly gone through the trial tribunal's record, but I could not

find the ruling on the raised preliminary objection. It follows therefore that whether the trial tribunal struck out or dismissed the application is not reflected anywhere as there is no ruling or order to that effect. As rightly pointed out by Mr. Mlingi, the learned trial chairperson never composed any ruling but just proceeded to dismiss the matter.

In that regard, it is now an established principle that, once the preliminary objection has been raised it must be disposed first, before the court or tribunal proceed to hear and determine the matter on merit. In the case of **Deonesia Onesmo Muyoga & 4 others v. Emmanuel Jumanne Luhahula**, Civil Appeal No. 219 Of 2020 (all unreported), the Court of Appeal held that;

*It is settled law that, once a preliminary objection is raised, it must be determined first before the substantive case is heard and determined. This is pertinent because the whole purpose of a preliminary objection is to make the court consider the first stage much earlier, save the time of the court and the parties by not going into the*

*merits of the case because there is a point of law that would dispose of the matter summarily. [Emphasis is supplied].*

The determination of the preliminary objection raised during the trial entails to notify the other party by filing the notice of preliminary objection properly before the court/tribunal and afford the parties the right to address the same before its determination.

As properly pointed out by Mr. Mlingi with the reference made to the decision of **Gabinus Singano v. St. Thomas Pre and Primary school (supra)**, where the court held that the party must be notified on the preliminary objection so that he is not taken by surprise.

The records of the court/tribunal do not reflect that the preliminary objection raised was prior communicated to the applicant, then argued by the parties and finally determined by the trial tribunal.

It is now an established principle that, the records of the trial tribunal/court should always speak for itself. This emphasis was made by the Court of Appeal in the case of **Attu J. Myne v. CFAO Motors Tanzania Ltd.** Civil

Appeal No. 269 of 2021 at Dar es salaam.

It is clear that the record of the trial tribunal indicate that the applicant therein was not prior notified and honourable chairperson did not compose a ruling to determine the preliminary objection raised. Rather, the trial chairperson just proceeded to dismiss the matter without making proper determination.

The omission to notify the party on the preliminary objection raised, also the failure to compose and sign the ruling on the objection raised was fatal and it vitiate the proceedings and orders of the court/tribunal.

Consequently, I remit the record to the trial tribunal with direction that the preliminary objection be properly filed and be served to the other party, the parties be allowed to address it and the trial tribunal determine it by delivering the proper ruling. In the nature and circumstance of this matter I will not make an order as to costs.

It is so ordered.

**Dated at Babati** this 21<sup>st</sup> June 2023.





*G. N. Barthly*

**G. N. BARTHY,**

**JUDGE**

Ruling is delivered this 21<sup>st</sup> of June, 2023 at Babati in the presence of Mr. Godfrey Mlingi advocate for the applicant, the first respondent in person and Mr. Paschal Peter her advocate but in the absence of the second respondent.

**B.A. MPEPO**

**DEPUTY REGISTRAR**