

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

MISC.LAND APPLICATION NO. 39 OF 2022

*(Arising from the land Appeal No. 47/2020 of the District Land and Housing Tribunal,
Originating from Mahembe Ward Tribunal)*

MWAJUMA FADHILI..... APPLICANT

VERSUS

JEBEYE FADHIL AND 4 OTHERS..... RESPONDENT

JUDGMENT

31/8/2023 & 3/10/2023

Mlacha, J

This is an application for revision filed by Mwajuma Fadhili, hereinafter referred as the applicant. She asked the court to call for and revise the records of Land appeal No. 47 of 2022 of The District land and Housing Tribunal for Kigoma region (the DLHT) claiming material irregularity in the conduct of the matter.

In order to appreciate the complaints, I shall now tell how it all started. It was at the Ward Tribunal of Mahembe where the applicant initiated a land dispute against the respondents namely, Njinjwi Simon, Makata Bande, Asia Nshamaje and Siyawezi Nikodem claiming to be the owner of a

piece of land which is the subject of this appeal. The dispute was decided in favour of the respondents.

Struggling for her right, she decided to file application for extension of time, Misc. Land Application No. 152 of 2021 at the DLHT to be allowed to file an appeal out of time. She had nothing to gain, her application was dismissed on ground that since the previous appeal was dismissed for being time barred, she cannot file an application for extension of time to file an appeal out of time on the appeal which was previously dismissed for being out of time and that order was still intact.

Feeling resentment of having been unfairly treated on extension of time, unsuccessful, she filled an appeal to this court via Misc. Land appeal No. 06 of 2022. This Court under section 41A (3) of the Land Disputes Courts Act Cap 216 R.E. 2019, ordered the appeal to be entertained by Hon. R. E. Kangwa, SRM-Extended jurisdiction. It was so entertained.

After seeing all his efforts have hit the rock, she decided to draw the attention of this court to call for and revise the records of the land appeal No. 47 of 2022 of the DLHT for its irregularities. This is now the matter before the court.

During the hearing of this application, both the appellant and the respondents were unrepresented. The matter was argued orally. Being a lay person, the appellant did not submit in the line with the revision, she instead provided the evidence of which in my view could not save the purpose of this revision. She narrated the story on how her 7 palms trees were cut down and on how she wanted to be killed by the respondents and the way she reported the matter to police who advised her to go to the ward tribunal.

In opposing the revision, all the respondents testified on how they got their land in dispute and how the applicant interfered their lands. They also said how their problem was solved by BAKWATA where by the boundaries were shown to everyone. They also said that on 16/6/1982 the applicant raised the issue of inheritance, the matter was taken to primary court and the land was divided. Again in 2019 the applicant started again to demand inheritance, she encroached to the land of Asia and of the others.

The applicant had no rejoinder. That mark the end of the parties' submission

The law on revision is settled. We have a lot of guidance in the matter. In the case of **Hawa Salum v. Hassani Yasini**. (HC), Land Revision No. 7 of 2019, at page 3 it was stated thus:-

*"... the powers of the High Court in revision are invoked accordingly when the orders sought to be revised are not appealable and issues such as whether the subordinate Court has **exercised jurisdiction not vested on it and if vested, whether it has failed to exercise the same or has acted illegally or with material irregularity**" (Emphasis added).*

see also **Abdal Hassan versus Mohamed Ahmed**, (1989) TLR 181 and **Abdu Hassan vs. Mohamed Ahmed** (1989) TLR 181, (HC Katiti J. (deceased)). In Abdul Hassan it was held as follows:-

*"The High Court revisional powers under section 79(1) of the Civil Procedure Code of 1966 are **limited to cases where no appeal lies...**" (Emphasis added).*

It follows that, a party to a dispute gets mandate to apply for revision where there is no right of appeal. An appeal is not alternative to an appeal. A subscribe to this position. The issue now is whether, the applicant in this case did not have a right of appeal.

The applicant filed a case at Mahembe ward tribunal and lost. Her case was dismissed. She filed an appeal to the DLHT, Land Appeal No. 47 of 2020 and lost. It was said that the appeal was time barred. She filed Miscellaneous Application No.152 of 2021 at the DLHT seeking extension of time. It was dismissed. She came to this court in Miscellaneous Land Appeal No.6 of 2022 challenging the decision of the DLHT made in Miscellaneous Land Application No. 152 of 2021. This case was transferred to the RMs court to be heard by a resident magistrate with extended jurisdiction. R.E.Kanqwa dismissed the appeal. She has now come to this court by way of revisions seeking to revise the proceedings and decision of the DLHT made in Land Appeal No. 47 of 2022. I see no way in which this revision can stand for two reasons. One, the appellant had a right of appeal against the decision which she has already exercised. There cannot be an appeal and a revision at the same time. Two, there is already a decision of this court made by the SRM with extended jurisdiction in the appeal. A decision of an RM with extended jurisdiction is a decision of this court and cannot be challenged before this court. Any aggrieved party must go to the court of appeal.

It follows that the revision is misconceived, improperly before the court and dismissed. The parties being close relatives, I make no order as to costs.



A handwritten signature in blue ink, appearing to read "L. M. Mlacha", is written over a horizontal line.

L. M. Mlacha

Judge

3/10/2023

ORIGINAL