

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. LAND APPLICATION NO.7 OF 2023

(Originating from the District Land and Housing Tribunal for Lindi in Land Application No.102 of 2021)

BI. SHALKE NARAYANI & 3 OTHERS.....APPLICANTS

VERSUS

CLIFF JIWAN GODHU NARAN.....RESPONDENT

RULING

20/9/2023

LALTAIKA, J.:

The applicants herein, **BI. SHALKE NARAYANI & 3 OTHERS** are moving this court under section 44(1)(b) of the **Magistrates' Courts Act [Cap. 11 R.E. 2019]** and section 79(1) of the **Civil Procedure Code [Cap. 33 R.E. 2019]**. Specifically, the applicants have requested this court to call for and examine the records of Lindi District Land and Housing Tribunal in Land Application No. 102 of 2021 for the purpose of satisfying itself as to the correctness, legality, or propriety of the proceedings. Furthermore, this application is supported by the affidavit affirmed by BI. SHALKE NARAYANI. On the other hand, the application is resisted by the counter affidavit sworn by the respondent.

However, when this matter came up today for mention, it came to the attention of this court that before this application had been lodged, **the applicant had already lodged Land Appeal No. 6 of 2023**, which has been assigned to the Honourable Judge in charge. In the Land Appeal, the applicant is contesting the decision delivered on Land Application No. 102 of 2021 by the District Land and Housing Tribunal for Lindi. While, in the present application, the applicant is requesting this court to call for and examine the records of Lindi District Land and Housing Tribunal in Land Application No. 102 of 2021 for the purpose of satisfying itself as to the correctness, legality, or propriety of the proceedings.

Consequently, this Court asked the parties what they knew about the matter raised. It appears that being lay persons, none of them was particularly at fault but exception to payment of court fee on the side of the applicants may have contributed.

I am aware that the law has vested this court with appellate and revisional jurisdiction. Indeed, these two remedies may be pursued by an aggrieved party in a matter but depending on the circumstances of the case concerned. I am also fortified that **these two remedies cannot be applied by an aggrieved party simultaneously**. Whenever there is a right of appeal, it must be pursued first. This position was stated by the Court of Appeal of Tanzania in **Jacqueline Ntuyabaliwe Mengi vs Abdiel Reginald Mengi & Others** (Civil Application 332 of 2021) [2021] TZCA 583 (12 October 2021). The Court observed that: -

*the Court being conferred with both the
and revisional jurisdiction against the*

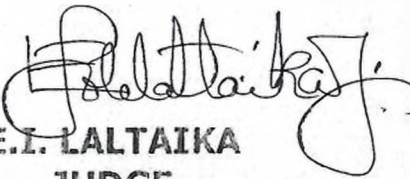
decisions of the High Court, such powers do not coexist. Whenever there is a right of appeal, then, that right must be pursued first. That being the legal position, in order to invoke the Court's power of revision, there must be no right to appeal and in some peculiar circumstances, a party aggrieved has to demonstrate sufficient and exceptional circumstances - see Transport Equipment Ltd v. Devram P. Valambhia [1995] TLR 161.

Upon being satisfied that the applicant has two cases of appeal and revision challenging the decision of the District Land and Housing Tribunal for Mtwara in Land Application No. 102 of 2023, it is without gainsaying that the present application is misconceived by the applicant hence, it suffers a dismissal order. Said and done, the application is hereby dismissed with no order as to costs.

It is so ordered.

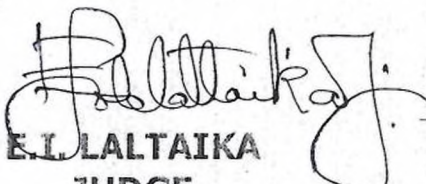


Court:


E.I. LALTAIKA
JUDGE
20.9.2023

This ruling is delivered under my hand and the seal of this court on this 20th day of September 2023 in the presence of both parties who have appeared in person and unrepresented.




E.I. LALTAIKA
JUDGE
20.9.2023

