IN THE HIGH COURT OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

REVISION APPLICATION NO.12 OF 2023

(Originating from the District Land and Housing Tribunal for Mwanza in Land Application No. 2 of 2022)

AMIRALI MANJI PIRBHAI.....1ST APPLICANT

MOHAMED BAKIR AMIRALI MANJI.....2ND APPLICANT

VERSUS

EMMANUEL BENJAMIN KIULA.....1ST RESPONDENT

DANIEL GYIMBI DUME.....2ND RESPONDENT

RULING

6TH September & 29th September, 2023

KAMANA, J:

This application for revision springs from the judgment on admission by the District Land and Housing Tribunal (DLHT) for Mwanza dated 11th July, 2023 in Land Application No.2 of 2022.

Facts leading to this application have it that on 6th January,2022, Mr. Emmanuel Benjamin Kiula, the first respondent, filed in the DLHT an application claiming to be the lawful owner of the land located along the shores of Lake Victoria at Luchelele, Mwanza. In the said application, the second respondent alleged that he obtained the land in question from his grandfather Mr. Daniel Gyimbi Dume, the second respondent. It was

further alleged in the application that Messrs. Amirali Manji Pirbhai and Mohamed Bakir Amirali Manji, the first and second applicants, had obtained building permits, and in the course of effecting construction, they trespassed onto his land.

When the application was set for hearing, the second respondent admitted the fact that he gave the first respondent the land in question as a gift. Following that admission, the DLHT entered judgment in admission which is the subject of this application.

Aggrieved by the judgment on admission, the applicants filed an application for revision under sections 41(1)(a) and (b), and (2) of the Land Disputes Courts Act, Cap. 216 [RE.2019]. In the said application, the appellants pray for the following orders:

1. That the Court be pleased to revise and set aside the judgment on admission in Land Application No.2 of 2022.
2. That the Court be pleased to revise and set aside all the proceedings in Land Application No.2 of 2022 on the basis of lack of jurisdiction, illegality and unlawful object.
3. That the High Court examines and gives directives as to the legality of Exhibits P1 and P2.

4. Any other order which the Court may deem fit and just to grant under the circumstances of the Application.

Before the hearing of the application that was supported by affidavits deponed by Dr. George Mwaisondola, learned counsel for the applicants, and Mr. Hamis Almas, supervisor of plots Nos.500 and 501, the first respondent filed a notice of preliminary objections coupled with a counter affidavit deposed by himself. The preliminary objections were:

1. That the application is incompetent before the Court for being premature.
2. That the applicant has no locus to file the application.

At the hearing of the preliminary objections, the applicants were advocated by Dr. Mwaisondola, learned counsel, whilst the respondents had the services of Mr. Akram Adam, learned counsel. The Preliminary objections were disposed of by way of oral submission. For this judgment, I thought it reasonable to dwell on the first preliminary objection as the same is enough to dispose of the application in its entirety.

Submitting in support of the preliminary objection, Mr. Adam contended that the application before this Court is premature and hence

incompetent. Amplifying the argument, the learned counsel argued that the applicants, through this application, sought revision of the judgment on admission which in effect did not determine the rights of the parties to finality.

He argued further that the judgment on admission was about the fact that the second respondent gave the first respondent the land in question and not the fact that the applicants trespassed onto the land claimed to be owned by the first respondent. Given that, Mr. Adam opined that since the cause of action relates to trespass, the judgment on admission has nothing to do with the rights of the parties as it did not determine the dispute. Strengthening his argument, the learned counsel cited the case of **Standard Chartered Bank and 3 Others v. VIP Engineering and Marketing Ltd and 2 Others**, Consolidated Civil Application No. 76 and 90 of 2016 (CAT Unreported).

Countering, Dr. Mwaisondola took the preliminary objection as baseless considering the fact that the application was brought to the attention of the Court under section 43(1)(a) and (b) and (2) of the Lands Disputes Courts Act. In that case, he argued that the cited sections gave this Court powers to supervise DLHTs. Given that, he was of the view that section 43 of the Act can be invoked at any stage without waiting for the final determination of the case. Buttressing his

views, the learned counsel cited the case of **Magdalena Francis v. National Microfinance Bank (NMB) and 2 Others**, Reference Application No. 05 of 2022 (HC Unreported).

Dr. Mwaisondola contended further that the application was competent before the Court on the reason that the judgment on admission affects his clients since it is taken that they have agreed to what was admitted by the second respondent. By way of extending his argument, the learned counsel contended that the reliefs prayed in the application touch the jurisdiction of the DLHT in the sense that the DLHT had no jurisdiction to entertain the application before it. He reasoned that the issue of jurisdiction can be determined at any stage including the revision stage. Bolstering his position, he cited the case of **A/S Noremco Construction (NOREMCO) v. Dar es Salaam Water and Sewerage Authority (DAWASA)**, Commercial Case No. 47 of 2009 (HC Unreported)

He went to distinguish the case of **Standard Chartered Bank and 3 Others** as cited by Mr. Adam as irrelevant to the circumstances of the case at hand. He contended that the cited case was about interlocutory orders whereby the Court of Appeal held that interlocutory orders are not appealable or revisional. The learned counsel argued that

the matter at hand is about the judgment on admission which in his opinion is not interlocutory.

Dr. Mwaisondola argued further that the application is not premature as the proceedings in the DLHT have been tainted with illegality. He cited the illegality to include admission of exhibits P1 and P2.

Rejoining, Mr. Adam contended that revisionary powers are invoked after the determination of the case to the finality. He contended further that the supervisory powers of the High Court must be exercised with care and in matters that do not determine the rights of the parties.

Concerning the case of **Magdalena Francis**, Mr. Adam distinguished it as in the cited case, the matter was determined to its finality. As to issues of jurisdiction, the learned counsel contended that the same was raised as a preliminary objection and the DLHT overruled it. Given that, he argued that the issue fell within the interlocutory web and hence cannot be referred to this Court for revision.

Regarding exhibits P1 and P2, Mr. Adam contended that the exhibits were not used in determining the judgment on admission. To him, bringing up the issue of the admissibility of the exhibits through this application is untenable at this stage.

Having considered the arguments from both sides, I think the issue for this Court's determination is whether or otherwise the judgment on admission, subject of this application for revision, conclusively determined the rights of the parties or rather had the effect of finally determining the suit to enable the application to stand.

Indisputably, this application originates from the judgment on admission in Land Application No. 2 of 2022. In the said decision, the second respondent admitted that he was the one who gave the first respondent the land in dispute. It is further not disputable that the cause of action that led to the application in the DLHT was allegedly trespassing of the applicants onto the land claimed to be owned by the first respondent. In the said judgment, it was held that:

> *'Hivyo Mahakama hii inatoa uamuzi kuwa kwa vile Mdaiwa namba 3 hapingi madai ya mdai, Hukumu ya kukili (sic) (Judgment on Admission) inatolewa dhidi yake kwa kuwa amekubali madai yote ya Mdai na kuwa alimpa Mdai eneo hilo.'*

It is from that judgment, the legal minds before me have parted ways. Whilst Mr. Adam contended that the judgment on admission did not determine the matter to finality and that it is interlocutory, Dr.

Mwaisondola held the view that the same determined the rights of his clients and is not interlocutory.

In determining the controversy, I think it is relevant to seek the assistance of section 79 of the Civil Procedure Code, Cap. 33 [RE.2019] as the Land Disputes Court Act is silent as to the procedures relating to matters of revision. The section reads:

> *'**79**. -(1) The High Court may call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies thereto, and if such subordinate court appears-*
>
> *(a) to have exercised jurisdiction not vested in it by law;*
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> *(b) to have failed to exercise jurisdiction so vested; or*
>
> *(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,*
>
> *the High Court may make such order in the case as it thinks fit.*
>
> *(2) Notwithstanding the provisions 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.

(3) ……..'

From the provisions of subsection (1), it is obvious that the subsection sets the general condition that this Court is vested with powers to entertain application for revision when the subordinate court has exercised powers beyond its jurisdiction; or when it fails to exercise its jurisdiction; or when exercised jurisdiction, such exercise is tainted with irregularity or illegality.

However, the provisions of subsection (2) serve as an exception to the general rule set in subsection (1). From its contents, the subsection ousts the general powers of this Court to entertain an application for revision when such application is in respect of a preliminary or interlocutory decision or order of the lower court unless such order has the effect of finally determining the suit.

Having considered the position of the law, it is incumbent for this Court to determine whether the judgment on admission was interlocutory or otherwise. If the answer is in the affirmative, the Court will determine as to what should be the fate of the application.

Without much emphasis, I am of the considered opinion that the judgment on admission was interlocutory as it did not finally determine

the matter between the parties. From the records, it is clear that the Land Application No. 2 of 2022 is still in the DLHT though was adjourned to allow the determination of this application.

The position I take is not a new phenomenon in our jurisdiction. The Court of Appeal had on several occasions pronounced that a judgment on admission when it has no effect of finally determining the suit is interlocutory and hence not appealable or subjected to revision. In the case of **Junior Construction Company Ltd and 2 Others v. Mantrac Tanzania Ltd**, Civil Appeal No. 252 of 2019, the Court of Appeal restated the principles to be considered before the Court entertains application for revision arising from the judgment on admission. It stated:

> *'We wish to emphasize that, in order for the appeal to lie to this Court on interlocutory order or decision under section 5 (2) (d) of the AJA, it must satisfy the conditions we have stated herein above, that is,* ***one the order or decision must be interlocutory or preliminary, and two, it must have the effect of finally determining the rights of the parties****.' (Emphasis Added).*

Worthy noting is that Section 5(2)(d) of the Appellate Jurisdiction Act, Cap.141 [RE.2019] interpreted by the Court of Appeal is similar to section 79(2) of the Civil Procedure Code.

Before I pen off, I wish to discuss the arguments of Dr. Mwaisondola that the DLHT embarked on dealing with the application without jurisdiction despite the preliminary objections raised. Trite law is that rulings emanating from preliminary objections are not capable of being revised unless they finally determine the suit. This is provided for under section 79(2) of the Civil Procedure Code. If the said objections had been decided in their favour to the extent of the application being dismissed, the opposite party would have the right to challenge the dismissal under section 79(1) of the Civil Procedure Code and section 79(2) would be ineffective. For now, the applicants have to wait until the determination of the suit to its finality to challenge it on that ground. Likewise, the same reasoning applies to the exhibits P1 and P2.

Dr. Mwaisondola hinted that the Court has powers to exercise supervisory powers over the DLHT. That is true but such exercise goes with conditions. In exercising such powers, it is not expected for the supervising court to reverse the position taken by the supervised court as if the former court exercises appellate or revisional jurisdiction. In exercising supervisory powers, the supervising court exercises

administrative and not judicial functions. In this regard, I am fortified by the decision of the Court of Appeal in the case of **Abdallah Hassan v. Juma Hamis Sekiboko**, Civil Appeal No.22 of 2007 where the Court of Appeal had this to state on supervisory power of the High Court:

> *'High Court powers are mainly administrative and not judicial as such. We are fortified in this view by the wording used. The Court would give directions, where necessary in the interest of justice and the courts shall comply with such directions without undue delay. This cannot be on merits of the case because the High Court cannot direct a lower court what decision it should make and how. In our view direction envisaged here are the ones related to the supervisory role of the High Court and which would include for example, transferring a case from one Court to another or from one magistrate to another or directing that it be put on first track during scheduling for hearing. Under this subsection, in giving its orders, the High Court is not enjoined to contact any of the parties involved.'*

In the final analysis, I found the application incompetent before the Court. Consequently, the same is struck out with costs. The matter is remitted to the DLHT to proceed. Order accordingly.

Right To Appeal Explained.

DATED at **MWANZA** this 29th day of September, 2023.

KS KAMANA

JUDGE