

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND REVISION

REFERENCE NO. 20240216000002989

(Arising from District Land and Housing Tribunal for Tarime, Application No. 91/2023)

MATIKO MWITA GHATI (Administrator of the Estate of the

Late EZEKIEL MWITA MATIKO) APPLICANT

VERSUS

ELIAKIM CHACHA MASWI RESPONDENT

RULING

12th & 16th February, 2024.

M. L. KOMBA, J.:

This court has been invited to call and examine the records of Miscellaneous Application No. 91 of 2023 which was delivered on 17th October, 2023 and determine on the correctness, illegality and propriety of the proceedings and the order of the District Land and Housing Tribunal of Tarime (the Tribunal) on whether;

- 1. The DLHT erred in law and in fact to dismiss.*
- 2. The DLHT failed to exercise jurisdiction so vested.*

The Chamber summons was filed under Section 43(1) (b) (2) of the Land Dispute Courts' Act, Cap 216 R.E 2019 and Section 79 (1) (b) (c) and 95 of the Civil Procedure Code, Cap 33 R. E. 2019 (the CPC) while supported by the affidavit of the applicant.

It is from the record that applicant had application No. 70 of 2022 at the DLHT where on 12/07/2023 he prayed the matter to be prolonged in order to allow parties to settle the matter and in May, 2023 (sic) applicant consulted tribunal clerk and was informed that the application was dismissed. Later on, applicant managed to get DLHT record which show the matter was withdraw on 10th May 2023 on the applicant prayer but the truth is, according to the applicant, that Chairman recorded differently.

His effort to set aside the dismissal order was fruitless and filed Miscellaneous Application No. 91 of 2023 for extension of time to file an application to set aside the dismissal order. After hearing, the Miscellaneous Application No. 91 of 2023 was dismissed on account that it was the applicant who prayed application No. 70 to be dismissed. The DLHT's decision aggrieved the applicant who decided to file this revision. Upon served with a copy of application for revision, respondent filed preliminary objection (PO)that;

The application for revision is not maintainable in law for being preferred as an alternative to appeal.

When the matter was called for hearing, applicant fended for himself while respondent enjoyed the service of Mr. Wambura Kisika.

Mr. Kisika was the first to submit on his PO that the Misc Appl No. 91 of 2023 was for extension of time which was dismissed but the applicant is in this court for revision, he was of the submission that the correct channel was appeal. He submitted further that as per S. 41 of Land Disputes Courts Act, Cap 216, the appellant was supposed to appeal against the decision of the DLHT and the same position is supported by GN No. 174/2003 at regulation 24.

It was his argument that in order for a person to file for revision, there is condition set in our legal system, one; is where there is no right of appeal, two; where the appellate process is blocked by judicial process, three; Where a person is not a party to relevant proceedings and four; there are some special circumstances exist but the same has to be explained. In the Application No. 91 of 2023 which is the root of this revision the applicant here in was the applicant in the DLHT and he was of the position that if he was aggrieved by decision, he was supposed to appeal under S. 41 of Cap

216 and regulation 24 as he was not blocked by judicial process while referring this court to **Cosmas Kisabu Magori vs Mahawa Sosmas Magori** Misc. Land Application No. 65 of 2020. He was of the submission that the claim against illegality alone is not enough to warrant revision in lieu of appeal, rather it can be raised in appeal.

Moreover, he cited **Fatuma Hussein Shariff vs Alikhan Abdallah and 3 others** Civil Application No. 536/17 of 2017 CAT Dar es salaam where it was decided that revision should not be utilized as an alternative to appeal. The matter being improperly filed as per the PO he prayed it be struck out so that the applicant can file proper remedy which is appeal. He prayed this with costs.

Responding to the what has been submitted, the applicant was of the submission that any party may apply for revision if he was dissatisfied by the decision of court which provide that decision. He was of the submission that this court has mandate via S. 41 (b) (2) of Cap 2016 to make revision and order the DLHT to correct errors and where there is the right to appeal, that right must first be utilize as the law demand so that the High Court can have power to revision unless there are special circumstances which should be shown by the applicant. See **Transport Equipment Ltd**

vs D.P. Valambhia Valambhia (1995) TLR 161. Referring to his application, the applicant said his application was for extension of time to set aside dismissal order so that he can be heard. He referred **Yahya Hamis vs Amida Haji Idd**, Civil Appeal No. 225 of 2018 CAT Bukoba and in **Padip Shija Hamis vs Mary Ally Salehe** Civil Appeal No. 1422 of 2018 that there is no appeal if the matter was not heard in the trial and cited **Abdallah Hassan vs Vodacom Tanzania** Civil Appeal No. 18 of 2008 (unreported) which is about dismissal and strike out and possibility to re-file while insisting that dismissal means the matter was heard on merit otherwise the remedy is struck out as in **Cyprian Mamboleo Hiza vs Eva Kioso** Civil Application No. 3 of 2010.

If the application was strike out the applicant could have time to re-file the matter. Referring to application at hand, applicant submitted that his application was dismissed and therefore he had no right to appeal although his application was not heard on merit. Applicant insisted that the remedy prayed in this application is proper as he applied for revision where this court will have wide range of decision as was in **Samwel Kobelo vs NHC**, Civil Application No. 442 of 2018 CAT at Dar es salaam.

Turning on provision of law, applicant prayed this court to be guided by S. 43 (1) (b) and (2) of Cap 216 and S. 79 (1) (b) (c) of the CPC that has power to revise decision of DLHT, the power which is unlimited. By cited law in his chamber summons, applicant prayed this court to analyse legal issues as picked in the DLHT decision and give appropriate order and the court order should not depend on what applicant has complained. He prayed the PO to be overruled.

During rejoinder Mr. Kisika submitted that the applicant agreed that if there is right to appeal, that right has to be utilized but it is not right to apply for revision. He said so far as this application originate from Misc Appl No. 91 of 2023 where applicant applied for time to restore Application No. 70 of 2023 then this court has to see if there is need to revise or appeal is needed. He distinguished the case of **Transport Equipment** (supra) as cited by the applicant on the ground that in that case there is special circumstance. Further the matter in **Yahya Hamis** (Supra) was heard on merit but in application No 91 of 2023 parties were heard to the merit and application was dismissed. Mr. Kisika insisted that the only remedy is to appeal against the dismissal.

I am hastening to remark at the early stage of my determination that the point raised by Mr. Jeremia on the propriety of this application before this court is of paramount importance as it sets the jurisdiction of this court. I say so because the law is now settled that revisional powers of the Court are not an alternative to its appellate jurisdiction. See **Hassan Ng'azi Halfan Vs. Njama Juma**, Civil Application No. 218 of 2018 CAT at Tanga.

As explained in chamber summons and submission by the applicant that this court is moved by, among other section is Section 79 of the Civil Procedure Code, Cap 33 R. E. 2019 (the CPC) section 79 provides that;

*'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; (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 think fit.*

(2)

3)Nothing in this section shall be construed as limiting the High Court's power to exercise revisional jurisdiction under the Magistrates' Courts Act.'

The above section proved condition that it is applicable only when no appeal lie there to. Applicant informed the court that he just prefers revision on the ground that this court may have a wide scope of review not only issues as raised by him but all irregularities done by the tribunal. He did not explain if he encounters any obstacle in appeal but insisted he has no right.

This court was moved by section 43(1) (b) and (2) I find it appropriate to reproduce it for refence thus;

43.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-

*(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, **on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings** and make such decision or order therein as it may think fit.*

(2) In the exercise of its revisional jurisdiction, the High Court shall have all the powers in the exercise of its appellate jurisdiction.

On the other hand, Mr. Kisika was of the firm argument that so far as the matter was dismissed, applicant had a chance of appeal before jumping to

another stage of revision. It is true that this court has both powers; appeal and revision but right to appeal should be utilized first as was in **Hassan Ng'azi Halfan vs Njama Juma** (supra) and **Mansoor Daya Chemicals Ltd vs NBC** Civil Application No. 464 of 2014 CAT at Dar es salaam. In the latter case the Court of Appeal had this to say;

'It has been insisted that revisional jurisdiction cannot be invoked as an alternative to the appellate jurisdiction except under exceptional circumstances like in situation where the appellate process has been blocked by judicial process.'

The court keep on insisting on this condition in a number of decisions includes **Hallais Pro-Chemie v. Wella A.G.** (1996) TLR 269 the Court inter alia stated;

'(i)...

(ii) Except under exceptional circumstances, a party to proceedings in the High Court cannot invoke the revisions jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court.'

See also **Moses J. Mwakibete vs. The Editor - Uhuru, Shirika la Magazeti ya Chama and National Printing Co. Ltd.** (1995) TLR 134, **Transport Equipment Ltd. v. D.P. Valambhia** (supra), **Hassan Ng'azi**

Halfan Vs. Njama Juma, (supra) and **Golden Palm Ltd Vs. Cosmas Properties** Civil Application No. 561/01 of 2019 (unreported).

Relying on the above authorities, I am firm that it is a settled principle of law that if there is a right of appeal then that right has to be pursued first unless there are sufficient reasons amounting to exceptional circumstances which will entitle a party to resort to the revisional jurisdiction of the Court.

In my view when the applicant lost his application at the DLHT, that dismissal did not block the appeal process to make the applicant resort to revision. The applicant has a right to appeal as he failed brought to the fore exceptional circumstances that would legally entitle him to resort to the revisional powers of this Court. Thus, the application before this court is incompetent and bad in law for being preferred as an alternative to an appeal. For the reasons I have endeavored to assign, I struck out this application. As the matter is not determined to finality, I vacillate to issue costs.



M. L. KOMBA

JUDGE

16th February, 2024

Ruling delivered under the seal of the court on this 16th day of February, 2023
in the presence of both applicant who was remotely connected and Advocate
Daudi Mahemba who represented the respondent.



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M. L. KOMBA

JUDGE

16th February, 2024