

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**MOSHI SUB- REGISTRY**  
**AT MOSHI**

**MISCELANEOUS LAND REVISION NO. 82820 OF 2023**

*(Arising from Misc. Application No. 164 of 2023 which originated from Application No. 3 of 2004 at the District Land and Housing Tribunal for Moshi at Moshi)*

**PAUL FELIX LYIMO.....APPLICANT**

***VERSUS***

**ABRAHAM MLAKI.....1<sup>ST</sup> RESPONDENT**

**PAUL ALEX.....2<sup>ND</sup> RESPONDENT**

**RULING**

02<sup>nd</sup> May & 19<sup>th</sup> June 2024

**A.P. KILIMI, J:**

This is a revision matter whereby the Applicant Paul Felix Lyimo has moved this court under the provision of Section 43(1) (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019. The applicant is praying for orders that this court be pleased to revise, quash and set aside the proceedings leading to execution order delivered by R. Mtei, Chairman dated on 22<sup>nd</sup> September 2023, in Misc. Application No. 164 of 2023 at the District Land and Housing Tribunal for Moshi at Moshi, originating from Application No. 3 of 2005 in the same District Land and Housing Tribunal. Therein he alleges that there are errors material to the merit of the case involving injustice. The

application is supported by his duly sworn affidavit wherein he has averred reasons as to why this revision is sought.

The factual background discerned from the trial tribunal records which led to the instant application for revision may be recapitulated briefly as follows; It was in the year 2005 the applicant hereinabove sued the 1<sup>st</sup> respondent one Abraham Mlaki at the District Land and Housing Tribunal for Moshi at Moshi claiming to be declared the lawful owner of a suit plot registered as Plot No. 53, Block 'A', Farm 181/182 within Moshi Municipality. In that application the applicant also claimed for a permanent injunction against the respondent, an order for recovery of possession and payment of Tshs. 18 million being value of a demolished fence.

As the matter was being heard by the tribunal, parties were also working on amicably settling the matter by negotiation outside the court. The effort to settle the matter was successful and on 18/2/2013 parties informed the tribunal that they had settled their dispute through a memorandum of settlement which they prayed for the tribunal to adopt it. The tribunal adopted the memorandum of settlement and consequently marked the dispute settled accordingly. It was also ordered that the case file was closed.

Four years later in 2017 the matter as it appears was again before the tribunal on 8/8/2017 for execution, on this day Mr. Njau learned advocate for 1<sup>st</sup> respondent informed the Tribunal they are finalizing negotiation thus prayed for 30 days to accomplish their mission. The record further shows on 3/10/2017 Mr. Njau filed a deed of settlement as pledged which was now subject of execution, subsequently the tribunal admitted it as a decree subject to execution.

It seems the above settlement was not honoured, on 28<sup>th</sup> July 2023 almost 5 years later, the 1<sup>st</sup> respondent went back at the tribunal to execute his decree accrue from a deed of settlement above and filed application no. 164 of 2023. The application was heard in absence of the applicant herein and later the tribunal on 22/09/2023 issued a ruling declaring Abraham Mlaki the lawful owner of Plot No. 53 Block 'A' Farm No. 181/182 within Moshi Municipality by reason that the applicant had failed to honour the said deed of settlement.

In his affidavit the applicant in this matter averred at paragraph (m) that he was condemned unheard as the order issued in Application no. 164/2023 was based on summons directed to one Paul Alex the 2<sup>nd</sup> respondent herein.

Disputing the affidavit of the Applicant, the 1<sup>st</sup> respondent avows that this application is devoid of any merit as there are no any material irregularities or illegality on the face of record warranting this court to revise the ruling and order in Misc. Application No. 164 of 2023.

At the hearing of the application the applicant was represented by Mr. Elikunda Kipoko learned advocate while the 1<sup>st</sup> respondent was represented by Mr. Ceazer Shayo and Ms. Beatrice Chami learned advocates. The 2<sup>nd</sup> respondent was absent and without legal representation. It was convenient the application be heard by way of written submissions, and I applaud for their research and timely compliance of scheduled order.

Mr. Kipoko started his submission by adopting applicant's affidavit and stated that the contested Application No. 3 of 2005 which lead to Misc. Application No. 164/2023 both at District Land and Housing Tribunal for Moshi at Moshi are fraught with errors material to the merits of the case involving injustice. He categorized the errors into three clusters and explained them as follows. First, He explained the first category being illegalities arising from tribunal acting on purported deed of settlement which were not admitted as evidence. It was Mr. Kipoko's submission that the way the tribunal conducted itself on 03/06/2009 where it closed the case and

later opened it on 18/02/2013 showed illegality as it neither gave the applicant the right to be heard nor did it follow the law and procedure of admitting evidence.

On the second category, he said it includes illegalities arising from the change of trial chairperson and assessors illegally. He submitted that from its inception Application No.3 of 2005 until the case was closed the tribunal changed assessors and chairpersons' multiple times contrary to the law. Explaining the illegality the learned counsel referred to the case of **Leticia Mwombeki vs. Faraja Safarali & Others** (Civil Appeal 133 of 2019) [2022] TZCA 349 and prayed for this court to find the proceedings subject of this revision being fraught with errors material to the merits of the case involving injustices and nullify them with cost.

Submitting further Mr. Kipoko stated that the applicant was denied the right to be heard on various occasion to wit when the matter was closed before Hon. Mwihava Chairman and when it was reopened and withdrawn before Hon. Silas Chairman and subsequently before Hon. Mtei Chairman. He argued that these are serious violations of the law and should not be left to stand. He supported his argument with the cases of **Shomary Abdallah vs. Hussein and Another** [1991] TLR 251; **National Housing**

**Corporation vs. Tanzaia Shoes and Others** [1995] TLR 251 and  
**Ndesamburo vs. Attorney General** [1997] TLR 137.

Finally, the third category he said it touches on the jurisdiction of the trial tribunal. He submitted that all the chairmen who adopted the purported settlement deed and issue adverse orders lacked jurisdiction as it was held in the case of **Leticia Mwombeki vs. Faraja Safarali & Others** (supra). He further submitted that the contested proceedings are a nullity and prayed that this court to find so and nullify them with cost.

Mr. Shayo learned advocate for the 1<sup>st</sup> respondent, responded to the submission by adopting the 1<sup>st</sup> respondent's counter affidavit and added that the submission from the learned counsel of the applicants are misconceived, frivolous and unfounded and that they have been brought under a wrong forum. He argued further that the application for revision should have been brought against the Application No. 3 of 2005 and not the execution order of the tribunal in Misc. Application No. 164 of 2023.

Furthering his submission Mr. Shayo submitted that without prejudice to the foregoing if at all the present application was made for the purpose of making revision against Application No. 3 of 2005 then he was of the view

that the same is hopelessly time barred. He said he submitted so because the time stipulated under the law is 60 days from the date of the ruling or judgment. He submitted that this is in accordance with the 1<sup>st</sup> Schedule, item 21 of the Law of Limitation Act Cap 89 R.E 2019. He further submitted that more than six years have passed since the deed of settlement was filed and adopted before the District Land and Housing Tribunal on 3<sup>rd</sup> October, 2017 and this application for revision was filed on 3<sup>rd</sup> November, 2023. He thus argued that the present application is time barred because it has been filed outside the prescribed time of 60 days. He further supported his submission with the case of **Abdalah Thabit Huwel vs. The Registered Trustees of Movimento Popular De Libertacao De Angola (MPLA) and 4 Others**, Civil Application No. 562/17/2018 [September 2022] TANZLII.

It was Mr. Shayo's further submission that the applicant has failed to point out any ground for Revision of Misc. Application No.164 of 2023 rather he has submitted at length on Application No. 3 of 2005. He further argued that the illegalities pointed out by the learned counsel do not exist in Misc. Application No. 164 of 2023 hence they see no need to reply on the same.

Regarding the issue of the applicant being condemned unheard, the learned counsel submitted that the applicant was dully served with an

application for execution but for the reasons known to himself he neglected to appear before the tribunal. Arguing in alternative Mr. Shayo submitted that if the applicant thinks he was condemned unheard the proper remedy was to make an application to set aside ex-parte order under regulation 11(2) of the District Land and Housing Tribunal Regulation GN 174/2003 and not through revision which is time barred.

Responding on the issue regarding summons being served to one Paul Alex, the learned counsel submitted that this is not true because as per the tribunal records reflects that the summons was issued under the Applicant's name but to the reasons known to him he refused and disobeyed the court order whereby the court server sworn affidavit to that effect. He contended further that the issue of the order of tribunal bearing the name of one Paul Alex was a clerical error and that the remedy is for parties to move the tribunal through a letter and that the same has already been done by the 1<sup>st</sup> respondent and the error has been rectified to reflect the applicant's name. He further explained that the correction by the tribunal was done before the present application was filed as it appears in the paragraph 6 (xi) of the counter affidavit. He further contended that with the introduction of the overriding objective principle the court are not to deal with technicalities



rather substantial justice. In the end Mr. Shayo prayed for the dismissal of the application with cost.

In brief rejoining Mr. Kipoko insisted that the application seeks to revise the Misc. Application No. 164/2023 originating from Application No. 3 of 2005 in the District Land and Housing Tribunal. He argued that the Misc. Application No. 164 was determined on 22/09/2023 and this application was filed on 3/11/2023 hence within time.

Mr. Kipoko also submitted that the summons for Misc. Application No.164/2023 was issued for mention only and directed to one Paul Alex. He thus contended that it is obvious that one Paul Felix Lyimo was not summoned. Also, he submitted that there was no summons issued to the applicant for the delivery of the ex-parte execution judgment and that he said is another aspect of denial of the right to be heard. He further contended that under the above circumstances the applicant was not a party to the Misc. Application no. 164/2023 hence his only remedy is the current application for revision.

Finally, Mr. Kipoko submitted that under the circumstance of the present case, this court is warranted to revise both Application No. 3 of 2005

and Misc. Application No. 164/2023 as they are both fraught with errors material to the merits of the case involving injustice and that by doing so it will avoid multiplicity of cases and will not prejudice the respondent in any way as both the applications are intertwined. The learned counsel finally prayed for the court to nullify the proceedings with cost.

I have considered the above rival submissions by the parties, I wish to start with the issue of jurisdiction raised by Mr. Shayo, and this is because time limit jurisdiction of the court, thus a point of law which I am supposed to entertain it first, taking regard Jurisdiction of courts is a creature of statute and not what the litigants like or dislike. See the case of **Madeni Nindwa vs Republic** [2017] TZCA 348 (TANZLII).

The present matter is an application for revision. The time limitation for instituting the matter is provided for under item 21 of the first schedule to the **Law of Limitation Act, Cap 89 R.E 2019** which is sixty (60) days. According to the chamber application filed and for purpose of clarity I find apposite to reproduce hereunder;

*"That, this honorable court be pleased to revise, quash and set aside the proceedings leading to execution order delivered by R. Mtei Chairman on 22nd September 2023, in Misc. Application*

*No. 164 of 2023 District Land and Housing Tribunal for Moshi at Moshi, Originating from Application No. 3 of 2005 District and Housing Tribunal for Moshi at Moshi on the ground that there are errors material to the merits of the case involving injustice.”*

In view of the above application, it is apparently that the applicant is seeking to revise application no.164 of 2023 though it has originated from application no. 3 of 2005. However, I have noted in his affidavit he has averred together with irregularities in application no. 3 of 2005. As alluded earlier above, the application no. 164 of 2023 was concluded and decree was issued on 22/09/2023 whereas this application was filed on 3/11/2023, thus according to the law of limitation above it is not time barred as contended by Mr. Caesar.

In respect to mother application no. 3 of 2005, as per record was concluded on 18/2/2013 and later reopen on 7/8/2017 and final conclusion was on 3/10/2017. Since this was an independently matter dealt with the right of parties, in my view cannot be carried by a revision of an application to enforce those rights filed later after six years. Basing on the law of

limitation above, the same cannot be revised by this court without extension of time to do so.

Now, in respect to the application no. 164 of 2023, the point of determination is whether the grounds raised as illegalities have merit for this court to invoke its revisionary power.

As said above in his affidavit the applicant has averred at paragraph that he was condemned unheard as the order issued in Application no. 164/2023 was based on summons directed to one Paul Alex the 2<sup>nd</sup> respondent herein. I have entirely scanned the tribunal record on above matter, **first**, it is apparent the summons was ordered to be sent twice to the first respondent, the first on 28/07/2023 and the second on 11/08/2023, the first one bears the real name of PAUL FELEX and the second bears the wrong name of PAUL ALEX. Therefore, from above record the last summons was sent to wrong destination, therefore in my view since the last service is the one moved the court to the next step, thus, I cannot hesitate to say the applicant was not properly served; **Second**, the last service despite of being misdirected, the same is not ascertained whether it was for hearing or mention; **third**, since court is moved by its own orders, the trial learned chairman did not direct himself whether he has concluded that the said

application will be heard *ex-parte* in the next session upon satisfy with the prove of service. In my considered opinion the presiding officer is required to make a finding in respect to proof of service and the way forward on the next session if the respondent abscond the service. In that regard the order issued by the court of hearing at next stage remained vague.

In my view, had the learned trial chairman examined the last summons issued keenly, He should not have rushed to proceed with the hearing of the case. Consequently, I sustain the applicant's averment and hold that, the above error is material which in fact prejudices the applicant's right to be heard in respect to the application no. 164 of 2023.

The other remaining alleged illegalities posed by Mr. Kipoko belong to Application no. 3 of 2005 at the said tribunal, as alluded hereinabove this application is barred to be dealt by me due to time limitation for revisional proceeding.

Nevertheless, according to the record of the two applications alluded above. Application no. 164 of 2023 merely emerged for the purpose of execution of a deed of settlement filed in Application no. 3 of 2005 by the parties. Perhaps I may say, although the said matter was heard interparty, but was not determined on merit according to the evidence adduced. What

the parties did before finality of the case, they reached an amicably agreement out of court which geared them to file deed of settlement at the tribunal.

Therefore, unless in that application there are irregularities which cause exception to the general rule, it is settled law that parties are bound by the agreements they freely entered into.

On the premises and from what I have endeavored to discuss above, I, in the exercise of revisional powers vested in this Court by section 43(1)(b) of the Land Disputes Courts Act (Cap. 216, R.E. 2019), the proceedings of the trial tribunal only in respect to Application no. 164 of 2023 are hereby nullified and consequently its Ruling and Decree thereon is hereby quashed and set aside.

After considering the circumstances of this matter, for compliance of any valid deed of settlement entered by parties in Application no. 3 of 2005. I order the record be sent back to the Trial Tribunal for execution of the same. Each party to bear his or own costs in this Court.

It is so ordered.

**DATED** at **MOSHI** this 19<sup>th</sup> day of June, 2024.



*A.P.K.*

**A.P. KILIMI  
JUDGE**

**Court:-** Ruling delivered today on 19<sup>th</sup> day of June, 2024 in the presence of Ms. Beatrice Chami for 1<sup>st</sup> Respondent. Applicant also presents in person.

**Sgd: A. P. KILIMI  
JUDGE  
19/06/2024**

**Court:-** Right of Appeal explained.

**Sgd: A. P. KILIMI  
JUDGE  
19/06/2024**