

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MOROGORO SUB REGISTRY)

AT MOROGORO

LAND REVISION NO. 10 OF 2023

(Originating from Misc. Land Appeal No.67 of 2018 in the DLHT of Morogoro)

ALLY SAID MUSSA APPLICANT

VERSUS

GODWIN AMANIEL MALLEO (Administrator of

Estate of late Mashauri Saiye) 1ST RESPONDENT

DORAH AMANIEL MALLEO (Administratix of

Estate of late Mashauri Saiye) 2ND RESPONDENT

MOROGORO MUNICIPAL COUNCIL 3RD RESPONDENT

Date of Last Order:05.06.2024

Date of Ruling: 05.06.2024

RULING

MAGOIGA, J.

The applicant, ALLY SAID MUSSA instituted this application by chamber summons and affidavit for revision, among others, to revise the ruling of the trial Tribunal in which the trial Chairman refused to recuse himself from the conduct of the proceedings.



Upon being served with the chamber summons the 1st and 2nd respondents save for the 3rd defendant, filed counter affidavit resisting this application.

When this application was called on for hearing, the applicant was enjoying the legal services of Mr. Asifiwe Alinanuswe, learned advocate; whereas the 1st and 2nd respondents were enjoying the legal services of Mr. Mhyellah Ally, learned advocate.

However, before learned advocates were invited to submit on the merits this application, I invited them to address this me on two points; one, the propriety of the application which emanates from the interlocutory decision to recuse, and second, whether the proceedings involving the 3rd respondent which is the local Government in terms of the Government Proceedings Act, [Cap 5 R.E.2019] in Land Application No. 67 of 2018 are proper before the District Land and Housing Tribunal for Morogoro following the amendment of the Government Proceedings Act, of 2020.

In response, both learned counsel for parties conceded and were at one that, in law, the instant application is misconceived and is barred under section 43(2) of the Land Disputes Courts Act, [Cap 216 R.E.2019] for it emanates from interlocutory decision of the trial Tribunal. They both prayed this revision be strike out for being misconceived and incompetent but lock horns whether with costs or without costs.



As to the second limb of the legal concern that the third respondent is a local Authority and following the amendment of the Government Proceedings Act, [Cap 5 R.E. 2019] under the Written Laws (Misc. Amendments) Act, No. 1 of 2020 and its effect on the suit, both learned advocates for parties were at one that following the amendment which provided for procedure and as such it applies retrospectively, then, the DLHT of Morogoro has no jurisdiction to entertain Land Application No. 67 of 2018. The learned advocates, thus, invited this court to exercise its supervisory and revisional powers and proceed struck out the Land Application No. 67 of 2018 and parties be advised to follow the proper procedure before instituting this dispute.

Having heard the less rivaling arguments by learned advocates for parties and read the relevant law on revision and the amendment made to the Government Proceedings Act, case law cited, no dispute that the ruling subject of this revision emanates from the ruling which by all standards did not determine the matter to its finality, hence barred as correctly submitted by learned advocates for parties under section 43(2) of Land Disputes Act, [Cap 216 R.E.2019].

With that note and without much ado, I hereby struck out this application for being misconceived and incompetent by being barred by law before this court.



On the second issue, surely as correctly submitted by the learned advocates for parties, and as earlier noted by this court, the involvement of the third respondent being a local government and following the 2020 amendment done to the Government Proceedings Act, [Cap 5 R.E.2019] under the Written Laws (Misc. Amendment) Act No. 1 of 2020, I find that the proceedings before the trial Tribunal in Land Application No. 67 of 2018 are being conducted without jurisdiction.

Therefore, being guided by the provision of section 43 (2) of the Land Disputes Act, I hereby exercise my supervisory and revisional power and proceed to quash all proceedings ongoing in the District Land and Housing Tribunal without jurisdiction in Land Application No. 67 of 2018 and struck out that Land Application from the record of the Tribunal for want of jurisdiction.

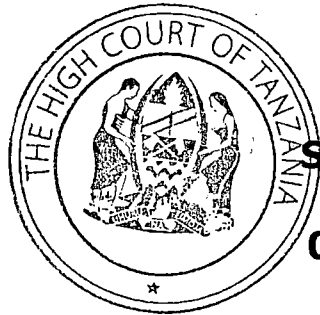
As to the costs, were pressed by Mr. Ally, the learned advocate for 1st and 2nd respondents and Mr. Alinanuswe, learned advocate for applicant pressed for orders without costs. I have given due consideration to the opposing submissions by parties learned advocates on grant and not to grant costs very careful.

Nevertheless, this point will not detain me much because all the legal points were raised by the court suo moto and much as parties are going to start afresh before this court, I order each party to bear its own costs.



Order accordingly.

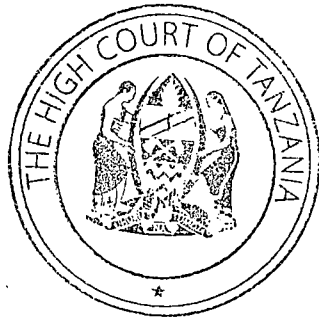
Dated at Morogoro this 05th day of June, 2024.



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S.M. MAGOIGA
JUDGE
05/06/2024

COURT: Ruling delivered in the presence of the learned advocates for parties in chambers at Morogoro today 5th day of June, 2024.



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S.M. MAGOIGA
JUDGE
05/06/2024