

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE SUB REGISTRY OF MANYARA**  
**AT BABATI**  
**LAND REVISION NO. 10 OF 2023**

*(Arising from Misc. Land Application No. 13 of 2023 and Original Land Application No. 18 of 2020  
before the District Land and Housing Tribunal for Babati at Babati)*

**YEREMIA SAMWELI.....APPLICANT**

**VERSUS**

**BAHA QWARAY GUDET.....1<sup>ST</sup> RESPONDENT**

**DIAMOND CREDIT RECOVERY CO. LTD.....2<sup>ND</sup> RESPONDENT**

**RULING**

*6<sup>th</sup> & 7<sup>th</sup> March, 2024*

***Kahyoza, J.:***

This is a ruling in respect of an application for revision instituted by **Yeremia Samweli**, the applicant, praying for this court to call and inspect record of proceedings and decision of the District Land and Housing Tribunal of Babati at Babati (the DLHT) in Misc. Land Application No. 08 of 2023 as to the correctness, legality, regularity, propriety and revise the decision dated 6/11/2023 and resulting orders.

The background, at the DLHT, **Baha Qwaray @ Baha Qwaray Gudet** sued **Emmanuel Samwel** and **Yeremia Samwel** (the applicant) for; Trespass on Land (situated at Basutuqang Village, Hidet Ward within Hanang' District, measuring 5 acres), a declaration that **Emmanuel**

**Samwel** and **Yeremia Samwel** as trespassers, an eviction order, a compensation to a tune of 5,000,000/=(TZS), a permanent injunction on the suit land and a condemnation on costs of the case. During the pendency of the suit, Emmanuel Samwel was withdrawn from the suit and the applicant failed to attend and defend and consequently the matter did proceed *ex-parte*. At the conclusion, the DLHT decided the matter in favour of Baha Qwaray Samweli, the 1<sup>st</sup> respondent, with orders that the respondent was the lawful owner of the suitland, an eviction order against the applicant, in its decision dated 11/07/2023.

Being aggrieved, the applicant filed Misc. Application No. 13 of 2023 praying to the tribunal to set aside its *ex parte* decision. The tribunal, however, ~~was~~ dismissed the application on 30/10/2023 for non-appearance of the applicant's advocate, one Mr. Erick Erasmus Mbeya.

In support of the application, the applicant filed an affidavit and the complaint is on the following-

*"10. That, on the said date 30/10/2023 my advocate was absence was for the reason that, he was appear[ing] for hearing application No. 71/02 of 2023 [before] the Court of Appeal of Tanzania at Arusha between **Nyanza Elias Korono vs. Godfreyv Msuguli.....**"*

In their joint counter affidavit, the respondents had this to depone-

*"5. That, the Respondent disputes the contents under paragraph 10 as there was no any evidence related to the absence of the Advocate on the material date."*

Ms. Maige, Advocate, on behalf of the applicant, submitted orally in support of the application that the dismissal of the said application was fatal irregularity for right to be heard is a natural justice, citing the rule in **Nyangasi Mongu vs Luke Bwikiya Ruttagah and Pascal Maganga** (Misc. Land Application 9 of 2020) [2020] TZHC 3734 (20 November 2020). He prayed this application be granted and quash the proceedings of the DLHT to allow the applicant be heard on merit.

On rebuttal, Mr. Kuwengwa Ndonjekwa submitted orally that once a matter is dismissed for want of prosecution in the DLHT, the aggrieved party is required to apply to the said tribunal to set aside the dismissal order, thus prayed for this court to find this application incompetent. That the applicant waived the right to be heard, also failed to tender any document to establish that his advocate was attending a matter to the superior court.

In a short rejoinder, Mr. Maige was emphatic that the essence of his application at the DLHT was to be availed with the right to be heard.

The pertinent issue for determination is **whether the dismissal order curtailed the applicant's right to be heard.**

Section 43(1)b of Cap 216 provides: -

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

*(a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, **call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice**, and all such tribunals shall comply with such direction without undue delay;*

*(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.**"*

From the cited guiding provision of the law, I find it to be the requirement of the law, that for an application for revision to be meritorious, there must exist an error material on the records so called and inspected. The records of the DLHT on 30/10/2023 reads-

*"Tarehe 30/10/2023*

**AKIDI: H.E MWIHAVA**

**Mleta Maombi – yupo**

**Mjibu Maombi** – yupo

**Wakili Ndonjekwa kwa Mjibu Maombi:** shauri linakuja kwa ajili ya kusikiliza na tupo tayari.

**Mleta Maombi:** Wakili wangu hayupo.

Sgd.

30/10/2023

**Amri:** Shauri ni la kusikilizwa lakini Mleta Maombi hayuko tayari.

*Shauri linafutwa bila gharama.*

Sgd.

30/10/2023.”

Regulation 13(1) of **the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2002, GN. 173/2003** (the Regulations) provides that;-

*"13,-(1) The parties to the proceedings may during the hearing of proceedings be represented by an advocate or any other representative.*

*(2) Where a party's advocate is **absent for two consecutive dates without good cause and there is no proof that such advocate is in the High Court or Court of Appeal** the Tribunal may require the part to proceed himself and if he refuses without good cause to lead the evidence to establish his case, **the tribunal may make an order that the application be dismissed or make such other orders as it may be appropriate.***

*(3) Where a party's advocate is absent for the reason of attending the proceedings in the High Court or Court of Appeal the Tribunal shall not believe any other evidence as a proof for being in the superior courts Other than by producing summons to the advocate and cause list from such courts.*

***(4) The Tribunal shall not have powers to set aside its own order made under sub-regulation (2) and any aggrieved party may appeal to the High Court (Land Division)."***  
*(emphasis added)*

From the fore cited provision of the law and what transpired on records, it is evident the tribunal erred on the failure to adhere to the requirement of the law under the cited regulations. For tribunal to issue the dismissal order under sub regulation 2 of regulation 13 of the Regulations, two conditions must be established; **one**, that an advocate representing a party must have been absent for two consecutive dates without good cause; and **two**, that, there is absence of proof that such an advocate is in the High Court or Court of Appeal.

From the scenery exhibited and notwithstanding it's propriety in Application No. 13 of 2023, I find it apparent that the tribunal ought to have made a ruling or short finding to ascertain as to whether the above two conditions were met, it is unfortunately that the same was not done. Even if this court is to get into the shoes of the tribunal, the records depicts that the said application was brought to the tribunal for the first

time on 12/09/2023 and the records are silent on whether the advocate for the applicant was absent, in the circumstances it was not warranted for the tribunal to dismiss the application. The dismissal was premature and it occasioned to miscarriage of justice to the applicant.

Before I pen down, I wish to remind the parties, that the DLHT has no mandate to set aside its *ex-parte* orders. Parties may wish to revisit regulation 13(4) of the Regulations. That notwithstanding, I invoke my revisionary powers, to quash the proceedings and the dismissal order in application No. 13 of 2023 and order the DLHT to proceed to hear the application. Cost shall be in due course.

It is ordered accordingly.

Dated at **Babati** this 7<sup>th</sup> day of **March**, 2024.



A handwritten signature in black ink, appearing to read "Kahyoza", written over a horizontal line.

**J. R. Kahyoza**

**Judge**

**Court:** Ruling delivered in the presence the respondents and Mr. Ndonjekwa, the respondents' advocate. B/C Ms. Fatina Haymale (RMA) present.

A handwritten signature in black ink, appearing to read "Kahyoza", written over a horizontal line.

**J. R. Kahyoza, J.**

**07/03/2024**