

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE REVISION NO. 4 OF 2011

***(From the Decision of the District Land and Housing Tribunal of Ilala
District in Land Case Land Application No. 251 of 2008)***

FATMA SALMIN.....APPLICANT

VERSUS

SHAMIM M. THAKUR.....RESPONDENT

REVISION ORDER

NGWALA, J:

The Applicant, Fatma Salmini, through the service of Mr. Lebba, learned Advocate, has filed this Application for Revision of the decision of the Ilala District Land and Housing Tribunal. The Applicant pray for orders that this Court quash and set aside the proceedings and order of the District Land and Housing Tribunal for Ilala District as a consequence of the premature closure of the Applicant's case/evidence and fixing a date of judgment before the Applicant had opportunity to call important witnesses and tender vital documents in evidence. The matter in issue is the Application No. 251 of 2008 in the Ilala District Tribunal, before Hon. R. Giray – Chairman of the Tribunal.

At the hearing of this application Mr. Semgalawe learned, Advocate for the Respondent raised an objection that this application cannot stand because this Court has no jurisdiction to determine this revision due to the fact that Act No. 25 of 2002 bars appeals, Revisions and References on matters which are not for final determination of the suit.

In reply Mr. Lebba argued that the said Act No. 25/2002 only bars appeals from interlocutory decisions of lower courts, but not Revisions. Without taking too much time on this matter, the said Act, Act No. 25 of 2002 – The Written Laws (Miscellaneous Amendments No. 3) Act, 2002 provides for appealable orders. This Act Amends the Appellate Jurisdiction Act, 1979 to the effect that, the Appellate Jurisdiction Act is amended in subsection (2) of Section 5 by deleting paragraph (d) and substituting it for the following:-

“(d) No appeal or application for revision shall lie against or be made in respect of any preliminary or interlocutory decision or order of the High Court unless such decision or order has the effect of finally determining the Criminal charge or suit.”

Further the Act amends Section 74 of the Civil Procedure Code, 1966 by designating the said Section. However, these two amendments relates to Appeals and Revisions to the Court of Appeal of Tanzania from the High Court. This is to the effect that the provisions bars appeals and applications for Revision against orders of the High Court.

The Counsels in their arguments did not specify which provision of Act No. 25/2002 they refer. But, as a matter of clarity, there is another provision which amends the Magistrate’s Courts Act, 1984. This provision reads as follows:-

“The Magistrate’s Courts Act, 1984 is amended:-

(a)

(b) In Section 43 by:-

Adding immediately after subsection (1) the following subsection

2. Subject to the provisions of subsection (3), no appeal or application for revision shall lie against or be made in respect of any preliminary or interlocutory decision or order of the District Court or

a Court of Resident Magistrate unless such decision or order has the effect of finally determining the criminal charge or the suit.

(c)”

In view of the above provisions, I believe the learned Counsels reference was to the amendment of the Magistrate’s Courts Act, 1984. The effect of this, therefore, is that the Appeal and Applications for Revision from interlocutory orders of subordinate Courts to the High Court, if such orders or decision does not finally determine the criminal charge or suit.

It is clear that the High Court in exercising land matters under the Land Act, 1999 and under the Village Land Act 1999, has no powers to apply/use the Magistrate’s Courts Act 1984. However, in my opinion that even though this Court in exercising its jurisdiction cannot apply provisions of the Magistrate’s Courts Act, but it is a point to take note that the appeals and application for Revision from subordinate Courts, if are against orders/decision which do not finally determine the suit are barred, meaning that they shall not lie to the High Court.

It is also clear that the District Land and Housing Tribunals are Land Subordinate to the High Court. Therefore, I hold that Appeals or Applications for Revision from the District Tribunal to the High Court are barred if what is appealed against or the orders to be revised do not finally determine the suit.

With regard to the matter at hand, the order and decision which is to be revised is an interlocutory order. It did not finally determine the suit. I therefore agree with Mr. Semgalawe that this Court lacks jurisdiction to entertain this matter as the application itself is barred by the law.

Moreover, since the trial chairman gave orders that the Respondent (Applicant in this application) cannot pray to add more witnesses or additional document, I see such orders are justifiable. The trial chairman rightly applied

the case of **Prosecutor V. Theoneste Bagosora Case No. ICTR - 98 - 41 - T (2004)**. Where it was held that in assessing good cause to recall witness requires two – prolonged analysis :-

(1) Purpose for which the witness will testify

(2) Reasons why the witness was not questioned earlier on those matters

The Trial chairman was of the view that the Respondent (Applicants) had tactics to delay the determination of the matter. I agree with the Chairman. This is also in line with the Land Case Revision No. 37 of 2010 filed in this Court and relation to the same Application- Application No. 251 of 2008 of the Ilala District Land and Housing Tribunal. In that application, the Applicants applied for Revision against proceedings and orders of the District Land and Housing Tribunal dated 30th day of July 2010. In the end, Nchimbi, J. dismissed the application. It is a matter of wonder why the Applicant is readily running to this Court for Revision. This application too lacks merit. It must be dismissed with costs.

In the end result, I uphold the objection raised by Mr. Semgalawe. The Application stands dismissed with costs for lack of merit and substance. The records should be remitted forthwith to the said District Land and Housing Tribunal for delivery of judgment.



Order Accordingly.

A.F. NGWALA

JUDGE

11/3/2011

11/3/2011

Coram: Hon. A.F. Ngwala, J.

Applicant: Absent

Respondent: Mr. Semgalawe

Court:

Revisional Ruling/Order read in Court in the presence of Mr. Semgalawe and the Respondent. The Applicant and his Advocate are absent.

Court:

Order of this Court to be complied with forthwith.




A.F. NGWALA

JUDGE

11/3/2011