

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE REVISION NO. 8 OF 2010

**(From the Decision of the District Land and Housing Tribunal
of KINONDONI District at KINONDONI in Land Case/Land
Application No. 337/2008)**

JOEL SAMWELAPPLICANT

VERSUS

TAMI M. MUYENJWA RESPONDENT

R U L I N G

A.F. Ngwala,J.

By way of a Chamber Application the applicant is seeking the following reliefs:

(a) That this Honourable Court may be pleased to grant an extension of time to the applicant thereof within which he may file revisional proceedings against the decision and order(s) of the Kinondoni District Land and Housing Tribunal made in Application No. 337 of 2008.

(b) That this Honourable court may be pleased to call the records of the Kinondoni District Land and Housing Tribunal in application No. 337 of 2008 and examine its correctness of the decision made therefrom and revise the said decision and orders.

(c) Cost of the application be borne by the respondent

(d)Any other relief(s) this honourable court may deem fit and equitable to grant.

The Application is supported by an affidavit of the applicant. In the affidavit the applicant depones the brief background of the dispute. He also disputes the jurisdiction of the trial Tribunal. Before going further, it is worth to state the brief background of this dispute. The Respondent in this application had in the year 2008 sued the applicant in the Kinondoni District Land and Housing Tribunal for encroachment and trespass over the suit premises. The suit was heard and determined exparte. Thereafter before execution the applicant filed an application for stay of execution and setting aside the exparte judgment. He, however later on decided to abandon the application. Consequently the trial Tribunal ordered execution of the exparte decree.

In his affidavit and in the written submissions in support of this application the applicant avers that he was not dully served with the exparte judgment as a result he delayed to file his revision within the prescribed time. He further stated that the exparte judgment was unlawful because he was not given time to defend his case. The failure to file the Written Statement of Defence was occasioned by his advocate.

On the jurisdiction of the trial Tribunal the applicant argues that the claim in the Tribunal was below the pecuniary jurisdiction of the Tribunal. It is the applicant's contention that since there is

an illegality in the trial Tribunal's decision this court has a duty to extend the time for revision. He supported his argument by referring the court to the decision of the Court of Appeal of Tanzania in the case of Principal Secretary Ministry of Defence Service V. DaVram Valambia [1992] TLR 185.

I have perused the records of the trial Tribunal. The records clearly show that the Applicant who was then the Respondent in the trial Tribunal was summoned and he was attending in the Tribunal. He however failed to file the Written Statement of Defence for unknown reasons. The suit was heard and decided exparte. The record also show that the applicant withdrew his application to set aside the exparte decree for the reasons known to himself. He did not wish to file another application to set aside the exparte decree.

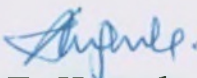
The prayer that time be extended so as to determine the application for revision out of time is not of much concern. My concern is in the merits of the application. The applicant absented himself and defaulted to defend his case in the trial Tribunal. Even if he had instructed an advocate to represent him in the suit, the applicant had a duty to make a follow up of his case. The records show that at certain periods the applicant appeared in person in the trial Tribunal.

The trial Tribunal's jurisdiction cannot be disputed or defeated at this stage. The applicant had to challenge the Tribunal's jurisdiction at an earliest opportunity during the trial. Besides, the

Application shows clearly that the suit is within the jurisdiction of the Tribunal.

I am satisfied with the proceedings of the trial Tribunal. The applicant was given enough opportunity to defend his suit and later to set aside the exparte decree. To me, it seems the applicant's intention is to delay the execution process. With these findings, I see no merit in the prayers sought in the Chamber Application. The Application for Revision must be rejected as per the provisions of Rule 4 of Order XLII of the Civil Procedure Code, 1966, [Cap. 33 R.E. 2002].

Consequently, I dismiss the Application with costs.


A.F. Ngwala,
JUDGE,
28/11/2012

Delivered in Court this 28th day of November, 2012

A.F. Ngwala,
JUDGE,
28/11/2012

28/11/2012.

Coram : A.F. Ngwala,J.
Applicant : Absent
Respondent : Present in person.

Court: The Ruling is delivered in court in the presence of the Respondent. Applicant's to be notified.

**A.F. Ngwala,
JUDGE,
28/11/2012**