IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

MISC. LAND REVISION NO. 27 OF 2019
(Originating from the District Land and Housing Tribunal of Kinondoni at Mwananyamala in Land Application No. 103 Of 2019)

PETER JUNIOR.....APPLICANT

VERSUS

OMARI DAUD MSHANA.....RESPONDENT

Date of Last Order: 30.10.2020
Date of Ruling: 07.12.2020

RULING

V.L. MAKANI, J

The applicant PETER JUNIOR has filed this application for revision against the ruling and order of the District Land and Housing Tribunal for Kinondoni at Mwananyamala (the **Tribunal**) in Application No. 103 of 2019. The application is made under section 43(1) (a) and (b) of the Land Disputes Court Act No. 2 of 2002 and section 79(1)(c) of the Civil Procedure Code CAP 33 RE 2002 and any other enabling provisions of the law. The application is supported by the affidavit of the applicant; and the respondent filed a counter affidavit to oppose the said application.

The ruling of the Tribunal in Land Application No. 103 of 2019 overruled the preliminary objections raised by the applicant who was the respondent in the Tribunal. In essence therefore the application at the Tribunal is still pending.

With leave of the court the application was argued by way of written submissions. The applicant drew and filed his written submissions, while Mr. Raphael Lefi David, Advocate drew and filed submissions on behalf of the respondent.

Before addressing the submissions by the parties, I would wish us to go through the enabling provisions cited by the applicant. Section 43(1)(a) of the Land Disputes Courts Act CAP 216 RE 2019 states:

> *"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;"*

Section 79(1) of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**) states:

"79 (1) The High Court may call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies thereto, and if such subordinate court appears:

(a) to have exercised jurisdiction not vested in it by law;

(b) to have failed to exercise jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit."

The above provisions confer powers to the High Court to call for, inspect and revise any decision of the Tribunal or any court subordinate thereto where there is illegality or irregularity and give directions where it considers necessary for the interest of justice. As said hereinabove, the decision of the Tribunal originates from a preliminary objection. Now, is such decision revisable?

The District Land Courts Act and the Regulations (Land and Housing Tribunal) Regulations, 2003 (GN No. 174 of 2003) are silent as to whether a decision on a preliminary objection is revisable. However, section 51(1) of the District Land Courts Act allows this court to apply the provisions of the CPC and the Evidence Act CAP 6 RE 2019. The said section states:

"51(1): In the exercise of its jurisdictions, the High Court shall apply the Civil Procedure Code and the Evidence Act and may, regardless of any other laws governing

production and admissibility of evidence, accept such evidence and proof which appears to be worthy of belief."

Following the grant to apply the CPC by the above provision, application for revision in respect of decisions on preliminary objections will therefore be covered by section 79(2) of the CPC which states:

"79(2) Notwithstanding the provisions of subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of the Court unless such decision or order has the effect of finally determining the suit.

The rationale behind section 79(2) of the CPC can be observed in the case of **Shenaz Ismail Noray vs. Dhirajial Mulji Durasa, Land Case Revision No. 23 of 2019 (HC-Land Division)** (unreported) where by brother Hon. Maige, J stated:

"The rule that appeals and revisions cannot be preferred against interlocutory decisions is a principle of general application in the High Court. The rule is advantageous in the exercise of the appellate and revisional jurisdiction of this court as it prevents unnecessary multiplicity of appeal and revisional proceedings which would possibly be preferred after final and conclusive determination of the controversy by the trial tribunal without occasioning any failure of justice. For correctness or otherwise of the interlocutory decision in question can be raised at the moment in time the aggrieved party is challenging the final and conclusive decision. In my view, allowing parties to prefer appeal and/or revisions against interlocutory decision with do not finalize matters in controversy, will create a room for abuse of the court

process and thereby leading to unnecessary prolongations of proceedings."

The Court of Appeal in analyzing section 5(2)(d) of the Appellate Jurisdiction Act which is similar to section 79(2) of the CPC stated in the case of **Karibu Textiles Mills Limited vs. New Mbeya Textiles Mills Limited & Others, Civil Application No. 27 of 2006** (unreported) as follows:

"We further agree with Dr. Lamwai's submission that the spirit of the amendment of the provision of the section 5(2)(d) of the Appellate Jurisdiction Act 1979 is to prevent unnecessary delays. This is rightly so because interlocutory orders do not finally and conclusively determine the rights of the parties. Where a party is aggrieved by an interlocutory order, that can form a ground of appeal or revision if the party is dissatisfied with the final decision of the court...."

Now, was the decision of the Tribunal finally and conclusively determined? In the ruling delivered by the Tribunal the Chairperson stated:

"The preliminary objection overruled for lack of merit, costs to take events (sic!)."

The decision of the Tribunal above, in my considered view, was not conclusively determined as the substantive application was yet to be heard on merit. As practice requires, the Chairperson dealt with the preliminary objection first, and having found that it is wanting in merit, overruled it. To my understanding, if the applicant was not

satisfied with the decision of the Tribunal at the preliminary objection level he would have waited until the end of the matter and that would have formed a ground of appeal (see: **Karibu Textiles Mills Limited** (supra). And in the case of **Mahendra Kumar Govindji Monani vs. Tata Holdings Limited, Civil Application No. 50 of 2002 (CAT)** (unreported) the Court of Appeal stated that where the decision of the court on preliminary matter does not finally determine the case, one has to wait until the final outcome is known and if dissatisfied, he can appeal against all the points including the preliminary interlocutory decision or order with which one was aggrieved. The applicant ought to have done this instead of rushing to file this application for revision against a decision on a preliminary objection which did not conclusively determine the matter.

Consequently, and by virtue of section 79(2) of the CPC this application is hereby dismissed with costs for being premature. It is so ordered.

Vel Makani

V.L. MAKANI
JUDGE
07/12/2020