

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

LAND REVISION NO. 58 OF 2020

ABDALLAH S. DUMBALUME APPLICANT

VERSUS

ELIZABETH G. FUTE RESPONDENT

RULING.

S.M. MAGHIMBI, J:

In this application, the respondent has moved the court under the provisions of Section 43(1)(b) and (2) of the Land Disputes Courts Act, Cap. 216 R.E 2019 and Section 95 of the Civil Procedure Code, Cap. 33 R.E 2019. He was seeking for the following orders:

1. That this honourable Court be pleased to call for records of District Land and Housing Tribunal in respect of Land Appeal No. 35 of 2020 together with TMK/KBG/BRZ/O9/2020 from which the above –mentioned appeal emanates and exercises its revisional jurisdiction so as to satisfy itself over their correctness, legality and propriety of the proceedings in the above named Land Courts.
2. The costs of this Application follow event.
3. Any other relief this honourable Court may deem fit and just to grant.

The application is supported by an affidavit of the applicant dated 28th December, 2020. In his affidavit to support the application, the applicant deponed that on the 02nd April, 2020 the Respondent instituted the claim with reference No. TMK/KBG/BRZ/09/2020 against the Applicant at the Kiburugwa Ward Land Tribunal claiming that the applicant had encroached on the border of the Respondent by erecting the cubicles/huts. During hearing of the application the applicant, among other things, submitted to the Tribunal that he was neither the owner nor administrator of the estate of Said Abdallah Dumbalume. However, the Tribunal without taking into cognizance that the Applicant was not administrator of the said estate continued with the determination of the matter in favour of the Respondent. Further that during hearing of this matter, the Ward Tribunal nevertheless did not consider the period the late Said Abdallah Dumbalume had occupied the piece of land in dispute.

That the Ward Tribunal found that the disputed piece of land is a road reserve, the issue which was solely invented by the tribunal itself as there was no evidence adduced in the course of hearing the matter. He then preferred Land Appeal No. 35 of 2020 in the District Land and Housing Tribunal for Temeke, an appeal which was dismissed following a preliminary objection that the same was time barred. It is the applicant's complaint that the Tribunal disposed the appeal after hearing the raised preliminary objection without cutting across and deep into the contents and substance of the matter being appealed against, which was that the respondent herein had no cause of action against him because he was not the administrator of the estate of the late Saidi Abdallah

Dubumbale whom the applicant alleges to have been the owner of the disputed property.

The applicant further raised a preliminary objection on point of law that the counter affidavit is incurably defective and that the attesting officer was not an authorised officer or unqualified. I order cross submissions of both the application and the preliminary objections. I need not be detained much by the objection beforehand. The applicant alleged that the counter affidavit of the respondent is incurably defective for lacking signature of the deponent, verification date and the date which the counter affidavit was made. Looking at the counter affidavit that was filed in court, all these informations are not available making the counter affidavit incurably defective. Consequently, the counter affidavit filed by the respondent is hereby struck out from the records.

On her part, the respondent had also raised a preliminary point of objections which in substance talk of the same thing; that the application is incompetent and unmaintainable as it falls short of legitimacy under any law that revision proceedings may be filed as an alternative to rescue unsuccessful appeal dismissed for being hopelessly filed out of time. The alternative objection raised is that the application is misconceived as being bad in law, frivolous and vexatious amounting to an abuse of court process.

Having considered the records of this application, the affidavit of the applicant and the submissions in support thereto, I have noted that the applicant wishes for the court to sympathise with him that the Ward Tribunal ignored the fact he established that the respondent has no cause

of action against him. The records are clear that in his affidavit, the applicant admitted that he has filed the current application as an alternative to an appeal. His reasons were that he had applied and was issued with the Ruling and Order of the tribunal and realized that he was running short of time to Lodge the Appeal and upon consultation of a lawyer who went through the records, he was advised that from the circumstance of the case, the question of his position as a party to the case was very crucial and should have been considered by the Ward Tribunal at the earliest stage. He was further advised that the District Land and Housing Tribunal should have noticed this anomaly and accord the necessary remedial measures. These facts necessitated me to revisit the records of the District Tribunal and found that in his memorandum of appeal, the appellant had three grounds of appeal that:

1. That the Ward Tribunal erred both in law and facts in entertaining the respondent's claims without any due consideration of the period of limitation.
2. That the Ward tribunal erred both in law and facts in ignoring the Applicant's evidence which shows that the disputed property is the applicant's family and has been used as a market (genge) centre since 1994.
3. That the Ward Tribunal erred both in law and facts in holding that the disputed piece of land is a road reserve, an issue which was not among the issues of the proceedings.

It is obvious that in his intended appeal that was dismissed for being time barred, the appellant did not at all raise the issue of the respondent having

no cause of action against him. He was playing along with the issue of substance of ownership of the suit property, only when he thought he has hit a dead end is when he is trying to play victim by raising the issue of cause of action against him. That being the case, the question is, as raised by the respondent, whether the application for revision beforehand is an alternative to filing an appeal.

In the cited the case of **Abdallah Hassani vs Juma Hamisi Sekiboko, Civil Appeal No. 22 of 2007**, the Court of Appeal at Tanga, (unreported) where the Court of Appeal had this to say:

"We turn to the merits of the appeal. The High Court moved under Section 44(1)(b) can only revise the proceedings where there is an 'error material to the merits of the case involving injustice.' Throughout, the court would act to rectify that error apparent on the face of the record and not that it sits in its appellate capacity as if on appeal; to evaluate evidence. And neither can it perform both roles (revision and appeal) simultaneously.

With respect to the High /court Judge (Shangali, J) what is depicted by the record supports ground one of the Appellant's complaints. The learned judge overstepped from the arena of revision into that of a appeal, confusing the process in the end as she branded what was before her as a 'revision' and at the same time as an 'appeal.'"

"And this brings us to our next finding that apart from the error of treating revisional proceedings as an appeal, the court also erred We think the principles guiding revisional proceedings before this Court, that is that revision should not be a substitute for an

appeal and that the court should be satisfied that in the interest of justice a revision should be employed rather than an appeal, should as well guide the High Court in applications for revision made under Section 44(1)(b) of the Magistrates Court Act, No.2 of 1984."

From the principle laid above, since the applicant has admitted to have lodged the revision as an alternative to an appeal which he thought was out of time, the application beforehand is an abuse of process. It is hereby dismissed with costs.

Dated at Dar-es-salaam this 14th day of July, 2021.



S.M. MAGHIMBI.

JUDGE.

