

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

LAND REVISION NO. 24 OF 2019

**DEUSDEDITH PASCAL CHUGGA.....1ST APPLICANT
PAUL MANYIKA.....2ND APPLICANT
HEMED RASHID ALLY.....3RD APPLICANT
MFAUME ATHUMAN.....4TH APPLICANT**

VERSUS

MORFARM..... RESPONDENT

Date of Order: 13.04.2021
Date of Judgment: 17.05.2021

RULING

V.L. MAKANI, J

The applicants herein are praying for the following orders:

- 1. That the honourable court be pleased to revise and set aside the orders dated 19th day of August, 2019 in Bill of Costs No. 132 of 2019 arising out of Miscellaneous Land Application No. 106 of 2018 and Land Application No. 37 of 2011 of the District Land and Housing Tribunal Kibaha.*
- 2. That costs of this application be provided for.*
- 3. Any other order(s) that his honourable court may deem just to grant.*

The application is made under section 43(1)(a) and (b) of the Courts Land Disputes Settlements Act, 2002 and section 95 of the Civil Procedure Act CAP 33 RE 2002 and is supported by the joint affidavit of the applicants. With leave of the court the application was argued by way of written submissions.

Submitting on behalf of the applicants, Mr. Ibrahim Mbugha gave a brief background of the matter. He said the applicants herein were served with Bill of Costs No. 132 of 2019 which arose from Misc. Land Application No. 106 of 2018 originating from Land Application No. 37 of 2011. Upon being served the said bill of costs the applicants filed preliminary objection. According to Mr. Mbugha, the Chairperson acknowledged the existence of the preliminary objection raised by the applicants but disregarded it and proceeded to fix the date of the ruling in the application for bill of costs. The objection raised was to the effect that the respondent herein did not have locus standi to hold a decree in its own for want of capacity to sue or be sued in its own name.

As for the main submissions, Mr. Mbugha alleged that at the District Tribunal the respondent herein presented herself as a duly registered Non-Government Organisation (**NGO**). He said having registered

itself, the respondent ought to have registered its trustees under section 3 of the Trustees Incorporation Act. After the registration the trustees become a body corporate by the name described in the certificate and shall have power to sue and be sued, succession band and a common seal. He said since the respondent was not incorporated as described it did not have locus standi to sue and be sued in its own name. In that regard, Mr. Mbugha prayed for this court to revise the orders of the District Tribunal made on 19/08/2019 and give any further orders the court deems fit and just to grant.

On his side Mr. Ladislaus Michael on behalf of the respondent adopted the counter affidavit affirmed by KASSIM ABDALLAH the Chairperson of the respondent herein. He said on 04/07/2019 the Tribunal ordered the parties to argue the Bill of Costs No. 132 of 2019 by way of written submissions. The respondent was ordered to file her submissions on 17/07/2019, the applicants to file their reply on 31/07/2019 and rejoinder if any on 07/08/2019. He said though the respondent filed her submissions on the scheduled date, the applicants did not file their Reply but instead filed a preliminary objection. He said it is a matter of practice and law that when an order of court is made parties must respect and comply with the said order to avoid chaos. He relied

on the case of **Tanzania Breweries Limited vs. Edson Dhobe & Others, Misc. Civil Application No. 96 of 2000 (HC-DSM)** (unreported). He further said the bill of costs filed at the Tribunal was presented to cover costs which were incurred to prosecute Misc. Land Application No. 106 of 2018. Mr. Ladislaus said went on saying that the objection was filed as a means of delaying justice as it was not a pure preliminary objection on a point of law in terms of **Mukisa Biscuit Manufacturing Limited vs. West End Distributors Limited [1969] 1 EA 696** and **Makeshkumar Raojibhai Patel vs Karim Shamshuddin Suleman, Commercial Case No. 80 of 2015 (HC-Commercial Division, DSM)** (unreported). For the said reasons he said that the application has no merit, and it ought to be dismissed with costs.

In rejoinder Mr. Mbugha emphasized that the issue at hand is the propriety or otherwise of the failure by the Tribunal to hear and determine the said preliminary objection. He said the qualifications and merits of the said preliminary objection were to be determined by the Tribunal which it did not. He said this court is vested with such powers according to section 43(1)(b) of the Courts (Land Disputes Settlement Act), 2002. He further observed that failure by the

Tribunal to hear and determine the preliminary objection raised before fixing a date of ruling was a fatal irregularity. He cited the case of **Khaji Abubakar Athumani vs. Daudlyakugile t/a ADC Aluminium & Mwanza City Council, Civil Appeal No. 86 of 2018** where the case of **Thabit Ramadhani Maziku & Kisuku Saium Kaptula vs. Amina Khamis Tyela & Mrajisi was Nyaraka Zanzibar, Civil Appeal No. 98 of 2011** was cited with approval. He reiterated his prayers for the application to be granted and the order for revision of the order of 19/08/2019.

The issue for consideration is whether this application has merit. I have gone through the affidavit of the applicant and I have noted that the order of 19/08/2019 which is the subject of this application is not attached. I have also perused the Tribunal's file, there are no proceedings to that date. In essence therefore the application before the court is incompetent for seeking a revision of a non-existing order.

Without prejudice to the above, the sequence of the proceedings of the matter is highly questionable. The respondent (then the applicant in Bill of Costs No. 132 of 2019), filed an application for bill of costs on 15/04/2019. When the matter was called for mention on

04/07/2019, an order for parties to file written submissions was given and the applicant was to file the written submissions on 17/07/2019 and the respondent on 07/08/2019 and the matter was set for another mention on 13/08/2019. Present on the date of this order was Mr. Ladislaus Michael for the respondent herein and Mr. John Sanga for the applicant, However, instead of filing the written submissions the applicant herein through John Barry Sanga, Advocate filed a notice of preliminary objection that the respondents did not have *locus standi*.

On 13/08/2019 all the applicants were absent save for the 5th applicant. On that date, Mr. Michael was also present. The matter was set for ruling on 01/10/2019. On the said date of the ruling, in the presence of Mr. Michael, there was a prayer by Mr. Mbugha, Advocate, for extension of time to file Reply to the written submissions which prayer was granted, and the applicants were given until 11/10/2019 to file their submissions. Instead of filing the submissions Mr. Mbugha filed another preliminary objection on 05/11/2019 on the same issue that the respondents did not have any *locus standi*. The act of Mr. Mbugha praying for extension of time to file written submissions in reply and the Tribunal granting the said

order, meant that the applicants herein waived their right to argue the initial notice of preliminary objection of which order is the subject of this revision, and decided to proceed to argue the application. Mr. Mbugha's argument that the preliminary objection had to be argued first before arguing the application, cannot be the subject of this application but relates to the initial objection of which right was waived when he prayed for and was granted leave for extension of time to file written submissions in reply. In that respect there is therefore nothing for this court to revise.

In any case, the records show that while Mr. Mbugha was praying for extension of time to file submissions in reply on behalf of the applicants at the Tribunal on 01/10/2019, Mr. Sanga had already filed this application on 26/09/2019. It is apparent that there were two parallel applications proceeding on at the Tribunal as well as this court. This in my view is an abuse of the process of the court as Mr. Mbugha being an advocate of the applicants at the Tribunal and in this court knew what was going on, and literally what transpired in the Tribunal has rendered this application redundant.

In view of the above, I find this application to have no merit and it is hereby dismissed with costs. It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
17/05/2021