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

LAND REVISION NO. 27 OF 2020

(Arising from the decision of Kibaha District Land and Housing Tribunal in Land Appeal No. 59 of 2019; Originating from Land Case No. 06/2016 Mzenga Ward Tribunal)

MAULID SELEMAN NASSORO.....APPLICANT

VERSUS

SAID SELEMANI KITORA.....RESPONDENT

Date of Order: 14.04.2021
Date of Ruling: 24.05.2021

RULING

V.L. MAKANI, J

The applicant in this application for revision MAULID SELEMAN NASSORO has filed this application for the following orders:

1. *That this honourable court be pleased to all for the records of the proceedings in District Land and Housing Tribunal decided buy Hon. S.L. Mbuga on 24th June 2020 between the above mentioned parties and revise part of the proceedings and judgment thereon or make such orders as it deems fits tht the costs of this application be in course.*

2. *Any other order(s) that the honourable court may deem just and equitable to grant.*

The application is supported by the affidavit of Michael Peter Mahende Advocate for the applicant, and it is made under section 38(1) of the Land Disputes Court Act, 2002, Section 30 of Civil Procedure Code

CAP 33 RE 2002, Order 4 of the Advocates Remuneration order of 2015 and sectio n 14 of the Law of Limitation Act CAP 89.

With leave of the court the application was argued by way of written submissions. Mr. Mahende for the applicant gave a brief history of the matter. He said initially there was an application at the Ward Tribunal in Mzenga namely Shauri No. 06/2016. Being aggrieved with the decision of the Ward Tribunal the respondent decided to appeal to Kibaha District Land and Housing Tribunal. The respondent was out of time, but he made an application for extension of time vide Misc. Land Application No. 172 of 2018 and the said application was granted by Hon. Mbuga, the Chairman. The applicant herein being aggrieved by the decision of the Chairman to grant such an extension has come to this court arguing that the respondent did not provide sufficient reasons at the Tribunal to warrant extension of time. But before filing the appeal, the applicant requested for copies of the judgment and decree from the District Tribunal. But because he obtained the copies late and then he filed an application for extension of time. while waiting for the extension of time to be granted the Chairman proceeded with hearing of the appeal Land Appeal No. 59 of 2019. On the other hand, the applicant showed the court summons

for the parties in Misc. Land Application No. 119 of 2020 for the parties to appear at the High Court before Hon. Opiyo, J and prayed orally for the Land Appeal to be stayed pending hearing of the matter at the High Court. He said judgment in Land Appeal No. 59 of 2019 was delivered despite there being an application at the High Court. He said technically the judgment defeated all the appellate steps and proceedings preferred by the applicant herein in Misc. Application No. 119 of 2020.

On irregularity and illegality of the proceedings Mr Mahende said there were five grounds of appeal filed at the Tribunal but they were not determined instead the Chairman invented a new ground that the suit land was already sold to a Third Party one Mahsaka and he ought to be joined as a necessary party. He further stated that the alleged land was said to measure 35x25. To the contrary the award of the Tribunal described the land in dispute as one and half acres of land. He said the Chairman would not have relied on such a contradictory statement. He said the main irregularity which was fundamental breach of the right to be heard according to Article 13 of the Constitution of United Republic of Tanzania. He said the Chairman ought to stay pronouncing judgment because once there is an

application in the higher court that amounts to infringe the right to be heard by the parties in the higher court. As for the right to be heard he relied on the case of **Mount Meru Flowers Tanzania Limited vs. Box Board Tanzania Limited, Civil Appeal No. 260 of 2018 (CAT-Arusha)** (unreported).

In reply the respondent who filed his own submissions stated that the provisions of law cited to move the court were not applicable to the application of this nature. He said the application before the court is revision, so the proper section ought to have been section 43 of the Land Dispute Courts Act. He relied on the case of **Lord Templeman in Ashmore vs. Corp. of Lloyds (1992) 2 All ER 486 (HL).**

The applicant did not file submissions in rejoinder.

I have gone through the application, and as stated hereinabove, and in his submissions the respondent raised the issue that the application has been brought under the wrong provisions of the law. The applicant had an opportunity of responding to this issue vide his rejoinder submissions, but he did not find it necessary to do so, subsequently he waived his right to respond to this issue which was

raised by the respondent herein. As correctly stated by the respondent, the proper provision for the orders sought for in the Chamber Summons ought to have been section 43 of the Land Disputes Court Act which states:

> *43.(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court:*
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> *(a) shall exercise general powers of supervision over all District 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;*
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> *(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit.*
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> *(2) In the exercise of its revisional jurisdiction, the High Court shall have all the powers in the exercise of its appellate jurisdiction.*

Section 38 (1) Land Disputes Court Act deals with appeals originating from the Ward Tribunal and not revision. The applicant has also cited other provisions to move the court. Such as section 30 of Civil Procedure Code which deals with costs therefore not relevant to this application. He has also cited Order 4 of the Advocates Remuneration

Order of 2015 which deals with taxation of costs is also not relevant. And section 14 of the Law of Limitation Act CAP 89 RE 2019 which refers to extension of time is equally not relevant.

It is settled law that an application brought under wrong provisions of the law is incompetent and ought to be struck out. It is equally settled law that non-citation of the relevant provisions in the notice of motion renders the proceeding incompetent. This was stated in the cases of **Robert Leskar vs. Shibesh Abebe, Civil Application No. 4 of 2006 (CAT-Arusha)** (unreported) and **Hussein Mgonja vs. The Trustees of the Tanzania Episcopal Conference, Civil Revision No. 2 of 2002 (CAT-Arusha)** (unreported).

In view of the above, I find that the court has not been properly moved and so the application is incompetent, and I proceed to strike it out with costs.

THE HIGH COURT OF TANZANIA ★ LAND DIVISION ★

V.L. MAKANI
JUDGE
24/05/2021