

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

LAND REVISION NO. 39 OF 2020

*(Arising from Land Application No. 58 of 2020 at the District Land and Housing
Tribunal for Ilala before M. Mgulambwa – Chairman)*

CHANDULAL WALJA LADWA.....APPLICANT

VERSUS

JITESH JAYANTILAL LADWA.....1ST RESPONDENT

HOUSE AND HOMES LIMITED.....2ND RESPONDENT

RULING

S.M. MAGHIMBI, J:

Before this Court is an application for revision lodged under the provisions of Section 43(1)(a) and (b) and Section 44(1)(b) of the Land Disputes Courts Act, Cap. 216 R.E 2019 and Section 79 (1) (b) and (c) and section 95 of the Civil Procedure Code Cap 33 R.E 2019. The applicant, Chandulal Walji Ladwa is aggrieved by the decision of the tribunal in Application No. 58/2020 lodged by the respondents herein, Jitesh Jayantilal Ladwa and House & Homes Limited.

While making their reply submissions to the application, the respondent's Counsel Mr. Elly Musyangi raised an issue concerning jurisdiction of this court. His objection is whether the ruling and Order subject of the present revision had the effect of finally determining the main application before the tribunal to warrant the present application before me. He supported his action of raising this point despite the fact

they did not file any counter affidavit by citing the case of **Finn Von Wurden Petersen And Another Versus Arusha District Council Civil Application No.562/17 Of 2017** (Unreported) where the Court of Appeal held at page 3 that:

"Therefore, the respondent who appears at the hearing without matters of fact, but he can challenge the application on matters of law".

He then submitted on the merits of his objection which he started by citing the provisions of the Written Laws (Miscellaneous Amendments) Act Number 25 of 2002 ("The Act") which amended various laws but the ones relevant for this ground of objection are: **The Appellate jurisdiction Act, Cap. 141 R.E. 2010** (hereinafter "the Appellate Act"), **The Civil Procedure Code Act, Cap. 33 R.E. 2019** (hereinafter "the CPC") and The Magistrates Court Act, Cap.11 R.E. 2019 (hereinafter "the MCA"). He argued that these three pieces of legislation were identically amended in Sections which deal with appeals and revisions. My interest for the determination of this application will however only stick to the provisions of the CPC because that is the law applicable in this court for matters originating from the Tribunal and not the MCA.

In his submissions Mr. Musyangi argued that the CPC prohibits an application for revision 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. He supported his argument by citing the case of **Jitesh Jayantilal Ladwa & another Vs Dhirajlal Walji Ladwa and 2 others** Civil Application for Revision Number. 154 of 2020, where by the Court of Appeal refused to revise the High court ruling on the basis the same was interlocutory. He concluded that the

application is premature and devoid of merits praying that the application is dismissed.

I have noted that the applicant did not make any reply submissions on this objection. I will therefore proceed to determine it. Before I go into the merits of the objection, I must make it clear that Mr. Musyangi's submissions are misleading at the point where he cited the provision of Section Section 74(1) of the CPC, that it was amended to include the word revision. This fact is not true because the correct provision is covered under Section 79 (2) of the CPC which provides:

"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."

Indeed the Revision beforehand emanates from the ruling and order in the Land Application No. 58 of 2020 delivered on 11th August 2020 before Honorable Mgulambwa, Chairperson whereby she overruled the Preliminary objection on point of Law. In the objection there, the then Respondent, who is the Applicant herein, challenged the Application on the ground that the tribunal lacked Pecuniary Jurisdiction to entertain the same. The Applicant's (respondent herein) estimation of the Property in dispute was One Hundred Million Only while the respondent's (applicant herein) objection was that the Property which is located at Sea View, Kimara Street, Ilala Municipality and with 9,390 square feet with two apartments, exceeded the amount. The tribunal was not convinced by the objection raised and preceded to overrule it hence this revision.

The question is whether the decision of the tribunal had the effect of finally determining the application? The answer is definitely no because after dismissal of the objection, the tribunal satisfied itself to have jurisdiction on the matter and proceeded to schedule the matter for mention. As per the provisions of the Section 79(2) of the CPC, no application for revision is to 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 decision of the tribunal did not determine the suit to its finality therefore the applicant is barred by the cited Section to lodge this application.

In conclusion, this application is incompetent before this court as it contravenes the provisions of Section 79(2) of the CPC. Consequently, it is hereby dismissed with costs.

Dated at Dar-es-salaam this 04th day of June, 2021.



A handwritten signature in black ink, appearing to read "S.M. Maghimbi".

S.M. MAGHIMBI.
JUDGE.