

**THE HIGH COURT OF TANZANIA  
(IN THE DISTRICT REGISTRY)  
AT MWANZA**

**LAND REVISION NO.37 OF 2020**

(Originating from the decision of the District land and Housing Tribunal  
for Temeke in Land Application No. 18 of 2020)

**CATHOLIC ARCHDIOCESE OF DAR ES SALAAM ..... 1<sup>ST</sup> APPLICANT**

**ST. ANTHONY SECONDARY SCHOOL ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**LATIFA SAID SAPHY (As an administrator of Estate**

**of the late SHUKURU SAID SAPHY) ..... RESPONDENT**

**RULING**

*Date of Last Order: 20.07.2021*

*Date of Ruling: 22.07.2021*

**A.Z.MGEYEKWA, J**

The applicant filed an application for revision in respect to Land Application No.18 of 2020. for the purpose of ascertaining the correctness, legality, propriety, and or otherwise of the Ruling of the Hon. Chinyele, Chairman for District Land and Housing Tribunal for Temeke at Temeke. The application is supported by an affidavit deponed by Robert Rutaihwa,

learned counsel for the applicants. The application has encountered formidable opposition from the respondent and has demonstrated his resistance by filing a counter affidavit deponed by Emily Laus Christant, the learned counsel for the respondent and he lodged the following preliminary objection:-

- 1. That the application for revision is misconceived and unmaintainable in law doe being based in interlocutory orders contrary to section 79 (2) of the Civil Procedure Code, Cap.33 [R.E 2019].*

When the matter was called for hearing on 20<sup>th</sup> July, 2021 the applicant enjoyed the legal service of Mr. Robert Rutaihwa, learned counsel and the respondent had the legal service of Mr. Emily Laus, learned counsel.

In support of the Preliminary Objection, the respondent's Advocate submitted that the applicant seeks this court to revise the decision of the District Land and Housing Tribunal for Temeke. He argued that the matter is pending before the tribunal hence the application for revision is prematurely before this court. The learned counsel for the respondent went on to state that the four point of preliminary objection were overruled by the tribunal therefore the tribunal did not determine the rights of the parties the means that the matter was not determined to its finality. He continued to submit that the tribunal decision was on interlocutory order.

It was Mr. Emily further submission that the applicant has cited section 43 (1) (b) of the Land Disputes Courts Act, Cap. 216 to move this court to determine the revision while the catch words 'merits of the case' which means the rights of the parties were not determined. Mr. Emily seek refuge in the case of **Junaco Tanzania Limited and Justine Lambert v Karel Mallac Tanzania Limited**, Civil Application No. 473/16 of 2016 (unreported).

On the strength of the above submission, the learned counsel for the respondent beckoned upon this court to find that the instant application is misconceived as it arises from an interlocutory order. He urged this court to dismiss the application with costs and remit the record to the District Land and Housing Tribunal for Temeke to proceed to determine the matter on merit.

Opposing the preliminary objection, Mr. Robert contended that the preliminary objection is out of misconception of the law. He claimed that the preliminary objection is made under section 79 (2) of the Civil Procedure Code, Cap.33 [R.E 2019], however, the learned counsel for the respondent has not substantiated anything in respect of the said provision. Mr. Robert went on to state that the application arises from the Ruling of the District Land and Housing Tribunal whereas the question of jurisdiction of the tribunal was discussed and the tribunal dismissed the preliminary

objection. He stated that the issue of jurisdiction is fundamental and the same can be raised at anytime and the same went to the root of the matter. He contended that the issue of jurisdiction is at issue it will be irrelevant to wait to raise the issue of the jurisdiction after hearing of the matter.

It was Mr. Robert further submission that the application for revision is a pure land matter brought under section 43 (2) (b) of the Land Act, in his view, the issue of revision is not restricted. He opposed the citation of section 79 (2) of the Civil Procedure Code, Cap. 33 [R.E 2019]. He added that the only provision restricting appeal on interlocutory order is Regulation 22 of the Land Disputes Courts and (the District Land and Housing Tribunal) Regulations of 2003 GN. 174. He went on to state that the respondent had no right to lodge an application before the District Land and Housing Tribunal because the rights of occupancy were revoked under section 49 (2) (f) of the Land Disputes Courts Act.

The learned counsel for the applicant complained that the issue of jurisdiction was finally determined by the tribunal. He cited the case of **NBC Ltd & Another v Bruno Swalo**, Civil Appeal No.331 at Mbeya (unreported). Mr. Robert distinguished the cited case of **Junaco** (supra)

that the discussion was based on section 4 (3) of the Appellate Jurisdiction Act and the circumstances are not the same.

On the strength of the above submission, Mr. Robert beckoned upon this court to overrule the preliminary objection since it is not pecked on interlocutory order. He also prayed for costs be upon the learned counsels for the respondent.

In his brief rejoinder, Mr. Emily reiterated his submission in chief. He distinguished the cited case of **NBC Limited** (supra) from the instant application, however, he prayed for this court to adopt the remedies stated in the **NBC Limited** case. He valiantly contended that it was the tribunal's findings that the point of revocation of title was not a point of law but a point of fact.

In conclusion, the learned counsel for the respondent urged this court to find that the instant application is an interlocutory application that is against the law. He beckoned upon this court to dismiss the application with costs.

Having summarized the submissions and arguments of both learned counsels for and against the appeal, I should now be in a position to determine the point of preliminary objection on which the parties bandying

words. The issue for determination is ***whether the preliminary objection has merit.***

I have perused the District Land and Housing Tribunal for Temeke ruling in respect to Land Application No. 18 of 2020 14<sup>th</sup> July, 2020 the Chairman overruled the preliminary objections raised by the respondent and decided to determine the matter on merit. The same means the matter is pending before the District Land and Housing Tribunal for Temeke. I am aware that the respondent's learned counsel has cited section 79 (2) of the Civil Procedure Code Cap. 33 [R.E 2019] to move this court to dismiss the application before this court for the reason that the instant application for revision is prematurely before this court. For ease of reference, I reproduce Section 79 (2) of the Civil Procedure Code Cap.33 [R.E 2019] as hereunder:-

*“ 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.”*

Applying the above provision of the law, section 79 (2) of the Civil Procedure Code Cap.33 [R.E 2019] moves this court to decide the instant matter which relates to interlocutory order. On the other hand, the learned

counsel for the applicant valiantly argued that the Civil Procedure Code Cap.33 [R.E 2019] is inapplicable in the land matter.

With due respect to the learned counsel for the applicants on his contention that the Civil Procedure Code, Cap.216 [R.E 2021] cannot apply in the circumstance of the case at hand. I hold to the contrary, that section 79 (2) of the Civil Procedure Code, Cap.216 [R.E 2021] applies squarely to the matter at hand since there is no specific provision or there is a lacuna in the Land Disputes Courts Act, Cap.216 [RE. 2019] which provides that no revision shall lei or be made in respect to preliminary or interlocutory order. Therefore, Section 79 (2) of the Civil Procedure Code Cap.33 [R.E 2019] is a proper provision to move this court to determine the matter before me.

It is indisputable fact that the matter is pending before the District Land and Housing Tribunal for Temeke and that the application for revision before this court is against an interlocutory order. Next for consideration is whether an aggrieved party can file a revision against an interlocutory order?

It is trite law that if a preliminary objection disposes of the case, it can be revised contrary to that it cannot be revised. The same was held in the case of **Lucky Spin Ltd (Premier Casino) Ltd v Thomas Alcorn & Joan**

**Alcorn**, Revision No. 445 of 2015 Labour Division at Dar es Salaam. I fully subscribe to the learned counsel for the respondent submission that a revision cannot be exercised in a decision that is not finally determined as clearly stated under Section 79 (2) of the Civil Procedure Code Cap.33 [R.E 2019].

Given the above analysis and the position of the law and authority, it is obvious that the nature of the Ruling before this court is related to an interlocutory order issued by the District Land and Housing Tribunal for Temeke. The matter before the District Land and Housing Tribunal for Temeke is not determined to its finality.

For the sake of clarity, the learned counsel for the applicants claimed that the issue of jurisdiction can be raised at any time. To the contrary, it is my view that the issue of jurisdiction can be raised at any time, however, it during trial and hearing an application or appeal. If the issue of jurisdiction will be disregarded then the proper remedy is to file an appeal after the determination of the matter on merit. The learned counsel for the applicant stated that the provision of law relating to interlocutory order is Regulation 22 of the Land Disputes Courts and (the District Land and Housing Tribunal) Regulations of 2003. It is my respectful opinion that the cited Regulation is not relevant to the situation at hand. The section empowers the Chairman to determine preliminary objection based on



point of law while section 79 (2) of the Civil Procedure Code Cap.33 [R.E 2019] is a fit provision of law to move this court to determine a revision which arises from a preliminary or interlocutory decision or order of the Court. Therefore, this court is properly moved to determine the objection raised by Mr. Emily.

In the upshot, I have to say that the point of preliminary raised by Mr. Emily, learned counsel for the respondent has merit. Therefore, I uphold the preliminary objection and dismiss the application without costs.

Order accordingly.

Dated at Dar es Salaam this date 22<sup>nd</sup> July, 2021.

  
A.Z.MGEYEKWA

**JUDGE**

22.07.2021

Ruling delivered on 22<sup>nd</sup> July, 2021 via audio teleconference whereas Mr. Robert, learned counsel for the applicants and Mr. Emily, learned counsel for the respondent were remotely present.



  
A.Z.MGEYEKWA

**JUDGE**

12.06.2020

Right to appeal fully explained.