

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

LAND REVISION NO.08 OF 2020

*(Arising from the District Land and Housing Tribunal for Temeke at
Temeke, in Land Case Application No.112 of 2019)*

THE REGISTERED TRUSTEES OF MASJID

SHEIKH ALBANI.....APPLICANT

VERSUS

RAYAH SALUM MOHAMED *(By Virtual of Special Power of Attorney from*

SHERDELL REND..... RESPONDENT

RULING

Date of Last Order: 30.06.2021

Date of Ruling: 23.08.2021

OPIYO, J.

This ruling is in respect of the prayers from the applicant above named that, the court be pleased to exercise its power of supervision on the District Land and Housing Tribunal of Temeke and call for and inspect the records of the said tribunal to see whether the orders issued by the High Court in Land Revision No. 15 of 2019, dated 26th July, 2019 have been complied with, costs of the case any other relief which the court will think fit to grant. The same was brought under section 43(1) and (2) of the Land Disputes Courts Act, Cap 216 R.E 2019 and supported by the Affidavit of Abdul Wahid Ahmed Salum, one of the Trustees of the

applicant. The respondent filed her counter affidavit opposing the grant of the reliefs sought in the chamber summons, hence hearing of the application which was by way of written submissions. The applicant was represented by Advocate Deogratius Lymo Kirita while the respondent enjoyed the legal services of the learned Advocate Leonard Masatu.

I have read and well considered the arguments for and against the application at hand, as put forward by the parties through their respective Advocates. Arguments are not going to be reproduced here but will be put in use as they fall relevant in the course of composing the ruling.

The issue for determination in this case is whether the application has merit or not. As stated here in above, what the applicant wants basically is for the court to exercise its powers of supervision on the District Land and Housing Tribunal of Temeke, call for and inspect the records of the said tribunal to see whether the orders issued by the High Court in Land Revision No. 15 of 2019, dated 26th July, 2019 have been complied with. This is emphasized by the counsel for the applicant in his submissions in chief. On the other hand, Advocate Emmanuel Ally for the respondent in his reply maintained that, this application is baseless as the records so stated to which revision is intended do not exist owing to the decision of this court, vide Land Revision No. 15 of 2019 by Hon. Maghimbi J.

My position is similar to that of the respondent's counsel and I will base on sections 43 (1) (a) and (2) of the Land Disputes Cap 216, R.E 2019 which have been used as enabling provisions in this application. When reading the said provisions of the law, one will find that the case at hand

lacks the prerequisites permitting the court to invoke its revisional powers under the said provisions. For quick reference I will reproduce section 43 (1) (a) and (2) as follows; -

43.-(1) "In addition to any other powers in that behalf conferred upon the High Court, the High Court-

(a) shall exercise general powers of supervision over all District Land 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;

(2) In the exercise of its revisional jurisdiction, the High Court shall have all the powers in the exercise of its appellate jurisdiction"

As I have said here in above, this case is incompatible with the above quoted provision of law. This is due to the fact that, there are no records in the first place, from the District Land and housing Tribunal for Temeke to be called for and inspected by this court so as to exercise its revisional powers as requested. In all, as per the records, this court did its job well by Revising Land Application No. 112/2019 and Misc. Application No. 104 of 2019 through its decision, dated 25th July 2019, vide Land Revision No. 15 of 2019. Consequently, it nullified the proceedings of District Land and Housing Tribunal in the referred application. It cannot re-determine the same twice by revising the records it had already nullified. This is barred by the rules of *res judicata*, see **Tanganyika Motors Ltd versus Trans-Continental Forwarders and Another {1997} TLR 158** and **Gerald Chuchuba versus Rector, Itaga Seminary {2002} TLR 212.**

In my view if there is failure to comply with this court's order the proper cause to take is to hold the defaulter accountable contempt of court not to ask the court to reiterate what it had already determined. In the event, I find this application to be unmaintainable, the same is dismissed. No order as to costs.



A handwritten signature in blue ink, appearing to be "M.P. OPIYO", written over a horizontal line.

**M.P. OPIYO,
JUDGE
23/08/2021**