

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 13 OF 2019

{Originating from the Judgment and Decree of Mkuranga District Land and Housing Tribunal, Hon. R. Mwakibuja-chairperson dated October 2018 in Land Appeal No.30 of 2018}

SIJAONA ABDALLAH BOGA.....1ST APPLICANT

SHABANI UBAYA SWALEHE.....2ND APPLICANT

VERSUS

UBAYA SALEHE MNYIMADI.....1ST RESPONDENT

BENJAMIN SENGHEREMA CHAYAI.....2ND RESPONDENT

REHEMA NASSORO MTURO.....3RD RESPONDENT

RULING

Date of Last Order: 27.05.2021

Date of Ruling: 24.08.2021

OPIYO, J.

In the application at hand, the applicants above named are seeking to revise the decision of Hon. Mwakibuja R, learned Chairperson of the Mkuranga District land and housing tribunal, in respect of the Land Appeal no. 30 of 2018. The application was brought under section

43(1)(b) and (2) of the Land Disputes Courts Act Cap 216, R.E 2019 and supported by the joint affidavit of the applicants.

In a nutshell, the genesis of this application is to the effect that, the 3rd respondent was involved in a dispute over the suit land against the 1st respondent and 2nd respectively before Mwandege Ward Tribunal vide land Case No. 33 of 2017. The decision came out in favour of the 2nd respondent who was declared to be the lawful owner of the suit land. The 1st respondent being aggrieved by the decision of the trial Ward Tribunal of Mwandege, unsuccessfully appealed before the District Land and Housing Tribunal for Mkuranga, vide Land Appeal No. 30 of 2018. Again the 1st respondent sought a second appeal before this court, vide Misc. Land Appeal No. 36 of 2020. The decision was against him. He decided to lodge an application for Revision at the Court of Appeal of Tanzania. Now the two applicants who were not parties in the original dispute as explained here in above, have filed this application challenging only the decision of the District Land and Housing tribunal for Mkuranga entered in Land Appeal No. 30 of 2018.

The application was heard by way of written submissions, all parties appeared in person. I will not reproduce the submissions of the parties in wholesome, but I appreciate their arguments for and against this application. I do so for the sole reason that when I took pain to go through the records and submissions of both sides, my attention was at once drawn to the fact that this application is unmaintainable. Based on the facts I stated earlier on and the records at hand, this court is *functus officio*. It cannot entertain the instant application as the decision sought

to be revised has already been approved by this court by the decision delivered by Hon. Mango J, vide Misc. Land Appeal No. 36 of 2020. Therefore, this court cannot do anything further against the said decision of the District Tribunal. It has already dealt with the complaint arising from the same decision in its appellate capacity, it cannot deal with it again in its revisional capacity. This is a settled rule as stated in the case of **Bibi Kisoko versus Minister for Lands, Housing and Urban development and Another, (1993) TLR 250** that:-

"I agree with Mr. Mahatane that, in matters of judicial proceedings once a decision has been reached and made known to the parties, the adjudicating tribunal thereby becomes functus officio."

Above all, the decision of this court has already been appealed against to the higher court, which in itself bars this court from dealing with the matter that is standing in the court of Appeal. The decision of the higher court may change the decision rendering the necessity of this application redundant. In the end, the instant application is struck out without costs for want of competence.



A handwritten signature in blue ink, appearing to read "M.P. OPIYO".

M.P. OPIYO,

JUDGE

24/8/2021