

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

**MISC. LAND CASE APPLICATION No.214 OF 2020**

**NIXON JOHN KIWELU.....APPLICANT**

**VERSUS**

**BERNARD MAARIFA.....1<sup>ST</sup> RESPONDENT  
PUDENCIA KASAMIA.....2<sup>ND</sup> RESPONDENT**

Date of Last Order: 01.07.2021  
Date of Ruling: 16.08.2021

**RULING**

**V.L. MAKANI, J**

The applicant NIXON JOHN KIWELU is seeking for the orders of this court as follows:

- 1. That this Honourable Court be pleased to issue an order for revision from ex-parte decision of District Land and Housing Tribunal for Ilala at Mwalimu House, vide Land Application No.9 of 2019 dated 12<sup>th</sup> July, 2019 (Hon. Mgulambwa, Chairperson) in which the first respondent was declared the lawful owner of the suit property against second respondent and set aside the whole decision and its execution proceedings.*
- 2. Costs be provided for.*
- 3. Any other order(s) this honourable Court may deem proper to grant.*

The application is made under section 79 (1) (c) of the Civil Procedure Code, Cap 33 RE 2019 (the **CPC**), section 41, 44, (1) (2) 45 of the Land Disputes Courts Act (Act No. 2 of 2002) and any other enabling provision of the law. The application is supported by the affidavit of the applicant.

In brief the 1<sup>st</sup> respondent had filed application No.09 of 2018 at The District Land and Housing Tribunal for Ilala (the **Tribunal**) claiming for ownership of a piece of land measuring 20 x 20 (the **suit Land**) situated at Kisukuru in Tabata Kimanga within Ilala in Dar es Salaam. The Tribunal declared the 1<sup>st</sup> respondent herein the lawful owner of the suit land and the 2<sup>nd</sup> respondent herein was ordered to immediately vacate from the suit land; and the applicant herein claiming to have the interest in the suit land has preferred this application for revision.

It was the court's order that this application be argued by way of written submissions. Ms. Catherine Lyasanga, Advocate drew and filed submissions on behalf of the applicant. In response, the 1<sup>st</sup> respondent personally drew and filed a reply to the applicant's

submission. The second respondent did not file any reply and therefore the matter proceeded ex-parte against her.

Submitting in support of the application Ms. Lyasanga prayed to adopt Chamber Application and affidavit together with its annexures. She said according to section 79 (1) (c) of the CPC, this court has special power to call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies thereto, whereas it appears subordinate court acted illegally in the exercise of its jurisdiction or with material irregularity. She said for an application for revision to be granted the court should consider two issues; whether the judgment and decree cannot be appealed against and whether the subordinate tribunal in exercise of its jurisdiction acted illegally or with material irregularity.

She said on the first issue the ex-parte decision and decree of the Tribunal cannot be appealed against by the applicant as he was not a party thereto. That the applicant has genuine documents of ownership attached to the affidavit (**Annexure A**) whereas the 1<sup>st</sup> respondent was conclusively declared to be the lawful owner of the suit land. She said the applicant was not afforded an opportunity be

heard and therefore the available remedy is revision. She relied on the case of **Edwin Paul Mhede vs. Orresty R. Mtangavo & Others, Land Revision No.14 Of 2017 (HC-Land Division)**, (unreported), where case of **Halima Hassan Marealle vs. PSRC & Tanzania Gemstone Industrials Limited, Civil Application No. 84 Of 1999** was quoted with approval. She said in these cases a third party may move the court by revision where that party has interest in the matter.

On the issue of illegality, she said that the applicant having interest on the suit land was not accorded an opportunity to be heard by the Tribunal. That the applicant has genuine documents of ownership over the suit land, but the Tribunal went on declaring the first respondent the lawful owner of the suit land. She insisted that failure to allow the applicant the right to be heard constituted a breach of natural justice which is a fundamental constitutional right. She relied on Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time. She prayed for grant of this application.

In reply, the 1<sup>st</sup> respondent prayed to adopt the contents of his counter affidavit and stated that this application should be dismissed on the grounds stated in paragraphs 2, 3 and 5 of the counter affidavit. He said the application has been made in the expense of the applicant and he placed reliance on the case of **Tima Haji vs. Amiri Mohamed Mtoto & Another, Civil Revision No.61 of 2003**. He insisted that the suit land has long before commencement of this application been under possession of the 1<sup>st</sup> respondent and the applicant has been aware of it and this was well testified at the Tribunal. He said that the Tribunal took in to account all extraneous matters in deciding the issue of ownership. That the suit land was in possession of the 1<sup>st</sup> respondent since 2014. He insisted that the applicant seemed to have misdirected and misguided himself on what really happened. He prayed for this application for revision to be dismissed with costs.

In her rejoinder, Ms. Lyasanga reiterated her main submissions and added that **Tima Haji's** case (supra) is distinguishable from this application since in that case the application was dismissed under section 79 of the CPC because the matter was appealable while in

this application the applicant was a third party at the Tribunal and therefore, he cannot appeal.

Having gone through submission and perusal from the records I now venture into the merits of this application.

Supervisory and revisionary powers of this court are found under section 43(1) (a) (b) and (2) of the Land Disputes Courts Act CAP 216 RE 2019. The said provision states:

*"(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;*

*(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.*

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

Indeed, the above provisions empowers this court on its own motion or upon application to call the record of the Tribunal at any time, to conduct inspection and give directions if it considers necessary for the ends of justice.

I have gone through the records; it is apparent that the applicant herein was not a party in Land Application No.09 of 2018 at the District Tribunal. The parties were Bernard Maarifa (the 1<sup>st</sup> respondent herein) who appeared as the applicant and Pudencia Kasamia (the 2<sup>nd</sup> respondent herein) who appeared as the respondent. In Land Application No.09 of 2018, the 1<sup>st</sup> respondent was declared the lawful owner of the suit land and the 2<sup>nd</sup> respondent was ordered to vacate the suit land forth with. Since the applicant herein was not party to the Land Application No.09 of 2018 and since she has a claim of interest in the said suit land he cannot appeal against the Tribunal's decision. The remedy available to him is revision.

As for the issue of illegality I find it to have no merit. Ms. Lyasanga said that the Tribunal acted illegally when it failed to accord the

applicant the right to be heard in Land Application No.09 of 2018 as he had interest over the suit land. She said he had in possession documents witnessing that he lawfully owns the suit land. With due respect to the learned Counsel, it was the 1<sup>st</sup> respondent who instituted a claim against the 2<sup>nd</sup> respondent at the Tribunal. She is the one who pointed out the party to sue and he decided not to sue the applicant. Anyhow, the Tribunal could not have *suo motto* summoned the applicant to join in the matter. If at all the applicant had interest or was aware of Land Application No.09 of 2018, he ought to have applied to be joined or the second respondent could have done so as she was the respondent at the Tribunal. Perusal in the case file reveals no such application was made by the applicant or the 2<sup>nd</sup> respondent. Therefore, such non-joinder of the applicant cannot be blamed on the Tribunal to form illegality or irregularity. On that basis it is obvious that the issue of illegality or irregularities as raised by the applicant cannot stand.

Now, as stated hereinabove, the applicant was not a party to Land Application No. 09 of 2018 and he has interest in the matter. The reasons for the 1<sup>st</sup> respondent not to join him as a party while he knew he was living in the suit land is best known to himself. But since



the applicant has interest in the suit land then he must be heard so that his rights can be determined. Condemning the applicant unheard would cause injustice on his part.

In the result and for the reasons I have endeavored to state hereinabove, the application is hereby granted with costs. The proceedings, judgment and decree of the Tribunal are quashed and set aside. The parties are at liberty to file fresh applications at the Tribunal if they deem fit to protect their interests.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**16/08/2021**



The seal of the High Court of Tanzania, Land Division, is circular with a blue border. The text 'THE HIGH COURT OF TANZANIA' is written along the top inner edge, and 'LAND DIVISION' is written along the bottom inner edge. In the center, there is a coat of arms featuring a shield with a scale of justice, a sword, and a book, flanked by two figures. The seal is stamped in blue ink.