

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO.71 OF 2021

(Arising from the District Land and Housing Tribunal for Kinondoni at Mwanayamala in Misc. Land Application No. 742 of 2020 Originating from Kijitonyama Ward Tribunal in Land Case No.76 of 2020)

ZABDIEL W. MREMA APPELLANT

VERSUS

KIKUNDI CHA UPENDO CAR WASH RESPONDENT

JUDGMENT

Date of Last order: 20.09.2021

Date of Judgment: 24.09.2021

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Kijitonyama in Land Case No.76 of 2020 and arising from the District Land and Housing Tribunal for Kinondoni in Misc. Land Application No. 742 of 2021. The material background facts to the dispute are briefly as follows; the appellant filed a case at the Ward Tribunal of Kijitonyama in

Land Case No.76 of 2020. The trial tribunal proceed to determine the case exparte and issued an order of injunction.

Aggrieved, Zabdiel Mrema, the appellant lodged a revision at the District Land and Housing Tribunal for Kinondoni, at Kinondoni vide Land Appeal No.742 of 2021. The appellant for revision in respect to Land Application No.18 of 2020. He urged the appellate tribunal to satisfy itself as to the correctness, legality, propriety of the order and decision made therein and determine whether the Ward Tribunal was clothed with jurisdiction to try the matter. The appellant application was supported by an affidavit deponed by Zabdiel Mrema, the current appellant. The application has encountered formidable opposition from the respondent and has demonstrated his resistance by filing a joined counter affidavit deponed by Jumanne Omary, Sultan Abedi, Haruna Omary, Ramadhani Bakari, Leonard Nyato, and Andrea Laiton. Memebbers of the Kikundi Cha Upendo Car Wash. The respondents also lodged two points of preliminary objection:-

- 1. That the application for revision is incompetent as the trial tribunal of Kijitonyama did not conclude and finalize the matter.*

- 2. That the application for revision is incompetent for it seeks the revisional jurisdiction of the tribunal as an alternative to the appeal.*

The appellate tribunal determined the matter and noted that the matter was still pending before the trial tribunal since the trial tribunal issued an injunction order but did not determine the case on merit. The first appeal irritated the appellants. Therefore they lodged an appeal before this court through Land Appeal No. 71 of 2021 on three grounds of grievance, namely:-

- 1. That the trial tribunal grossly erred in law and fact failure to hold that the respondent has no any legal personality to sue the appellant herein.*
- 2. That the trial tribunal grossly erred in law and fact failure to hold that the Ward Tribunal had no any jurisdiction to try the claim involving appellant's suit land on Plot No. 369 Block 'A' Kijitonyama area at Kinondoni Municipality which the appellant is using to wash cars.*
- 3. That the trial tribunal grossly erred in law and fact in failure to hold that the complained decision of the trial tribunal is conflicting with the rules of natural justice as the appellant has been condemned unheard.*

When the appeal was called for hearing on 20th September, 2021, the appellant and the respondent appeared in person, unrepresented.

In support of the appeal, the appellant had not much to say, she rather urged this court to adopt her grounds of appeal. The appellant submitted that she was dissatisfied by the decision of the District Land and Housing Tribunal thus she decided to file the instant appeal. In conclusion, the appellant urged this court to allow the appeal.

Opposing the appeal, the respondent simply submitted that they have filed a reply to the memorandum of appeal and urged this court to adopt it and make a right decision. Insisting, he submitted that he urged this court to analyse the case and come up with a fair decision.

In her short rejoinder, the appellant reiterated her submission in chief and urged this court to allow the appeal 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 appeal on which the parties bandying words. The issue for determination is ***whether the appeal has merit.***

In my determination, I will consolidate the first and third grounds because they are intertwined. The second ground will be argued separately in the order they appear.

The first and third grounds go to the merit of the case that the appellant had no any legal personality to sue the appellant and that the decision of the trial tribunal is in conflict with the principle of natural justice. I have perused the District Land and Housing Tribunal for Kinondoni ruling in respect to Misc. Land Application No. 742 of 2021 dated 11th March, 2021 and found that the Chairman sustained the preliminary objections raised by the respondent on the ground that the case before the trial tribunal was based on injunction whereas the trial tribunal issued an *ex parte* order, the appellant was ordered to maintain status quo until the determination of the case at the Ward Tribunal of Kijitonyama.

In that regard, the law is clear that the remedy for an *ex parte* decision is to set aside the *ex parte* decision, not to file an appeal or revision. Therefore, the appellant was required to exhaust the remedies for an *ex parte* decision before filing the said revision before the appellate tribunal. In such circumstances, I have to say that the instant application

for revision before the District Land and Housing Tribunal for Kinondoni was prematurely filed.

Moreover, since the appellant was dissatisfied by the interlocutor's order that means she was not permitted to file a revision since interlocutory decisions or orders of the court are not subjected to revision. Section 79 (2) of the Civil Procedure Code Cap.33 [R.E 2019] provides that:-

“ 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.”

It is indisputable fact that the matter is pending before Kijitonyama trial Tribunal and that the application for revision before the first appellate tribunal is 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 submitted 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]. As a result the first grounds of appeal cannot stand.

Concerning the second ground that the Kijitonyama Ward Tribunal had no jurisdiction to determine the matter. I understand that the issue of jurisdiction can be raised at any time, however, there are exceptions; the same can be raised during trial and hearing an application or appeal. In the case of **Sospeter Kahindi v Mbeshi Mashani**, Civil Appeal No.56 of 2017 (unreported) the Court of Appeal of Tanzania held that:-

"The question of jurisdiction of a court of law is so fundamental. Any trial of any proceeding by a court lacking requisite jurisdiction to seize and try the matter will be adjudged on appeal or revision."

In the instant matter, the appellant was required to raise the issue of jurisdiction during hearing after setting aside the *ex parte* ruling and if the same could have been disregarded then the proper remedy is to file an appeal after the determination of the matter on merit. Therefore, this ground also has no merit.

Given the above analysis and the nature of the Ruling before this court is related to an interlocutory order issued by Kijitonyama Ward Tribunal and the case is pending before the trial tribunal.

In the upshot, I have to say that the grounds of appeal raised by the appellant are demerit and as a result, I proceed to dismiss the strike out the appeal without costs.

Order accordingly.

Dated at Dar es Salaam this date 24th September, 2021.




A.Z.MGEYEKWA
JUDGE
24.09.2021

Ruling delivered on 24th September, 2021 in the presence of the respondent.




A.Z.MGEYEKWA
JUDGE
24.09.2021

Right to appeal fully explained.