

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND REVISION NO. 25 OF 2021**

(Arising from Misc Application No.35 of 2017 of District Land and Housing Tribunal of Temeke)

**KASSIM ZACKARIA.....APPLICANT**

**VERSUS**

**DR. ERASMO KUWENDWA.....1<sup>st</sup> RESPONDENT**

**RULING**

*10/11/2021 & 08/12/2021*

**Masoud, J.**

The applicant asked this court to revise the decision of the District Land and House Tribunal for Temeke at Temeke in Application No. 135 of 2021 delivered on 19/05/2021. As the application was brought under section 43(1)(b) of the Land Disputes Courts Act, cap. 216 R.E 2016, the question I have to consider and determine is whether the applicant's affidavit disclosed an error material to the merits of the case involving injustice. If there is any such error, the court would have to grant the prayer sought which is inter alia to the effect that:

*that the Honourable Court may be pleased to revise and set aside the perplexing ruling/order of the District land and Housing Tribunal for*

*Temeke at Temeke dated 19/05/2021 and substitute it with a fair and just directives as circumstance allows*

The applicant's affidavit mainly gave the background to the present application. It was towards the end of the affidavit that the applicant stated that the decision of the district tribunal was tainted with irregularities as the land claimed to have been trespassed was only five (5) acres while both sides had other independent portion of land.

The respondent's counter affidavit looked at as a whole appeared to suggest that the applicant did not disclose such error. In other words, the respondent had it that there were no irregularities warranting revision and hence granting of the sought orders.

The application was conducted by filing written submissions. Both parties herein benefitted from the service of their respective advocate. While Mr Kessy Ngau, learned counsel, represented the applicant, the respondent was Advocated by Mr Leslie Koini, learned counsel. The applicant's counsel in his submission expounded on the averments in the affidavit supporting the application.

The counsel for the applicant buttressed his submissions by invoking the decision of this court in **Frank Edward (administrator of the Estate of Asha Swalehe) v Hawa Swalehe**, Land Case Revision No. 1 of 2019 in which the court allowed revision. The court was thus invited to allow the revision as in his view the district tribunal closed its eyes on essential facts that needed to be ascertained. As averred in the applicant's affidavit and expounded by the learned counsel in his submission, the matter in the district tribunal was instituted by the respondent claiming for trespass within the five (5) acres out of forty acres he alleged to have bought.

The respondent's learned counsel seemed in his submissions to have confused and mixed up the word review for revision. However, the generality of his submissions is to the effect that the application is devoid of merit as the applicant has a right of appeal which is yet to be exercised. He invoked the settled position of law that revision is not alternative to appeal. To make it worse, it was argued, there were no exceptional circumstances shown in the affidavit to move the court to exercise its revisional powers under section 43(1)(b) of the Land Disputes Courts Act, cap. 216 R.E 2016.

The counsel for the respondent relied on the case of **Moses Mwakibete vs The Editor, Uhuru and others** [1995] TLR 134, and the case of **Hallais Pro-Chemie v Wella A.G** [1996] TLR 269. Indeed, these two cases, details circumstances in respect of which a party may invoke revisional jurisdiction of this court. I need not restate the particulars and details of the abovementioned authorities. It should suffice to only say that the circumstances listed included where there is no right of appeal, where the right of appeal has been blocked by judicial process, and where the right of appeal existed but was not taken good and sufficient reasons must be given for not lodging the appeal. As the right of appeal has not been blocked, the court was told that the application is premature.

I am clear that the applicant has a right of appeal against the decision of the district tribunal. The affidavit supporting the application did not state reasons as to why the applicant sought it fit to resort to revision as opposed to appeal.

I am aware of the case of **Zebon Pangamaleza V Joachim Kiwaraka** [1987] TLR 140 where the Court of Appeal, (Omar JA, Mfalila and Mapigano Ag JJA) interpreted section 44(1) of the Magistrates

Courts Act, cap. 20 R.E 2019 as going beyond jurisdictional issues to cover situations where there has been an error material to the merits of the case involving injustice. The provision vests additional powers to this court. As earlier shown, the application was brought under section 43(1)(b) of the Land Disputes Courts Act, cap. 216 R.E 2016 which is in *parimateria* to the above provision. As earlier shown, the question is whether the application has disclosed error material to the merits of the case involving injustice

According to **F.B.M.E Bank V John Kengele and others**, Revision Commercial Case No. 1 of 2008, such errors would cover vices like bias, lack of impartiality, fraud, misconduct, unfair treatment on the part of the court. And that once such vices are established, there would be nothing to stop the court from exercising these powers.

The only paragraph of the applicant's affidavit which may be said to advance an error material to the merits of the case involving injustice is as follow and I hereby quote thus:

*8. That the decision of the Tribunal has been tainted with irregularities as the land claimed to have been trespassed is only five (5) acres,*

*both sides had other independent portion of land  
thus the dispute was boundry conflict.*

I do not read any error material to the merit of the case involving injustice. Despite implying that there are irregularities in the impugned decision, the details given in relation to such irregularities do not reveal special situations that would warrant this court to exercise its powers under the provision of section 43(1)(b) of the Land Disputes Courts Act, cap. 216 R.E 2016.

In the end and for reasons stated herein above, the application is hereby dismissed with costs. It is so ordered.

Dated and Delivered at Dar es Salaam this 8<sup>th</sup> day of December 2021.

  
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**B. S. Masoud**  
**Judge**

