

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

LAND REVISION NO 33 OF 2021

*(Arising from judgement and decree of the Kinondoni District Land and
Housing Tribunal in the Land Application No. 475 of 2020)*

KHALID SIMBA.....APPLICANT

VERSUS

L.H. MALEKO..... RESPONDENT

RULING

Date of Last Order: 08.11.2021

Date of Ruling: 17.12.2022

T. N. MWENEGOHA, J.

This is a ruling in respect of the preliminary objection that was raised by the respondent that:-

1. That the present revision cannot be used as an alternative to appeal.
2. The applicant's affidavit in support of the revision is incurably defective for containing legal arguments and conclusions.

Hearing of the preliminary objection proceeded by way of written submission. Whereas the respondent was represented by Mr. F.A.M Mgare, Advocate, the applicant was under the legal Aid assistance from ABC SLOAT, under the representation of Mr. Godwin Anthon Fissoo, Advocate.

Submitting in support of the preliminary objection Mr. Mgare advanced that, on the 29/6/2020 the respondent herein filed an application for execution of the decree dated 12/4/2010, before the Kinondoni District Land and Housing Tribunal (herein after **the trial Tribunal**). That the said decree was issued by the same Tribunal. That the applicant herein raised objections to challenge the said application but his objection was dismissed on the 3/8/2021.

Mr. Mgare submitted further that after the applicant's objection was dismissed by the trial Tribunal, the applicant herein should have applied for appeal to aver his dissatisfaction. That, this is according to rule 24 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 [GN 174 of 2003] (herein after **the Regulation**). But instead of doing so, the applicant decide to file this Revision.

To support his arguments, he cited the following cases; **Moses Mwakibete vs. The Editor Uhuru Ltd (1995) 134, Halais Prochemie vs. Wella AG (1996) TLR 269 and Transport Equipment ltd vs. Devram Valambhia (1995) TLR 161.**

That this revision application filed by the applicant cannot be used as an alternative to the right to appeal provided for under the law. To support his argument, he cited the case of **Registered Trustees of Social Action Trust and another vs. Happy Sausages Ltd and 10 others (2000) TLR 285.** He submitted that the revisional powers of this court in a case originating from the trial Tribunal can only be exercised if there is no right of appeal.

Submitting on the 2nd preliminary objection, Mr. Mgare provided that in the case of **Uganda vs. Commissioner of Prisons, Exparte Matovu**

(1960) E.A 516 the East Africa court of appeal held as follows regarding an affidavit;

"An affidavit used in court being a substance for oral evidence should only contain elements of facts and circumstances to which the witnesses depose. Such an affidavit must not contain an extraneous matter by way of...conclusion or legal arguments"

He was of the view that, applying the principle given in that case, the applicant's affidavit is incurably defective on the reasons that it contains legal arguments and conclusions. That, this is evidenced in the several paragraphs of the applicant's affidavit including paragraphs 1 and 3 containing conclusions, and paragraphs 4, 5 and 6 containing legal arguments.

He added that defective affidavit is not affidavit at all, and it cannot legally support the chamber summons. That the defect pointed earlier have adverse impact on the entire affidavit because if they are expunged from the applicant's affidavits the remaining paragraphs wont adequately and properly support the chamber summons, rather it will render the application incompetent worth to be struck out. He finalized his submission by praying the court to dismiss the application with costs.

In reply of the 1st preliminary objection, Mr. Fissoo submitted that the respondent is totally misconceived on the reason that **Regulation 24 of the Regulation** does not apply on the circumstances of the case at hand, when the execution proceeding is still pending in court. That it does apply to govern appeals from the District Land and Housing Tribunal (herein after **the DLHT**) to the high court when the matter has been heard and

finally determined. But the case at hand is still pending before the trial Tribunal.

Mr. Fissoo further added that under the provisions of Sections 41(1) and 43(1)(a) of the Land Disputes Courts Act Cap 216 R.E 2019 (herein after Cap 216), the high court has the jurisdiction to hear and determine revisions in respect of any proceedings in a DLHT in the exercise of its original jurisdiction. To support his argument, he cited the case of **Ami Tanzania limited Vs. Dorin Donald Darbria Commercial Revision No.200 of 2016 at pp. 6-8** hon. Songoro, J. held that the high court has jurisdiction in any proceedings which is still pending before the lower court by discussing Sections 43 and 44 of the Magistrates Courts Act which is absolute similar to Sections 41 and 43 of Cap 216.

Replying on the 2nd preliminary objection Mr. Fissoo submitted that the respondent failed to identify which part of paragraph 1 and 3 contain conclusion and which part of paragraphs 4, 5 and 6 of the applicant's affidavit contains legal arguments. That the function of the court is to make decisions and not help the respondent to identify which part of those paragraphs are conclusion or legal arguments. He added that in the said affidavit there is no paragraphs which contain arguments or conclusions therefore prayed the preliminary objection to be dismissed on the reason that the extraneous matters have not been identified.

Having gone through the submissions of the preliminary objection raised; this Court has to determine whether the preliminary objection has merit.

In determining the first point of preliminary objection raised, that is the present Revision cannot be used as alternative to appeal, the advocate for respondent Mr. Mgare argued that, the applicant herein raised the

preliminary objection before the District Land and Housing Tribunal during the execution proceedings. The Preliminary objection was dismissed by the District Land and Housing Tribunal and ordered the execution to proceed on merit. Aggrieved by that decision decided to file the application at hand instead of an appeal. Mr. Mgare argued that this is contrary to the provision of the Regulation (Regulation 24).

In reply, Mr. Fisoo contended that **Regulation 24 of the Regulation** does not apply on the circumstance at hand when the execution is still pending. That this Court has jurisdiction to determine and hear Revision in respect of any proceedings from District Land and Housing Tribunal when exercising its original jurisdiction, under **section 41(1) & 43(1) (a) of Cap.216**.

Its true that the above cited sections empower the High Court to hear Revisions from District Land Housing Tribunal, however, the above cited sections are supposed to be read together with the Civil Procedure Code in case there is a lacuna.

This is due to the reasons that Cap. 216 is silent on the circumstances of the application at hand where there is a pending application.

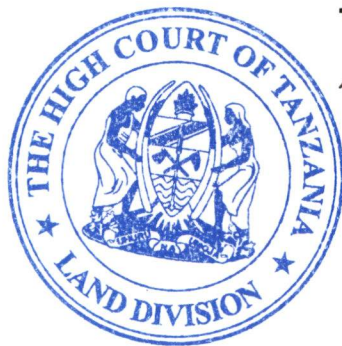
The Civil Procedure Code as a procedural Law under S. 79 (a) provides as follows:-

"... No application for revision shall lie in respect of any preliminary objection or interlocutory decisions or order of the Court unless such decisions or order has the effect of finally determining the suit".

Through the provision cited above, and going through the records of this application it is clear that the preliminary objection had no effect of determining the application. Hence it does not fit in the criteria of the preliminary objection capable of being Revised by this Court.

For that reason the 1st preliminary objection has merit and it is hereby sustained. Finding that the 1st preliminary objection has the effect of dismissing the application, I therefore see no reasons to labour much on the remaining preliminary objection. Therefore, the application at hand is dismissed with costs.

It is so ordered.




T.N. Mwenegoha,
JUDGE.
17/12/2021