

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

**LAND REVISION NO. 36 OF 2021**

(Arising from Land Application No. 492/2020, Misc. Land Application No. 307 of 2021 all in the District Land and Housing Tribunal for Kinondoni at Mwananyamala and Land Appeal No. 84 {Originated from Sinza Ward Tribunal at Sinza in Dispute No 57/2019})

**BILLIONAIRE JOHN MKEU ..... APPLICANT**

**VERSUS**

**GLADNESS HASHIM RAJABU** (Suing as a Guardian on behalf of

**NASRA HASHIM RAJAB and**

**HALIMA RAJABU ..... RESPONDENT**

**RULING**

*Date of Last Order 30/9/2021*

*Date of Ruling 05/11/2021*

**A. MSAFIRI, J:**

The applicant in this matter is praying for revision of the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Misc. Land Application No. 307 of 2021 and Land Application No. 492/2020.

The applicant is moving the Court to exercise its revisionary powers as follows;

- a) *This Honourable court call for and examine and revise the proceedings and order dated 9<sup>th</sup> day of September, 2021 by Hon. L.R. Rugarabamu,*

*Alls.*

*Chairman in Misc. Land Application No. 307/2021 and proceedings in Land Application No. 492/2020 in the District Land and Housing Tribunal for Kinondoni at Mwananyamala for purpose of satisfying itself as to the legality or propriety and correctness of the said proceedings and order granting an order (sic) for amendment of the main Application and ordering eviction of the Applicant, agents whomsoever from the suit property known as Plot Nos. S 7778 & 779 SINZA 'A' Ubungo Municipality, Dar es Salaam while there are pending Main Application and raised preliminary objections thereof.*

*b) That, this Honourable court be pleased to set aside orders and quash the proceedings and order hearing de novo subject to determination of the raised preliminary objections.*

*c) That, the costs be provided by the Respondent.*

*d) Any other Relief this Honourable Court may deem fit to grant.*

The Application filed under Certificate of Extreme Urgency, was preferred under Sections 41, 43 (1) (a) and 43 (1)(b) of the Land Disputes Courts Act, Cap 216 R.E 2019. As usual the chamber application was supported by an affidavit sworn by Mr. Alex Mashamba Balomi, learned advocate of the applicant, while in opposition, the respondent in person filed a counter affidavit.

By consent of the parties, the hearing of the Application was by way of written submissions and both parties have complied with the Court's

*Alls.*

schedule. The applicant was represented by advocate Alex M. Balomi while advocate Haji Mlosi, represented the respondent.

Mr. Balomi started his submissions by adopting his affidavit to form part of his main submissions. That the said affidavit sets grounds for revision of the proceedings and decision dated 09/9/2021 of the District Tribunal which the applicant feels that they were tinted with irregularities and apparent errors on the face of records.

He stated that the respondent filed a land dispute at Sinza Ward Tribunal, Shauri la Madai Na. 57/2019 seeking an eviction order to evict the applicant who was her tenant from the respondent's house Plot Nos. 78 & 79 Sinza 'A' (herein as suit property). The Ward Tribunal decided in favour of the respondent and ordered that the applicant should either enter a new lease agreement with the respondent or in default, give vacant possession by 30/8/2019. The applicant was dissatisfied and filed a Land Appeal Case No. 84/2019 before the District Land and Housing Tribunal for Kinondoni. The judgment of the said Tribunal was delivered in favour of the applicant that the Ward Tribunal had no jurisdiction to entertain Shauri la Madai No. 57/2019. The applicant in between the proceedings, filed an application for stay of execution No. 542/2019 which was granted by the District Tribunal.

Mr. Balomi submitted further that, the respondent in abuse of Court process, had re-filed a fresh Land Application No. 492 of 2020 before the District Tribunal which was assigned to Hon. Rugarabamu, Chairman. *Alls.*

According to Mr. Balomi, this act of re-filing a fresh land application was a serious error warranting a revision because the respondent ought to have conceded to the appeal and seek an order for leave to refile a fresh application but unfortunately the respondent adamantly contested the appeal and finally lost the matter. That the main Application No. 492/2020 is similar to the previous land dispute in the Ward Tribunal, i.e. Dispute No. 57/2019 since both of them were on the same subject matter and other reliefs. That the determination of Appeal No. 84/2019 did not give leave to refile a fresh Application in the competent court so the respondent was technically barred from re-filing the same Application. To cement his arguments, Mr. Balomi referred this court to the provisions of Order XX III, Rule 1(1), (2), (3) of the Civil Procedure Code Cap 33 R.E 2019 and the case of **Tanzania Venture Capital Fund Limited vs. Igonga Farm Limited** (2002) TLR at page 304.

Mr. Balomi told the Court that, after the respondent's institution of fresh Application No. 492/2020, in response, the applicant filed Written Statement of Defence and raised four (4) Preliminary points of objections namely;

- i) The application was res judicata,
- ii) No cause of action.
- iii) The application has defective verification clause, and
- iv) Application was bad in law for non-joinder.

He argued that, unfortunately, these four preliminary objections were never determined by the Chairman for the reason that the applicant was not *Alles*

present on the material date. He argued that the Chairman ought to have ordered the matter to stand adjourned and set another date with notification to the applicant. Failure to do so amounted to an abuse of Court process by the Chairman.

According to Mr. Balomi for the applicant, refusing to entertain the four preliminary objections on point of law was a material error which fit for this Court to invoke its revisionary jurisdiction.

He stated further that, the respondent upon receiving the raised preliminary objection by applicant, sought and was granted amendment to the Application and the court proceeded ex-parte on the pretense that the applicant was absent while no notification was given to him. Therefore, the applicant was denied the right to be heard. In addition, the counsel stated that, allowing the amendment to the Application by the respondent, preempted the pending objections raised and the pending main Application which is yet to be determined.

He submitted that the applicant believes that the respondent has committed material irregularities and abuse of court process fit to be revised. Also, the applicant is seeking revision of the proceedings and orders for amendment of the main Application and eviction in the suit property where he resides. He concluded by praying for this Honourable Court to set aside with costs the impugned order dated 09/09/2021 and order hearing de novo subject to determination of the raised preliminary objections. *Alle*

In reply, Mr. Haji Mlosi prayed to adopt the respondent's counter affidavit filed in opposition of this Application. He submitted that the applicant's only ground for the sought Revision is an abuse of the court process which does not warrant grant of the sought orders. That the respondent filed a fresh matter in Land Application No. 492/2020 which is still pending before the District Tribunal, and this was in response to the judgment of Land Appeal No. 84 of 2019 which was filed by the applicant.

Mr. Mlosi stated that, the respondent filed an Application No. 307/2021 for eviction of the applicant after defaulting and refusing to pay rent due to the respondent. That the Application was heard on merit and was granted by the District Tribunal. He submitted further that the applicant being dissatisfied with the order made by the Tribunal on 9<sup>th</sup> September, 2021 in Misc. Application No. 307 of 2021, the applicant ought to have appealed against the order and not to seek for revision on the ground of "abuse of court process".

Mr. Mlosi contended that, the respondent has never abused any Court process but all the legal actions against the applicant were genuinely instituted. He added that, the preliminary objection raised against Application No. 492/2020 were dismissed for want of prosecution and leave granted for amending Land Application No. 492/2020 was not subsequent to the dismissal of the preliminary objection and hence there is nothing to be revised by this court. *Alle-*

He concluded that the applicant has failed to adduce sufficient reasons for revision and that there is neither irregularities nor errors on the face of records in the orders and proceedings of the District Tribunal in Misc. Land Application No. 307/2021 and Land Application No. 492/2020.

In rejoinder, Mr. Balomi reiterated his submissions in chief and insisted that there was a material irregularity in the procedure including dismissing the raised preliminary objections, respondent filing a fresh application and the eviction order of 9<sup>th</sup> September, 2021.

Having gone through the parties' affidavits and submissions as well as the Court's records, the issue here is whether this Application has merit. The law requires the High Court to exercise its revisional jurisdiction in a case where it appears there has been an error material to the merits of the case involving justice. This principle is set under section 43 (1) (b) of the Land Disputes Courts Act, Cap 216 R.E 2019 (also see the case of **Zabron Pangalameza vs. Joachim Kiwaraka & Another** (1987) TLR 140).

According to the chamber summons the applicant is praying for this court to call, inspect and revise the proceedings and order dated 09/9/2021 in Misc. Land Application No. 307/2021 and proceedings in Land Application No. 492/2020 in the District Land and Housing Tribunal for Kinondoni at Mwananyamala. The important question here is whether there is any error material to the merit of the herein above cited matters. *Alle -*

Beginning with examination of proceedings and order dated 09/9/2021 in Misc. Land Application No.307/2021, Gladness Hashim Rajab (suing as guardian of Nasra Hashim Rajab and Halima Hashim Rajab), filed an Application before the Tribunal seeking for an eviction order against the respondent Billionaire J. Mkeu who is the applicant's tenant. The eviction was in respect of premises located on Plot No. 778 and 779 at Sinza 'A' Ubungo Municipality pending the hearing and determination of application No. 422/2020 which was also before the same Tribunal. The Application was accompanied by the affidavit of the applicant and it was under certificate of urgency. The respondent (who is now the applicant) in opposing the application, filed a counter affidavit.

On 29/4/2021, the matter was set for mention. The advocate for the applicant prayed for the leave to argue the matter by written submissions, which was granted. The Application was argued by written submission whereby both parties filed their submissions accordingly. On 25/8/2021, the Tribunal set the Ruling date to be 09/9/2021. The respondent was not in attendance. On 09/09/2021, the Ruling was delivered in presence of advocate for the applicant and in absence of the respondent. In the Ruling, the court granted the Application and gave an order of eviction of the respondent or any occupants of the suit premises House on Plot No. 778 and 779 Plot B, Sinza A, Dar es Salaam within 14 days.

*Alle*



So far, I have not detected any irregularities in the proceedings and the order. I have gone through the affidavit of the applicant so as to see whether the same has revealed procedural irregularities or illegalities of the proceedings and order of Misc. Land Application No. 307/2021, I have failed to detect any information.

From the submission of Mr. Ballomi advocate for applicant, regarding Application No. 307/2021, he stated that, the impugned order of 09/09/2021, was made in the absence of the applicant. That the said decision terminated all the basic rights of the applicant under the lease agreement. He argued that serious errors and irregularities were committed by the Honourable Chairman by ordering the eviction of the respondent at the stage where there was pending main application which would finally result into two consequential decisions in one case.

What I have gathered here is that the applicant is saying that the Hon. Chairman erred in hearing and determining Application No. 307/2021 and giving an order therein dated 09/09/2021 while there was a main case, Land Application No. 492/2020 pending before the Tribunal. However, I am of the opinion that, the presence of Application No. 492/2020 before the Tribunal was not a bar for the applicant to institute a miscellaneous application seeking for order which she thought was necessary in pursue of what she believed to be her right. *Alls*

Furthermore, since the applicant in Application No. 492/2020 was also the same applicant who filed Miscellaneous Application No. 307 of 2021, I have failed to detect how this could have prejudice the then respondent's rights.

The applicant in the current Application has failed to prove to the satisfaction of the court, how the proceedings and order dated 09/09/2021 have irregularities to warrant supervision and necessary orders of this court.

On Land Application No. 492/2020, it was also instituted before the trial Tribunal by the now respondent. As I have gathered from submissions on both sides and the records, initially, the respondent has filed the suit against the applicant before Sinza Ward Tribunal in Dispute No. 57/2019 praying for vacant premises by the applicant. The Ward Tribunal decided in favour of the respondent. The applicant was aggrieved and successfully lodged the Appeal No. 84 of 2019 before the District Tribunal where the proceedings, decision, and Order of the Ward Tribunal were quashed and set aside for want of jurisdiction. The District Tribunal gave the parties liberty to file a fresh case in competent Court/Tribunal.

It was then that the respondent decided to file a fresh suit at the District Tribunal, Application No. 492/2020 which is still pending at the Tribunal. I have gone through the proceedings of Application No. 492/2020. When the now applicant was filing his Written Statement of Defence, he raised four points of preliminary objections to the effect that, first; the Application is Res judicata, Second; there is no cause of actions against the respondent, third; *Alto*.

the Application suffers from defective variation clause, and; fourth, that the Application is bad in law by non-joinder of the necessary parties to the Application. The preliminary objection was scheduled for hearing on 08/3/2021.

On 08/3/2021, the respondent (who is now the applicant) was absent. The matter was again scheduled for hearing on 19/3/2021. On 19/3/2021, again, the respondent did not enter an appearance, therefore the preliminary objections were struck out. The Tribunal ordered for hearing of the main case on 14/6/2021. There was an order for the respondent to be notified by summons.

On 25/8/2021, in absence of the respondent, the counsel for the applicant orally prayed to make amendments in the main Application. The prayer was granted. As per the proceedings of the Tribunal, the respondent and or his counsel has never entered appearance before the Tribunal from 11/11/2020 when this matter was set before the trial Chairman for the first time to 29/9/2021 when the case file was called for revision before this court.

From the submission from the parties, I have gathered that Mr. Balomi is contending that, first, it was irregular and abuse of Court process for the respondent to file fresh application No. 492/2020. That the act of filing fresh suit was a serious error warranting a revision. That the Application No. 492/2020 before District Tribunal is similar to the previous Land Dispute No. 57/2019 before Ward Tribunal and that determination of Appeal No. 84/2019 *Allo*.

did not give leave for the respondent to refile a fresh application. That the respondent was barred from re-filing Application No. 492/2020.

With due respect to Mr. Balomi, the determination of Appeal No. 84/2019 did not bar any party of the suit from filing a fresh suit. In fact, among the order in that Appeal No. 84/2019 was setting the parties at liberty to file a fresh case in a Court or Tribunal of competent jurisdiction. Acting on that order, the respondent filed a fresh application No. 492/2020 which is pending before the Tribunal.

From this, I have also failed to see any serious irregularity or abuse of Court process regarding Application No. 492/2020.

Second; the counsel for applicant submitted about raising a Preliminary Objections in application No. 492/2020 whereby the same was struck out for want of prosecution as the applicant who has raised the same, failed to enter appearance before the Tribunal to attend the same. Mr. Balomi argued that, the way the Tribunal Chairman handled the matter was not only improper but amounted to an abuse of Court process. He went further as to allege that the Tribunal Chairman seems to be biased. That the same ought to have ordered the matter to stand adjourned and set another date with notification to the applicant.

It happens that Mr. Balomi is a learned senior advocate who is an officer of the court. He knew that he had an obligation to PROPERLY notify the Court/Tribunal on his absence or non-attendance in court. Mr. Balomi *Alle*

stated in his submissions that he was suffering from severe pneumonia. However, he did not show this court whether the trial Tribunal was properly informed/notified about his absence or illness.

In absence of proper notification, the Tribunal was justified to draw an inference against him and struck out the objections. From this, I have failed again to detect or see any irregularities in proceedings of the Application No. 426/2020.

I have considered another argument/point from Mr. Balomi that the Tribunal committed serious irregularities when it granted and allowed the respondent to make an amendment to the main Application therefore pre-empting the preliminary objection which were previously raised by the applicant. That, the act of amending the Application was intending to rectify the errors which were raised by the applicant.

I have carefully considered the submissions on both parties. It is true that the applicant raised a preliminary objection which was struck out for want of prosecution. As stated before, the applicant has failed to enter appearance before the Tribunal. The respondent prayed for an amendment which was granted. I find that the amendment of Application No. 492/2020 was not to pre-empt the preliminary objection as it is submitted by Mr. Balomi because the amendment was prayed and made after the preliminary objection has already been struck out by the Tribunal. *Alls.*

As it is, the amendment of the pleadings is the right of the party and can be done at any time before commencement of the trial, the respondent was justified in making the said amendments. She could not have just sat and waive her right because the applicant has raised preliminary objection on the matter which was already struck out for want of prosecution. In the circumstances, I have failed to see the irregularities or serious omission of the Tribunal in attending the pleadings and proceedings in this application No. 492/2020.

Observing on the point of abuse of court process, Mr. Balomi has pointed and repeatedly submitted that the respondent's filing and refiling of several applications before the Tribunal amounts to the abuse of court process. As rightly responded by Mr. Haji Mlosi for the respondent, the respondent has filed applications in pursue of her rights. The Application too, through his advocate Mr. Balomi also has multitude of applications in the name of pursuing for his rights. The respondent has filed Dispute No. 57/2019 at Ward Tribunal, Land Application No. 492/2020 (which is still pending), and Misc. Land Application No. 307/2021. The applicant has filed Misc. Land Application No. 542/2019, Land Appeal No. 84/2019 and now Revision Application No. 36/2021.

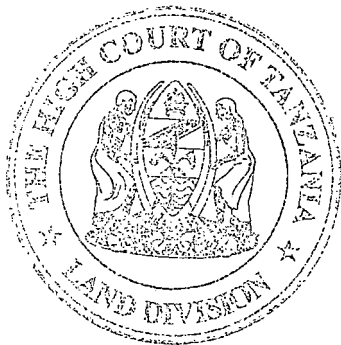
In this juncture, the applicant cannot accuse the respondent for abusing court process by filing those applications as all these was done by both parties in pursuing their rights. *Alle*

In the upshot, I find that this Application has no merit as my perusal of the records has failed to see any errors material to the merit of the cases which are subject to revision.

There is no any serious irregularities on the records which suffice the court to invoke its powers under Section 43(1) of the Land Disputes Act (supra). I hereby dismiss this Application with costs.

It is ordered. Right of appeal explained.

Dated at Dar es Salaam 5<sup>th</sup> Day of November, 2021.



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**A. MSAFIRI**  
**JUDGE**