

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

LAND REVISION NO. 54 OF 2020

*(Arising from the Ruling and Drawn order of the District Land and Housing Tribunal
for Kibaha at Kibaha in Misc. Application No. 27 of 2020).*

**JONAS MADALE MADALE.....APPLICANT
VERSUS**

**JUMA ZUBERI JINADA.....RESPONDENT
(Administrator of the Late Zuberi Halfani Jiada)**

J U D G M E N T

*Date of last Order: 02/12/2021
Date of Judgment: 28/02/2022*

T. N. MWENEGOHA, J.

The applicant lodged this application under the provisions of section 41 and 41A (3) amended by G, N No. 7 Vol 99 and Section 43(1) (b) of the Land Disputes Courts Act, cap 216 R. E. 2019, seeking for the following orders:

1. That this Honorable court be pleased to call for and examining the records of Misc. Land Application No. 27 of 2020 to satisfy itself to the legality, correctness and propriety of the ruling and drawn order made thereon by Hon. H. L. Mbuga, Chairperson on 8th October 2020;
2. That, this Honorable Court be pleased to quash the said ruling and drawn order made in Misc. Land Application No. 27 of 2020 dated 8th October 2020;
3. Costs of this application be provided by the respondent to the instant applicant; and

4. Any other relief as this honorable court may deem fit and just to grant.

The application is supported by the affidavit of the applicant Jonas Madale Madale which was countered by the respondent.

Applicant's submission was indicated to be drawn by the applicant the same applied to the respondent.

In his submissions to support the application the applicant submitted that he invited this court to examine records of the trial Tribunals and clear its minds as to whether the said records were determined judiciously since the same do speak for themselves hence this application. He referred to paragraph (a) of the chamber summons that the records in the trial Tribunals are all in the case file and the fact that applicant was called to appear to the Ward Tribunal as the Ward Tribunal wanted to know whether applicant knew about the dispute with the respondent. That the said dispute was already decided by the same Ward Tribunal and was finalized in 2013 by a different Chairman however same members were present in that year and records in issue are all annexures in the affidavit in Misc. application No. 27 of 2020 which this court is asked to examine it's correctness hence the instant application.

In regard to his paragraphs 2,3,4,5,6 and 7 of the affidavit which the respondent asks us to prove, he submitted that he has proved the same at the District Land Tribunal where the respondent failed to challenge or file the counter affidavit despite the (schedule) orders of the Tribunal. That, the applicant now invites this Court to satisfy itself to the legality, correctness and propriety of the ruling and drawn order in issue. That, Hon. S. L. Mbuga Chairperson, issued orders and schedule for the parties however the respondent failed to file counter affidavit and the submission but the applicant managed to do the same.

He added that the issue now before this court is that why the Chairperson (Tribunal) closed his (its) eyes to the respondent who did not obey the schedule and orders of the Tribunal and reached the instant ruling (which is in respondent's favour).

He submitted that as per paragraph 2 of his affidavit he has disclosed with evidence in the Trial Tribunal that there is no 30 hectors situated at Kibuta Village in Kisarawe District where an eviction order can be effected. He argued that the respondent failed to challenge or file counter affidavit to Misc. application No. 27 of 2020 and the Tribunal is aware on the same but basing on the reasons best known to itself, dismissed the application regardless the short comings disclosed in the above paragraphs.

In reply the respondent submitted that the Tribunals did their work in a good manner and by considering the principle of natural justice. He added that this application is land dispute. It is his submission that Section 38(1) of the Land Disputes Courts Act provides for the procedure for a party who is aggrieved by the decision of the District Land and Housing Tribunal to appeal to High Court.

He submitted further that the above provisions of the law are in two limbs. The first limb is in respect of the remedy available to a person aggrieved by any decision of the District Land and Housing Tribunal when exercising its original, revisional and appellate jurisdiction. The remedy is to appeal to the High Court. The second is to file Revision to this Court in which is vested with powers of Revision.

He added that the Court has always been unsympathetic to those who tried to move it to entertain any matter seeking to impugn the provision of the law by way of Revision where the right of appeal is available. It has been consistently pronounced that such a move is improper and it

has been insisted that the revisional jurisdiction can be exercised in appropriate circumstances only. He cited the case of **Moses J. Mwakibete vs. The Editor - Uhuru, Shirika La Magazeti Ya Chama And National Printing Co. Ltd. (1995) TLR 134** where it was stated that;

i) The revisional powers conferred by Section 4(3) of the Appellate Jurisdiction Act 1979, are not meant to be used as an alternative to the Appellate jurisdiction of the Court of Appeal; accordingly, unless acting on its own motion, the Court of Appeal cannot be moved to use its revisional powers under Section 4 (3) of the Act in cases where the applicant has the right of appeal with or without leave and has not exercised, that right;

ii) The Court of Appeal can be moved to use its revisional jurisdiction under section 4 (3) of the Appellate Jurisdiction Act. 4 (3) of the Appellate Jurisdiction Act 1979 only where there is no right of appeal, or where the right of appeal is there but there has been blocked by judicial process.

iii. where the right of appeal existed but was not taken, good and sufficient reasons are given for not having lodged an appeal.

He concluded that in the present case the applicant is aggrieved by the decision of the District Land and Housing Tribunal, therefore had, as indicated above, the right to appeal to the Court against that decision, He was, therefore, bound to abide to the requirements of Section 38(1) of the Land Disputes Act by lodging an appeal to the High Court. He insisted that the applicant must first exhaust that remedy provided by

law before invoking the revisional jurisdiction of the Court. He therefore prayed that the Application to be dismissed.

In rejoinder the applicant reiterated his submission in chief and noted that the respondent did not dispute his case, that is did not object failure to file his Counter affidavit and submission.

Having heard submission of both parties the issued for determination is whether the application has merits.

From both parties' submissions it is evidenced that the applicant who was also the applicant in Misc. Land Application No. 27 of 2020 was applying for extension of time to file appeal to the District Land and Housing Tribunal for Kibaha at Kibaha against the decision of Land case No. 98 of 2019 of Kibaha Ward Tribunal. The proceeding indicated that the respondent did not file his counter affidavit despite of being duly served hence the Chairman found that the application was undefended. The chairman then proceeded to examine whether the applicant adduced sufficient reasons for him to grant his application where he was not satisfied and therefore proceeded to dismiss the application.

Now, the main argument from the applicant was on the fact that how do the Tribunal closed it's eyes on his application while the respondent disobeyed its order by not filing his counter affidavit and submission. According to the 3rd paragraph of this affidavit he wanted the Tribunal to record admission on part of the respondent and grant the application. To him the application was uncontested hence the decision should have been in his favour.

I have read carefully the record of this application, in the Judgment of the Tribunal at page 3, in the first paragraph the trial Chairman correctly ruled that as the respondent was dully served with summons his act of not filing a counter affidavit is to the effect that he left his case undefended.

The trial Chairman went further to examine the merits of the application so as to determine if there are valid and sufficient reasons for delay advanced for him to grant the extension of time as prayed. He found the reasons were not sufficient. Being dissatisfied with the reasons offered she denied the application.

At this Juncture, I wish to note that this application is guided by Section 43(1) (b) of the Land Disputes Courts Act, the provision provides that;

"(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-

(a) N/A

(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." (Emphasis supplied)

Therefore, the applicant is moving this Court to determine whether there is an error material to the merits of the case, whereas I find that the Chairman was correct in his findings.

However, further that, under paragraph 4 and 7 of the applicant affidavits the applicant has tried to state the reasons for his delay and that he had probable reasons for his delay. By doing so he wants this court to determine that he had valid reasons for delay. It is my view that what he wants me to address in this regard is supposed to be raised in appeal case and cannot be entertained through Revision. The application for Revision is not an alternative to appeal. I join hand with the case of **Moses Mwakibete (Supra)** as well cited by the respondent on this point.

To conclude, I see no reason to fault the decision of the Tribunal. The application is hereby dismissed with costs.

It is so ordered.

Dated at Dar-es-Salaam this **28th** day of **February, 2022.**




T. N. MWENEGOHA
JUDGE