

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 29 OF 2021

(Originating from District Land and Housing Tribunal for Kilombero, Land Appeal No. 76/2015, arising from Minepa Ward Tribunal, Land Dispute No. 27/2015)

BENIGNIS A. MPISHI (an administrator of
the estate of the late **ALOYCE ALBERT MPISHI**) **APPLICANT**

VERSUS

VERONICA LIPANDE..... **RESPONDENT**

RULING

Last court order: 11/08/2022

Ruling date on: 19/08/2022

NGWEMBE, J.

This ruling is in respect to the prayers for revision of the decision of the District Land and Housing Tribunal for Kilombero, in Land Appeal No. 76/2015. The applicant is seeking this court to revise, quash and set aside the judgment and decree meted by the trial tribunal for lack of jurisdiction and that the whole proceedings had material irregularities.

This application was brought before this court under section 43 (1) and (2) of **the Land Disputes Courts Act, [Cap 216 R.E 2019]**,



supported by an affidavit of Benignis Aloyce Mpishi, (applicant). The respondent denied herself for failure to file counter affidavit. Throughout, she was not available even after issuing several summonses, which brought back with information from the local leaders that she has changed her domicile outside Morogoro region. As a result, a substituted service was preferred through Mwananchi Newspapers of 25/03/2022, which circulates all over the country. Yet that effort yielded no fruits. Eventually, on 04/08/2022 this court ordered the matter be tried *ex parte* against the respondent.

From the affidavit and the lower tribunal's proceedings, I have gathered the following background. The parties are cousins. Mr. Aloyce Alert Mpishi, who passed away on 2013, was the father to the applicant and respondent's uncle. He owned a farm land measuring $\frac{3}{4}$ an acre at Chikago area, Kivukoni Village, Minepa Ward in Ulanga District, but later he shifted to Ifakara. The respondent entered therein and occupied seeming from the year 1989 and kept using the same up to 2011, when the late Mpishi faced the respondent and they settled for payment of Tsh. 100,000/=. However, the respondent paid only 70,000/= to the late Mpishi.

The family of the late Mpishi questioned the transaction and in 2012, the disputes arose. However, that dispute was amicably settled by the local leadership. After the death of Mr. Aloyce Mpishi, the applicant and brothers sought vacant possession of the respondent. The applicant herein, in her personal capacity, filed the dispute before Minepa Ward Tribunal claiming against the respondent for trespass into their land, which is part of the deceased estate.



In instituting that claim, she was not an administratrix of the deceased estate. The Ward tribunal proceeded to award her the disputed land. Thus, fueled the respondent to appeal to the District Land and Housing Tribunal. In appeal, she raised among other grounds, *locus standi* of the applicant. The District Land and Housing Tribunal ruled that, the applicant had no *locus standi* to sue the respondent before the Ward tribunal, but proceeded further to weigh the evidence and awarded the disputed land to the respondent.

Out of that decision, the applicant herein preferred an appeal to this court, which unfortunate same was struck out for being time barred. Tirelessly, the applicant successfully, applied for extension of time, but instead of lodging the intended appeal, she again noted some irregularities in the District Land tribunal's decision, hence she lodged Misc. Land Application No. 401 of 2020 for extension of time to file revision. This time she obtained letters of administration of the deceased estate of her late father, Aloyce Albert Mpishi, hence the present application for revision.

The hearing of this application was conducted orally on 11/08/2022. Mr. Michael Mkenda, learned advocate represented the applicant in the absence of the respondent. Submitting in support of the application, argued that the District Land and Housing Tribunal having ruled that the applicant had *no locus standi*, should not have proceeded to determine the merit of the case in favour of the respondent. Instead, it ought to have nullified the whole proceedings of the Ward tribunal. By determining the matter on merits, the appellate tribunal blessed the anomaly committed by the Ward tribunal. He rested his case by referring this court to the cases of **Ibrahim Kusaga Vs. Emmanuel**

Mweta [1986] T.L.R. 26 and Yusuph Vs. Albert Munuo, Civil Appeal No. 12 of 2018 (page 8/9) in persuading this court to follow the course.

The essence of this application was stated by the applicant in his affidavit, that she is now appointed as an administratrix (para 2) and that there is illegality in the Tribunals below (para 6 and 9) which she would wish this court to correct them accordingly (paragraph 12). All grounds boil in one major issue of illegality as pointed above. But ground five (v) of the chamber summons contents that the applicant being an administratrix was condemned unheard in the tribunals below. This allegation is incompatible to her affidavit. Paragraph 2 of the affidavit stats that the applicant was appointed an administratrix on 15/09/2015 (annexture BM – 1). The case at the Ward tribunal was instituted on 13/03/2015 and determined on 30/03/2015. Thus, the dispute at the Ward tribunal, the applicant lacked *locus standi* for she was yet to be appointed an administratrix.

Having considered the arguments on this application, the issue for determination is whether or not the application has merit. This court will examine the proceedings to see if there is any irregularity as argued by the learned advocate. In case of any irregularity is spotted, I will make findings on whether this revision is the proper remedy under the circumstance of this matter.

Generally, the powers of this court to revise decisions made by the District Land and Housing Tribunal are reserved under section 43 (1)(b) of **The Land Disputes Courts Act**, which same is quoted hereunder:-



"43(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."

Though this application has not been contested and therefore competence of the application has not been challenged, it is important for this court to revisit the guiding principles governing revision. The rationale is to make sure that the court is not misdirected. Considering that, revision is not common remedy and thus, susceptible to misuse.

The aim of revision is to cure the mischief by clearing the errors found on the face of the record of the proceedings. Generally, revision is a remedy to a person who was not a party to the trial court, when such court's decision affects the said person who cannot have right to appeal for being a stranger to the original suit. A party to the trial court may resort to revision only in exceptional circumstances. The rule was set by the court in a number of decisions, among them are; **Halais Pro-Chemie Industries Ltd Vs. Wella A.G [1996] TLR. 269; Moses Mwakibete Vs. The Editor, Uhuru and Two Others [1995] T.L.R. 134;** and **NONDO Kalombola t/a N.J. Petroleum SPRL and another Vs. Broad gas Petroleum (TZ) Limited and 3 others,**

Consolidated Civil Applications Nos. 165/16 & 518/16 of 2019, CAT, at Dsm. In **Nondo Kalombola** the Court of Appeal, covering both the circumstances, held: -

*"It is trite law that the Court's power of revision can only be invoked; **one**, where there is no right of appeal; **two**, where right of appeal exists but has been blocked by a judicial process; **three**, where although a party has a right of appeal, sufficient reason amounting to exceptional circumstance exists; and **four**, where a person was not a party to the relevant proceedings"*

In this case, though the applicant was a party in the original suit, is now suing as a different person, an administratrix of the estate of her father. In all senses, the administratrix in her personal capacity is different from the capacity as an administratrix. Therefore, not a party to the original proceedings. See the case of **Edward Henerico Bubadalaja Vs. Minzimali Luchagul, PC. Civil Appeal Case No. 59 OF 2021, HCT at Mwanza**, the court also followed the Court of Appeal's decision in the case of **Abdullatif Mohamed Hamis Vs. Mehboob Yusuf Osman & Fatna Mohamed, Civil Revision No. 6 of 2017, (CAT at Dsm)**. He is therefore, not entitled to appeal against the District Land and Housing Tribunal's decision, though he seems to stand aggrieved.

In respect to this application, the applicant claimed illegality for the Tribunal entertaining the matter which was nullity. I have perused the proceedings of both, the Ward tribunal and the district tribunal, the following is a summary of what I have observed.



The applicant Benignis A. Mpishi, in her personal capacity sued the respondent. Claiming the respondent to have trespassed to the land which belong to their family (their late father), but she was not appointed as an administer of the deceased estate. The Ward tribunal did not bother to check if the applicant had legal authority to sue and be sued on behalf of the deceased estate. Instead, it rushed to determine the merit of the matter in favour of the applicant. The District Land and Housing Tribunal, rightly observed that, the applicant had no *locus standi*. However, instead of curing the error, proceeded to make findings on the evidence available and decided that the respondent was the rightful owner of the disputed land.

Now the question is whether the District Land and Housing tribunal by so deciding, committed any illegality? The applicant believes that it had no jurisdiction to decide the case on merit, by so doing it blessed illegality.

I think I need not to labour much on this because the law is well-developed that, when a person lacks *locus standi* in any suit in a court of law and that person has instituted an action in court, the court will have no jurisdiction to entertain the claim. This is because *locus standi* runs to the jurisdiction of the court. This is similar to the Court of Appeal's jurisprudence reflected in, among others, in the case of **Peter Mpalanzi Vs. Christina Mbaruka, Civil Appeal No. 153 of 2019**, at Iringa, the Court held: -

"Locus standi is a point of law rooted into jurisdiction. It is for that reason that it must be considered by a court at the earliest opportunity or once it is raised"



In the case at hand, there is no dispute that the applicant had no *locus standi* when she sued the respondent over the suit land. She did so in her personal capacity, while the property involved was part of the deceased estate, as herself personal capacity presented the dispute at the Ward tribunal. The Ward tribunal, therefore, erred in entertaining her claim, correctly as the District Land and Housing Tribunal so decided.

As the law applies, without discrimination, equally the District Land and Housing tribunal had no jurisdiction to award the respondent based on the said evidence, which was adduced in a case instituted by an incompetent person. The decision of the trial tribunal being nullity for lack of *locus standi* of the complainant, there was neither point in law nor in fact and nor in justice to deal with the merit of the matter. I agree, with the applicant's advocate that the whole process was nullity abinitio. The appellate tribunal had mandate only to quash the whole proceedings of the trial tribunal.

In the case of **Thobias Yakobo Malibwa (As the Administrator of the Estate of Late Jacobo Zakaria Malibwa) Vs. Gatawa Magomba and 18 others, Misc. Land Appeal 10 of 2021, HCT at Mwanza** which is similar to the case at hand, the appellant in his personal capacity successfully sued the respondents at the Ward tribunal over the suit land, which belonged to his late father. The respondent appealed to the District Land and Housing Tribunal, which ruled that the appellant had *no locus standi*, and then reversed the decision in favour of respondents. On further appeal, this court reasoned that the appellate tribunal having ruled that the appellant had *no locus standi*, it was bound to quash and set aside the proceedings

and decision, but not going to the merit of the matter. Part of the judgment is quoted hereunder: -

"The appellant at the time he instituted the dispute at trial tribunal was neither the owner of the suit land nor the administrator of the deceased father's estate, hence, he (Thobias Yakobo Malibwa), had no locus standi to sue. Consequently, the proceedings and judgment of the trial tribunal and the subsequent proceedings and judgment before the appellate tribunal were a nullity."

In respect to this case, the District Land and Housing Tribunal was, in disguise confirming and blessing the anomaly made by the Ward tribunal, which had expressly condemned. I treat this to be incompatibility of legal syllogism which, not only has prejudiced the parties in this case, but also stained proper interpretation of the law.

Since the applicant had lacked *locus standi*, it means she may institute her case under the proper capacity. For clarity, the applicant after obtaining letters of administration, she had *locus standi* to sue and be sued on behalf of the deceased. The question to answer is whether she can do so while there is a judgment already binding on the same property? I accept that it was necessary to seek revision before undertaking any pursuit because, the existence of the said decision binds the property in dispute would impede any pursuit or otherwise bring forth to endless litigations contrary to the public policy.

Her *locus standi* so obtained by being an administratrix would be of no help if the proceedings in Land Appeal No. 76 of 2015 originating from Land Dispute No. 27 of 2015 left to exist. Under the circumstance,



it was necessary for the applicant to seek revision as she did. Having so reasoned, I accept the applicant's prayer that the proceedings before the District Land tribunal should be revised.

It is on that basis and considering the whole circumstances of this matter, I find this application has merits and the application is fit for this court to exercise its powers under section 43 (1) (b) of the **Land Disputes Courts Act, Cap 216 RE 2019**. I thus proceed to grant the application for revision since the decision and proceedings of the tribunals below are collectively nullity. Any interested party with proper standing in law is at liberty to commence proper proceedings before a competent court/tribunal.

Save for the capacity the applicant is standing in this application, she was the initiator of all the incompetent proceedings, considering that fact and the matter having been heard *ex parte*, I award no costs in this application.

I accordingly Order.

Dated at Morogoro this 19th day of August, 2022.



P. J. NGWEMBE

JUDGE

19/08/2022

Court: This *ex parte* ruling is delivered in Chambers at Morogoro on this 19th day of August, 2022 in the presence of Mashankara for Michael Mkenda for the applicant and in absence of the respondent.



A handwritten signature in blue ink, appearing to read "P. J. NGWEMBE", is written over a large, empty oval shape.

P. J. NGWEMBE

JUDGE

19/08/2022