

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

**LAND REVISION NO. 46 OF 2021**

(Originating from Kinondoni District Land and Housing Tribunal at Mwananyamala in Land Application No.196 of 2018)

**FREDRICK VICENT SANGWA & 9 OTHERS.....APPLICANTS**

**VERSUS**

**AGNESS MHANDO & 60 OTHERS.....RESPONDENTS**

Date of Last Order: 22.08.2022  
Date of Ruling: 09.09.2022

**RULING**

**V.L. MAKANI, J**

This ruling is in respect of the preliminary objections raised by the 61<sup>st</sup> respondent named that:

- 1. This application is incompetent for contravening a prohibitive principle of riding two horses at the same time established by the Court of Appeal of Tanzania in the case of **Isidore Leka Shirima & Another vs The Public Service Social Security Fund (as the successor of PSPF, PPF.LAPF and GEPF &3 Others, Civil Application No.151 of 2016 (unreported).***
- 2. That the application at hand is incompetent as the tribunal and judgment upon which this court is asked to revise are non-existent.*

The preliminary objections proceeded by way of written submissions.

Submissions on behalf of the 61<sup>st</sup> respondent was drawn and filed by

Mr. Felix Edward Makene, Advocate, while Mr. Daniel Oduor,

Advocate, drew and filed submissions in reply on behalf of the applicants.

As for the first point of preliminary objection, Mr. Makene submitted that the application at hand cannot co-exist with Land Appeal No.233 of 2021 pending in this court. He said the 61<sup>st</sup> respondent preferred an appeal against the judgment of Kinondoni District Land and Housing Tribunal (the **Tribunal**). That in the same court, the applicants on 03/11/2021 preferred this application for revision. He said both the appeal and revision are against the same decision of the Tribunal as such they cannot co-exist to avoid an abuse of the court process. He said that an application for revision was filed while there was already an appeal filed in this court. Mr. Makene said since the 61<sup>st</sup> respondent filed his appeal on 03/11/2021, then the applicants were thus prevented from filing this revision. He relied on the case of **Attorney General vs. Hammers Incorporation Co. Ltd and Another, Civil Application No.270 of 2015** (unreported)

On the second point of objection Mr. Makene said there is a grave mistake in the chamber summons and affidavit supporting the application. That the applicant has cited non-existing tribunal. That

there is no tribunal by the name of **Kinondoni District Land & Housing Tribunal at Mwananyamala**, that the sought revision is against **Land Application No.196 of 2018 by Hon. R. Mwakibuja dated 12/10/2021**. He said that the application for revision does not emanate from an application rather from the judgment. That there is no judgment dated 12/10/2021 by Hon. R. Mwakibuja and the tribunal is not existing, and the decision is not properly addressed. He relied on the case of **James Funke Ngwagilo vs Attorney General (2004) TLR 161** where it was stated that the function of the pleadings is to give notice of the case which has to be met. That a party must therefore so state in his case that his opponent will not be taken by surprise. He said this court being the court of records, its records should be correctly recorded and reported for a reason of avoiding unnecessary future legal problems or complications to parties.

In reply to the first point of preliminary objection, Mr. Oduor said that it is not the applicants who filed the alleged Land Appeal No.233 of 2021 but the 61<sup>st</sup> respondent herein against the 1<sup>st</sup> to 60<sup>th</sup> respondents. That the said Land Appeal No.233 of 2021 was stayed by this court pending this application for revision No. 46 of 2021 vide

Land Application No.14 of 2022. That the allegation by 61<sup>st</sup> respondent that he filed Land Appeal No.233 of 2021 against the 1<sup>st</sup> to 60<sup>th</sup> respondents is a matter that requires evidence. In that regard he said, the objection would not meet the elements of preliminary objections established in the case of **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696**. He said that for the principle of riding two horses as established by the 61<sup>st</sup> respondent to stand, there must be evidence and, in this case, it is lacking. That since there is no evidence that the applicants filed an appeal and yet filed this application, the principle of riding two horses cannot stand. He argued that the appeal and revision are all seeking to challenge the same decision simultaneously.

As for the second point of preliminary objection that the improper citing of the tribunal and the date of judgment was a mere slip of the pen which did not prejudice the respondents in anyway as the proper description of the tribunal can be found in the applicants' joint affidavit at paragraph 8. He added that there is a certified copy of the said judgment annexed to the application. He distinguished the cited case of **James Funku** (supra) as he said it talks of requirement to

serve pleadings to the other party so as not to take the other party by surprise, but in this case the respondent was properly served. He argued the court to apply the overriding objective principle and prayed for the raised preliminary objections to be dismissed with costs.

In rejoinder, Mr. Makene reiterated his main submissions and the prayers therein.

Having heard submissions from the learned Advocates, the main point for consideration is whether the objections raised by the 61<sup>st</sup> respondent have merit.

It is not disputed that the applicants in this present application for revision were not parties to the Land Application No.196 of 2018 at the Tribunal. And revision is preferable where the right to appeal does not exist. These facts in this application are similar to those in the cited case of **Isidore Leka Shirima & Another vs. The Public Service Social Security Fund (as the successor of PSPF, PPF.LAPF and GEPF & 3 Others, Civil Application No.151 of 2016** (unreported). The Court of Appeal struck out the application

for revision irrespective that the applicants were not parties in the trial court because there was already an appeal before the Court on the same subject matter. In the case of **Attorney General vs. Hammers Cooperation Co. Limited** (supra) which was quoted in the case of **Isidore Leka Shirima** (supra) the Court of Appeal observed that to allow a party to prosecute an application for revision where one of the parties has initiated the appeal process is to cause confusion to the administration of justice and this applied even where the applicant was not a party to the impugned proceedings before the lower court. The Court of Appeal further said:

*"We wish to add that the position against invoking the two jurisdictions simultaneously does not change even were, like in this case, the applicant is a stranger or an interested party who did not participate in the proceedings before the High Court. Besides, we think that in the circumstances like the one obtaining in the present application, to allow an applicant who was not a party in the previous proceedings to apply for revision where one of the parties has initiated an appellate process, to bring confusion in the administration of justice. This is so because some of the matters raised in the grounds of revision could be properly raised in an application for stay of execution or as grounds in the intended appeal by a party who has initiated the appeal process."*

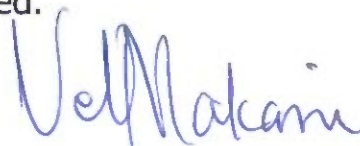
In this present instance there is an appeal pending in this court and it was filed before this application. Both the appeal and the application for revision are in respect of the same decision of the Tribunal. It is

therefore not prudent for this matter to proceed while there is an appeal on the same decision in this very court. The assumption is that if the appeal and the revision are entertained by the court simultaneously, then there would be two decisions of this court which may create chaos, and this, is in my view, an abuse of the court process.

So, following the footsteps of the Court of Appeal in the cases cited above of **Isidore Leka Shirima** and **Attorney General vs. Hammers Cooperation Co. Limited** (supra), this application cannot stand and it is incompetent because of the existence of the appeal against the same decision which is yet to be determined.

Having established that the application is incompetent I will not deal with the second preliminary point of objection.

In view of the above, the first preliminary objection is meritorious, and it is sustained. The application is hereby struck out for being incompetent. Considering the circumstances of the case, there shall no order as to costs. It is so ordered.



**V.L. MAKANI**  
**JUDGE**  
**09/09/2022**