

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

LAND REVISION NO. 35 OF 2021

(Arising from the Ruling and drawn order of the District Land and Housing Tribunal for Kinondoni at Mwanayamala delivered by Hon. R. Mwakibuja, Chairperson dated 24th August 2021 in Land Application No. 339 of 2018)

RAMADHANI SELEMANI PAZIAPPLICANT

VERSUS

MAGIBANYA SAID PAZIRESPONDENT

R U L I N G

Date of last Order:23/09/2022

Date of Ruling:29/09/2022

K. D. MHINA, J.

By Chamber Summons taken under Section 41 and 41A (i) as amended by GN No. 7 of 2018 and Section 43 of (i) (b) of the Land Disputes Court Act [Cap. 216 R. E. 2019] (the Act), the applicant, Ramadhani Selemani Pazi, instituted this application against the respondent, Magobanya Said Pazi.

According to the chamber summons, the Applicant is seeking the following: -

- i. To call for and examine the records of Land Application No. 339 of 2018 and to satisfy itself to the legality, correctness,*

- and property of the Ruling and drawn order of Hon. R. Mwakibuja, Chairperson dated 24th August 2021;*
- ii. To quash the said ruling and drawn order made in Land Application No. 339 of 2018 dated 24th August 2021;*
 - iii. Costs and any other relief(s) the Court may deem fit to grant.*

The Affidavit of the applicant, which expounds the grounds of the application, supports the chamber summons.

In response to the application, the respondent countered it by filing a notice of preliminary objection predicated on the following ground: -

- a. That the Application for revision is on an interlocutory decision which has not finally determined the matter is bad in law and offends the mandatory provision of Section 79 (2) of the Civil Procedure Code [Cap. 33 R. E. 2019] (The CPC).*

At the hearing of the application, the applicant was represented by Mr. Andrew Kanonyele, learned advocate, while the respondent by, Mr. Abdallah Shaibu, learned advocate.

Mr. Shaibu's arguments on the ground of the preliminary objection were to the following effect, the application for revision contravened Section 79(2) of the CPC for being interlocutory.

He argued that the revision stems from the Land Application No. 339 of 2018, whereby the trial Tribunal rejected the admission of the document as an exhibit at the hearing.

To cement his position, he cited **UDSM Vs. Sylvester Cyprian and 210 Others** (1998) TLR 175 where it was held that: -

"Interlocutory are those proceedings which do not determine the rights of the parties."

He concluded by submitting that after the rejection of the document as the exhibits at the hearing, the trial was supposed to proceed.

In reply, Mr. Kanonyele opposed the preliminary objection as he submitted that, the document which was rejected at the Tribunal has an effect on the final determination of the suit.

In proving the interest of ownership or disposition of land, Section 64(1)(a) and (b) of the Land Act set a condition that written documents must prove disposition.

He further argued that, the document rejected was the declaration of offer or deed of gift written by the donor to the donee. It was the only document depended on by the applicant to prove that the disputed suit was

disposed to him. Its rejection definitely weakens his case and affects the determination of the case.

He concluded by submitting that even though the matter was yet to be determined, rejecting that document should have an effect on the finality of the case.

In a brief rejoinder, Mr. Shaibu opposed the arguments made by the learned counsel for the applicant. He submitted that regardless of whether the document was vital, the law does not allow the filing of revision in such a situation.

To determine this matter, the starting point is **Section 79(2)** of the CPC, which provides that;

"Notwithstanding the provisions of Subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of the court unless such decision or order has the effect of finality determining the suit."

The test on what is the term "finality determining the suit" was discussed by the court of Appeal of Tanzania in **Sudi Khamisi Suid & 3 others vs. Maureen George Mbowe Jilwa & 3 others**, Civil Application No. 362/17 of

2018 (Tanzlii) while quoting **Bozson vs. Altrincham Urban District Council** {1903} 1 KB 547 at page 548 it was held that: -

"It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order."

Again in **Junaco and Another vs. Horel Mallac (T) Ltd, Civil Application No. 473/16 of 2016 (unreported)**, it was defined as:-

"An order or decision is final if it finally disposes of the right of the parties."

Regarding the instant application, as I indicated earlier, the revision was sought against the order on the rejection of the admission of an exhibit (documentary evidence). Therefore, from the above and in light of cited decisions of **Sudi Khamis Sudi** and **Harel Mallac** (Supra), and the imports of **Section 79 (2)** of the CPC, I hold that;

One, in the order sought to be revised, nowhere has it been indicated that the suit has been finally determined. I hold so because, as a matter of law, the trial must proceed when the exhibit is rejected or admitted.

Two, since the order sought to be revised had not determined the rights of the parties to the finality, then the order is interlocutory, and Section 79(2) of the CPC prohibits revision in respect of interlocutory decision or order.

The argument by Mr. Kanonyele that rejecting the exhibit would weaken the Applicant's case because the document was vital and would affect the finality of the case, outright I find, the argument unfounded.

The law does not allow revision on interlocutory orders regardless of whether or not the document rejected was vital.

To conclude, I sustain the ground in the notice of preliminary objection, that the applicant is barred by Section 79 (2) of the CPC for being interlocutory.

In the event and for the foregoing reasons, I dismiss the application with costs.

It is so ordered.



29/09/2022