

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 450 OF 2021

(Arising from the decision of the District Land and Housing Tribunal for Kinondoni in Land Review No. 737 of 2017, Hon. Mwakibuja-Chairperson)

LOID MBOGELA 1ST APPLICANT

OLIVER MBOGELA.....2ND APPLICANT

VERSUS

JUSTIN HAMIS FOKOLO.....RESPONDENT

Date of last order: 7/9/2022

Date of Judgment: 30/9/2022

RULING

KADILU, J.

This is a ruling on application for revision lodged in the Court by the above-named applicants on 21/08/2021 under Section 43 (1) (b) of the Land Disputes Courts Act [CAP 216 R.E 2019]. Essentially, the applicants tried to move the court to invoke its powers of revision to revise the proceedings of the District Land and Housing Tribunal for Kinondoni in Land Application No. 737 of 2017 dated 9/8/2021.

The application has been taken at the instance of **Kings Law Chambers** and it is supported by an affidavit sworn by Mr. Boniphace E. Meli learned advocate for the applicants. A brief background giving rise to the application

at hand is necessary. Sometimes in 2015, the above-named respondent instituted Land Application No. 341 of 2015 before the tribunal against the applicants. The respondent was claiming for assortment of reliefs against the applicants including declaration as a lawful owner of a house situated on plot No. 9B/34A Mwananyamala, Kinondoni Municipality.

It is on record that while the matter was still pending in the tribunal, the 2nd applicant entered into a settlement deed with the respondent and the matter was marked settled. This was per the deed of settlement dated 11/11/2016.

I have gone through the said settlement deed and found that the 2nd applicant agreed to pay the respondent the sum of Tsh 4,500,000/= payable on or before 3/3/2017. It is further revealed that the 2nd applicant did not honour her promise. This prompted the respondent to lodge an application for execution on 4/5/2017 seeking for attachment and sell of the suit premises so as to satisfy the decree. It is on record that the trial tribunal granted the application for execution on 4/9/2017 in which the applicants were required to pay the decretal sum on or before 30/9/2017, failure of which the disputed premises would be auctioned through Rhino Investment and Tribunal Broker.

The applicants being aggrieved with the order for execution lodged at the tribunal in Application No. 737 of 2017, sought to review the decision of the tribunal dated on 4th September 2017 which arose from Misc. Land Application No. 390 of 2017. Several reasons were advanced by the applicants in their memorandum of review which can be paraphrased as follows:

- a. That the respondent was not a registered entity capable of issuing loans.*
- b. The loan agreement between the 2nd applicant and the respondent was illegal.*
- c. The tribunal had no pecuniary jurisdiction to entertain Land Application No. 341 of 2015 and Misc. Land Application No. 390 of 2017.*
- d. That the tribunal erred in awarding the respondent reliefs or interests that emerged from illegal agreements.*
- e. That the tribunal erred in deciding the house in dispute be attached and sold whereas it was the property of the 1st applicant who was not a party to the said loan agreement.*
- f. That the Honourable Trial chairman grossly erred in law and in fact in failure to consider the criminality aspects on the side of the respondent.*
- g. The trial chairman erred in law and fact for failure to consider and analyze the evidence tendered before him.*

After hearing the parties in respect of the application for review, the tribunal dismissed the same for lack of merit. Hence the applicants have preferred

the present application for revision as stipulated above. At the hearing of the present application, Messrs Boniface Erasto learned advocate represented the applicants and Richard Mbuli represented the respondent. This Court on 28th October 2021 ordered the application to be disposed of by written submissions, the order which was duly complied with hence this ruling.

The applicants having adopted the contents of the affidavit in support of the application, prefaced their submission contending that sometimes in 2014 the 2nd applicant had obtained loan facility from the respondent at the tune of Tsh 3,000,000/= on agreement that the former would refund the sum of Tsh 7,000,000/=. The applicants submitted further that the respondent advanced the said loan facility while he is unregistered money lender and with no licence to conduct business of lending money.

The applicants submitted at length regarding the purported loan agreement between the 2nd applicant and the respondent contending that the loan agreement was illegal by its nature and therefore, it was wrong for the tribunal to decide in favour of the respondent. To fortify their stance, the applicants cited the case of **Grofin Africa Fund Limited v H. Furniture**

and Electronic Limited and 3 others, Commercial Case No. 81 of 2017 (unreported).

On the complaint that the tribunal had no jurisdiction to entertain the matter, the applicants submitted that the matter which was before the tribunal was not a land matter rather a loan agreement. The applicants have cited several decisions on the aspect of jurisdiction. On reply, the respondent disputed the existence of a loan agreement and submitted that there was a sale agreement concluded between the parties on 23rd October 2013 in which the applicants agreed to sell their house to the respondent which they later rescinded the said agreement and in lieu thereof the purchase price was to be refunded to the respondent.

The respondent contended further that the applicants did not honour their obligation hence the respondent instituted Land Application No. 341 of 2015 which was settled out of court and therefore, parties had no chance to give evidence as contended by the applicants. The respondent contended further that there was no any document to prove existence of loan agreement between the parties as correctly observed by the honourable tribunal.

On the issue of jurisdiction, the respondent contended that the tribunal had jurisdiction over the matter as the cause of action arose from the land sale

agreement valued at Tsh 10,000,000/=. The respondent therefore prayed the application to be dismissed with costs. On rejoinder, the applicants essentially reiterated their submission in chief.

Having gone through the submissions by the learned advocates for the parties and in support of the present application, the sole issue that calls for the court's determination is whether the present application has merit. I wish to point out that this Court derives its powers of revision over the proceedings or any order from the tribunals under section 43 (1) (b) of the Land Disputes Courts Act [CAP 216 R.E 2019]. The said provision provides:

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

(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 added].*

From the foregoing provision of the law, in an application of revision like the present one, the applicants must show that there is an error material to the

merit of the case involving injustice. I have carefully gone through the entire record of the tribunal. It is not in dispute that the present application arises from application No. 737 of 2017 whose ruling was delivered on 9th August 2021. The application for review before the tribunal aimed at challenging the order for execution which arises from application No. 390 of 2017 which was determined to finality on 4th September 2017.

I am of the considered view that the application for review lodged before the tribunal, and the present application for revision lodged in this court are misconceived in law. The Land Disputes Courts (District Land and Housing Tribunal) Regulations, G.N. No. 174 of 2003, (hereinafter referred to as Regulations), gives an elaborative procedure and remedy available as far as execution is concerned.

Regulation 23 of the Regulations requires the decree holder to file an application for execution as soon as the order or decree is passed. Sub regulation 2 of Regulation 23 gives the manner in which such execution is to be preferred. Where there are any objections, the same have to be determined prior the execution is granted. Hence the judgment debtor against whom the execution has been preferred is required to raise his/her objection prior the execution order is made. And the chairperson is required

to determine any objection raised first. This is the requirement under Regulation 23 (5) of the Regulations.

When the matter was before the tribunal, at the hearing of the application for execution (Application No. 390 of 2017), the judgment debtors, the applicants herein did not raise any objection as clearly seen on the record. Consequently, until the application for execution was determined and an order for execution issued, the applicants had no objection. Hence by preferring an application for review after the order for execution had been made was improper.

Equally, the Regulations make it clear that any party aggrieved by the order arising from execution is required to reach this court by way of appeal as provided for under Regulation 24 of the Regulations and not revision as it was done in the present application. In the case of **Ms. Farhia Abdullah Noor v Advatech Office Supplies Limited & Another**, Civil Application No. 261/16/2017, Court of Appeal of Tanzania (unreported) cited by the applicants, it was held that the court's power of revision may be resorted to only where there is no right to appeal or where such right exists, but has been blocked by judicial process.

In the present matter therefore, the right to appeal was available to the applicants and hence no reason has been advanced as to why they did not exhaust that remedy first before resorting to revision. There are numerous authorities to the effect that, revisional powers of the Court can only be invoked where there is no right of appeal. Some of them are; **Transport Equipment Ltd v. Devram P. Valambhia** [1995] T.L.R 161, **Moses J. Mwakibete v. The Editor-Uhuru, Shirika La Magazeti ya Chama & Another** [1995] T.L.R 134 and **Halais Pro-Chemie v. Wella A.G** [1996] T.L.R 269. Others are, **M/S NBC Limited V. Salima Abdallah & Another**, Civil Application No. 83 of 2001 and **Kezia Violet Mato v. National Bank of Commerce & 3 Others**, Civil Application No. 127 of 2005 (both unreported).

I would like to make an observation on the nature of the objections to be raised by the judgment debtors in execution proceedings. Regulation 23 (5) of the Regulations requires objections that are to be raised by the judgment debtors to be limited to the subject matter of the execution. Going by the applicants' objections in their appeal before the tribunal and in the present matter, I am of the settled mind that the objections raised by the applicants against the execution were misconceived in law. The application for review

sought to challenge the execution and not the main application (No. 341 of 2015).

Hence, the applicants preferred an appeal in disguise against the main application. I state so because there was no room available for the applicants to raise matters which should have been dealt with by adducing evidence if hearing of application No. 341 of 2015 could proceed on merit. Nevertheless, as long as the said application was finalized through settlement, the matter was finally determined.

Whether there was a loan agreement and not a sale agreement in respect of the disputed premises, it could not have been raised in the execution proceedings as it was done in the present matter. Equally, in the matter at hand the applicants are not challenging the propriety of the execution proceedings rather, on matters which ought to have been dealt with in the hearing of the main application. After all, the applicants did not challenge or dispute about anything regarding the settlement deed.

It is for the reasons I hold that the present application is incompetent before the court and it is hereby struck out with costs.

Order accordingly.



M. Kadilu

KADILU, M.J.

JUDGE

30/9/2022

Ruling delivered on the 30th Day of September, 2022 in the presence of Mr. Justin Hamis Fokolo, the respondent appearing in person.



M. Kadilu

KADILU, M. J.

JUDGE

30/9/2022.