

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 42 OF 2021

(Originating from Land Appeal No. 119 of 2014 in the District Land and Housing Tribunal for Kinondoni Hon. Mbilinyi –Chairperson dated 12th February 2016)

TERESIPHORY MUGANYIZI ANTHONY.....APPLICANT

VERSUS

MERCHADES OSWARD KALEMELA.....RESPONDENT

21/9/2022 & 20/10/2022

RULING

A. MSAFIRI, J.

On 11th October 2021 the applicant filed an application before this Court by way of chamber summons under Section 43 (1) (b) and (2) of the Land Disputes Courts Act [CAP 216 R.E 2019] seeking for the following reliefs;

- a. The High Court be pleased to call for both the Ward and District Land and Housing Tribunal's record of proceedings and judgment to satisfy itself as to the correctness, legality, propriety*

Alle

and or otherwise of the judgments and proceedings thereof.

b. That the High Court be pleased to make such other orders quashing the entire proceedings and judgment as may appear to the court to be just and convenient and declare the applicant the rightful owner of the suit land.

c. Costs of this application be provided for.

d. Any other reliefs that the Honourable Court deem fit and just to grant.

The application has been taken at the instance of M/S RK Rweyongeza and Co Advocates and it is supported by an affidavit sworn by the applicant herein.

The respondent resisted the application by filing in court a counter affidavit as well as notice of preliminary objections to the effect that;

1. The application is incompetent as it does not fall within section 38 (1) of the Land Disputes Courts Act Cap 216 R.E 2019 since the applicant has opportunity to appeal instead of revision.

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2. The applicant [sic] is misconceived and or incompetent.

3. The application is an abuse of the process of the court.

On 1st August 2022, this court ordered the preliminary objections raised by the respondent together with application on merits be argued simultaneously by way of written submissions. The order was duly complied with. The applicant was represented by Mr. Robert Rutaihwa, learned advocate while the respondent appeared in person, he had no legal representation.

I propose to begin with determination of the preliminary objections. The respondent's submission in support of the preliminary objections was to the effect that the present application for revision is incompetent because the applicant had an opportunity to prefer appeal against the impugned decisions. The respondent contended further that as the remedy for appeal was not exhausted then revision cannot be resorted to as an alternative remedy.

To fortify his stance the respondent has referred to me several decisions including **Halais Pro Chemie v Wella AG** [1996] TLR (CAT) 266 and **Edward Msago v Dragon Security Service Ltd**, Civil Revision

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No. 556/01 of 2021, Court of Appeal of Tanzania at Dar es Salaam (unreported). In the latter decision it was held;

"To invoke the Court of Appeal's power of revision there should be no right of appeal in the matter, the purpose of this condition is to prevent the power of revision being used as alternative to appeal".

The respondent therefore prayed for this application to be dismissed with costs.

On reply, the applicant contended that the application at hand is properly before the court and it has not been preferred as an alternative to appeal. The applicant contended further that the decision in **Halais Pro Chemie v Wella AG (supra)**, cited by the respondent is distinguishable with the circumstance at hand. In the referred decision revision was preferred as an alternative to appeal while in the present matter revision has not been preferred as an alternative to appeal.

As for the reasons of not preferring an appeal, the applicant contended that the reasons cannot be explained at this stage. The applicant therefore prayed for the preliminary objection to be overruled with costs.

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Having gone through the parties' submissions rival and in support of the preliminary objection, the sole issue for my determination is whether the present application for revision is competent before the Court.

It is borne out of the record that the respondent instituted before the Mbezi Juu Ward Tribunal, Land Case No. 11 of 2012 against the applicant herein alleging him to have trespassed on his land situated at Mbezi Mtoni Mji Mpya.

Each of the parties herein claimed to have purchased the land in dispute whereby the respondent claimed to have purchased the same in 2004 while the applicant claimed that he purchased it in 2008. After hearing the parties the trial Tribunal decided in favour of the respondent as he was declared the lawful owner of the land in dispute.

Being resentful of the trial Tribunal's decision the applicant lodged Land Appeal No. 199 of 2014 at the District Land and Housing Tribunal for Kinondoni at Kinondoni (the DLHT) with three (3) grounds of appeal. On 12th February 2016, the DLHT delivered its judgment whereby the appeal lodged by the applicant herein was dismissed with costs for lack of merits.

This application was preferred after the applicant had been granted an extension of time. *Aelle*

Let me now turn to determine the merits or otherwise of the respondent's objection on the competency of the present application. It is not in dispute that this is an application for revision arising from decision of the DLHT in the exercise of its appellate jurisdiction. The applicant herein was a party to the impugned decision sought to be revised.

It follows therefore that bearing in mind that the applicant was party to the decision sought to be revised he had a right of appeal against that decision but he did not exhaust that remedy instead he preferred application for revision. 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) it was held that;

The Court's power of revision may be resorted to only where there is no right of appeal or where such right exists but has been blocked by a judicial process. A party may also invoke the revisional jurisdiction of the Court where, although he has a right of appeal, sufficient reason amounting to exceptional circumstance exists or where a person was not a party to the relevant proceedings.

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There are other decisions which underscore the above position, see for example, the cases of **Moses Mwakibete v. The Editor, Uhuru and 2 Others** [1995] TLR 134, **Transport Equipment Ltd v. Devram P. Valambhia** [1995] TLR 161 and **Halais Pro-Chemie v. Wella A.G** [1996] TLR 269.

In the instant application, the applicant did not say why he preferred revision while he had a chance of appealing. In the decision of **Ms Farhia Abdullah Noor v Advatech Office Supplies Limited & Another** [supra], four conditions must be satisfied before a person invokes the revisional jurisdiction of the court;

- i. No right to appeal exists.*
- ii. The right to appeal exists but it has been blocked by judicial process.*
- iii. He was not a party to the decision sought to be revised.*
- iv. The right to appeal is available but there exists exceptional circumstance for revisional jurisdiction of the court to be invoked.*

In the instant application, the applicant was a party to the decision he is seeking to challenge through revision. Similarly there was a right to

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appeal against the decision of the DLHT to this Court within 60 days. But the applicant has not said anything why he did not exhaust the remedy available for appealing. The applicant has not shown any exceptional circumstance(s) that would have justified the calling of revisional jurisdiction of the court.

It is for that reason I proceed to sustain the preliminary objection raised by the respondent. Consequently the application is incompetent before me and I hereby strike it out with costs.

It is so ordered.



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A. MSAFIRI

JUDGE

20/10/2022