IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 21 OF 2022

(Arising from Misc. Application No. 327 of 2018 of Temeke District Land and Housing)

MWANGAZA YUSUPH MPELEMBE .... APPLICANT

VERSUS

FESTO HAULE .... RESPONDENT

RULING

Date of last Order: 27.10.2022

Date of Ruling: 31.10.2022

A.Z. MGEYEKWA, J

This is an application for Revision against the decision of the District land and Housing Tribunal for Temeke. The application is brought under section 43 (1) (b) of the Land Disputes Courts Act, Cap 216. The application is supported by an affidavit sworn by Mwangaza Yusuph Mpelembe, the applicant. The respondent has filed a counter affidavit deponed by Festo Haule, the respondent. The dispute pits the applicant against the respondents, and the applicant's prayer is for this court to call

for and examine the proceedings and orders of the District Land and Housing Tribunal for Temeke in particular the orders following from 23rd August, 2019 as the same was made illegally. The applicant also prays this Court be pleased to order the respondent to handle back to the applicant a Residential Licence No.TMK 146 situated at Nzasa, since the applicant has already discharged all the loans taken by praying the sum of Tshs. 4, 500,000/= to the respondent.

When the application was placed before me for hearing on 10th October, 2022, the applicant had the legal service of Mr. Victor, learned counsel, and respondents appeared in person, unrepresented. Mr. Victor, learned counsel for the applicant urged this Court to argue the application by way of written submission. The Court acceded to the applicant's request to have the matter disposed of by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

The applicant was the first one to kick the ball rolling, the applicant started to narrate the genesis of this matter which I will not reproduce in this application. The applicant contended that the decision of the District Land and Housing Tribunal was purely illegal. She submitted that the respondent financed a loan of Tshs. 4,500,000/= whereby she secured the said loan, the security was her Residential Licence No. TMK a matrimonial home. She went on to submit that on the due process of

paying back the loan, the respondent surprisingly served the applicant with a notice of sale the attached security. She submitted that she filed Application No. 327 of 2018 at the District Land and Housing Tribunal for Temeke to remedy such action. The applicant added that she decided to withdraw the same and promised to settle the claim out of the court process. She stressed that her final prayer before the tribunal was to withdraw the matter nothing more.

The applicant went on to submit that after several days the respondent once again served the applicant with a Deed of Settlement which is suspected to have been signed by the applicant and a drawn order was issued on 23rd August, 2019 and extracted on 23rd July, 2020. The applicant denied having signed the Deed of Settlement since the date of signing the document she was out of Dar es Salaam attending the funeral of her husband. It was her submission that since she did not sign the Deed of Settlement then the same waves away the legitimacy of the same.

She claimed that the Deed of Settlement invites a tripartite parties-based process, and lack of consent of the other party renders the adoption Deed of Settlement illegal. She invited this Court to intervene and put the record clear. Fortifying his submission she cited the case of **Principal Secretary Minister of Defence & National Service v Davram Valambhia** (1992)

TLR 182. Stressing on the point of illegality, the applicant insisted that the tribunal decision emanates from the so-called Deed of Settlement.

The applicant forcefully argued that the respondent misled the court by stating that he offered a loan to the tune of Tshs. 11,880,000/= as pleaded in his counter affidavit. She stressed that the only amount of loan is Tshs. 4,500,000/=. She continued to submit that the respondent has pleaded that he agreed to reduce the figure of Tsh. 11,880,000/= to Tshs. 7,500,000/= while there is no any proof of the same.

The applicant went on to argue that the law requires a financial institution that supplies loans to the public with an interest to be registered by the Business Registration and Licencing Agency (BRELA) by being issued with the certificate of registration and TIN for taxation and a certificate of recognition from the Bank of Tanzania. Thus, it was her view that the claims at hand are not recognized in the eyes of the law. Supporting her submission she cited the case of **Change Tanzania Ltd v Registrar of Business Registration and Licence Agency**, Misc. Commercial Case No.27 of 2019.

On the strength of the above submission, the applicant urged this Court to grant her application as prayed in the Chamber Summons.

In reply, the respondent urged this Court to adopt his affidavit to form part of his submission. The respondent contended that the applicant has filed

her application for revision under section 43 (1) of the Land Disputes Courts Act, Cap. 216 whereas the Court has the power to revise the decision of the District Land and Housing Tribunal on application by a party as in this case or *suo motu*. He went on to submit that the Court can revise the proceeding if there is an error material to the merits of the case involving injustice.

The respondent went on to submit that examining the applicant's affidavit and her submission in chief shows that the application is short of merit. He added that the applicant has failed to show the impugned decision of the tribunal is worth for revision. To support his submission he cited the case of **Ismail Abdallah Limbega v Victor Nyoni**, Civil Revision No.33 of 2020. The respondent went on to submit that the applicant on page 2, the third line from the top stated that the final prayer of the applicant to the trial tribunal was to withdraw the matter and nothing more. The respondent went on to quote the applicant's submission that:-

> *"...on the basis of the above, the applicant submits that she has never been a signatory of the same..."*

On the basis of the above quotation, the respondent argued that the applicant wants to suggest that she did not sign the Deed of Settlement, however, the records of the trial tribunal speak for themselves. It was his submission that the applicant's affidavit contains lies and the applicant is

trying to impeach the trial tribunal records. It was his submission that it is the principle of law that the court records are presumed to be genuine and they cannot be easily impeached. The respondent went on to submit that the applicant has attached a deed of compromise as annexure 'A2' looking at the Deed of Settlement, the two documents contain the same signatures of the applicant and her counsel Aretas Kyara.

The respondent went on to submit that the Deed of Settlement was recorded and an order extracted thereafter but that applicant has not taken any step to challenge the same. He submitted that in case the applicant alleges that her signature appearing in the Deed of Settlement was forged then she ought to have filed a criminal case. He added that the Deed of Settlement was entered with the applicant's free will before her counsel.

Expounding on the Deed of Settlement, the respondent contended that the applicant is trying to submit on evidential matters as if it is an appeal, he referred this Court to page 4 first paragraph the applicant alleges that the loan agreement attracted interest and the respondent being an individual was not allowed to charge interest. He valiantly argued that these are matters which were not discussed at the tribunal. The respondent added the applicant's demand on the title of the house cannot

be granted through an application for revision and the alleged amount to the tune of Tshs. 500,000/= was paid before the institution of the case.

On the strength of the above submission, the respondent stated that the application does not qualify to be an application for revision. He urged this Court to dismiss it.

In his rejoinder, the applicant reiterated his submission in chief. On the issue of appeal, the applicant submitted that the facts of the matter at hand attract revision rather than an appeal because there is an issue of illegality in the trial tribunal. In her view, the only remedy is revision because she is blocked by the judicial process. She added the issue of consent judgment cannot be challenged by way of an appeal. She urged this court to consider the illegalities established in her submission and grant the application. The applicant claims that the court cannot grant what has not been asked, thus she urged this Court to order the respondent to return the residential licence to the applicant. Ending, the applicant urged this court to grant her application.

Having heard the submissions of the applicant and respondents in and against the application, the issue for determination is the *whether the application is meritorious*.

I had to scrutinize the records of the District Land and Housing Tribunal for Temeke to find out what transpired during the hearing of the

application. The applicant is claiming that her last prayer was to withdraw the application. Reading the proceedings of the tribunal it shows that 7th March, 2019 Mr. Aretas Kyara, the counsel appeared for the applicant in the absence of the respondents prayed for a date to file their Deed of Settlement, and on 23rd August, 2019 Mr. Aretas Kyara appeared for the applicant and informed the tribunal that the disputants have settled the matter out of Court and they filed a Deed of Settlement.

As rightly pointed out by the counsel for the respondent the power of this court is to revise the decision of the District Land and Housing Tribunal, however, reading the affidavit and submission of the applicant is clear that the applicant wants this court to revise the parties agreement which can only enforce it when it is requested so to do. It is worth noting that the Deed of Settlement is an arrangement between parties to settle the dispute it cannot be revised by the Court but can only be enforced.

In the tribunal's proceedings, there is nowhere stated that the applicant prayed to withdraw her case. The applicant has denied having signed the Deed of Settlement, however, comparing her signature appended in the Deed of Settlement, the same resembles other signatures appended in other documents which are part of the records of the tribunal. It is worth noting that the court records accurately represent what happened and as rightly submitted by the respondent that the court records are self-

explanatory and the same cannot be easily impeached. In the case of **Halfan Sudi v Abieza Chochili** (1998) TLR 527, it was held that:

> *" A court record is a serious document; it should not be lightly impeached; (ii) There is always a presumption that a court record accurately represents what happened."*

Guided by the above provision it is clear that the applicant did not pray to withdraw his case instead she filed a Deed of Settlement. There is no any proof that the counsel for the applicant has done so without his client's instruction. Therefore, it is right to blame the tribunal and the respondent for the prayer made by the applicant's counsel.

Therefore, I fully subscribe to the respondent's submission that this Court under section 43 (1) of the Land Disputes Courts Act, Cap. 216 has the power to revise the decision of the District Land and Housing. However, the grounds for revision are not tenable. Even the second prayer of ordering the respondent to return the residential licence to the applicant is not a grounds for revision. I short, this Court can be moved to exercise its supervisory powers to revise only the proceedings where there is an error material to the merits of the case involving injustice. In the case of **Abdallah Hassan v Juma Hamis Sekiboko**, Civil Appeal No. 22 of 2007, the Court of Appeal of Tanzania held that:-

"Throughout, the Court would act to rectify that error apparent on the face of the record ..."

From the above excerpt, it is clear that the proceedings of the District Land and Housing Tribunal for Temeke does not contain an error material to move this Court to exercise its power of revision.

In view of the aforesaid, I find this application to be incompetent and thus the same is struck out with costs.

Order accordingly.

Dated at Dar es Salaam this date 31st October, 2022.

A.Z.MGEYEKWA

JUDGE

31.10.2022

Ruling delivered on 31st October, 2022 via video conferencing whereas both parties were remotely present.

A.Z.MGEYEKWA

JUDGE

31.10.2022

Right to appeal fully explained.