

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

LAND REVISION NO. 25 OF 2022

(Arising from Application No.26 of 2018, in the District Land and Housing Tribunal for Kinondoni).

MOHAMED SELEMANI SUKA.....APPLICANT

VERSUS

ZAHARA SELEMANI SUKA.....1ST RESPONDENT

ZUBEDA SELEMANI SUKA.....2ND RESPONDENT

KINONDONI MUNICIPAL COUNCIL.....3RD RESPONDENT

RULING

Date of Last Order: 18. 10.2022

Date of Judgment: 29.10.2022

T.N. MWENEGOHA, J

This application was brought under sections 43(1)(a) and (2) of the Land Disputes Courts Act, Cap 216, R.E 2019. The applicant wants the court to call for and examine the records of the proceedings in relation to the decision of Hon. Rugarabamu, learned Chairperson, dated 3rd September, 2022, from the District Land and Housing Tribunal for Kinondoni District, vide Land Application No.26 of 2018. The applicant has insisted that, the reasons led to this application is the existence of serious irregularities in the said case, that need attention of the court by setting aside the decision entered in the Land Application No. 2018.

The background of the present case stems from Land Application No. 26 of 2018. The case was before Kinondoni District Land and Housing

Tribunal, here in after called the trial tribunal and filed by the applicant. He sued the three respondents here in above over a landed property, namely, House No. 34 with registration No. KND/MSS/MGR/8/20, located at Makangira, Msasani Dar Es Salaam. At the trial, the applicant prayed to drop the 3rd defendant who is the 3rd respondent in this application. The prayer was allowed but the presiding chairperson formed an opinion that, in absence of the 3rd defendant, the case must fail as she is a necessary party. It therefore, went on to strike out the said case, hence this application.

The application was heard by written submissions and *ex parte* against the 3rd respondent. Advocate Francis Munuo while the 1st and 2nd respondents were represented by Advocate Juma Mtatiro.

Submitting in favour of the application, Mr. Munuo insisted that, the decision of Hon. Rugarabamu, to allow the applicant's leave of dropping Kinondoni Municipal Counsel as a 3rd defendant in a case and afterwards striking out of the said case for non-joinder of the same party is illegal. He insisted that, the court cannot force a plaintiff to sue a defendant that he doesn't want to implead. Mr. Munuo cited the case of **Tanzania Railways Corporation (TRC) v versus GBP(T) Limited, Civil Appeal No. 218 of 2020, Court of Appeal of Tanzania at Tabora.**

In reply, Mr. Mtatiro for the 1st and 2nd respondents, was of the view that, there was no way for the former case at the trial tribunal could proceed in absence of the 3rd defendant now respondent. It is because, she was implicated in several paragraphs of the application before the tribunal, these include paraphs 6(vi), (vii), (xiii), (xiv), (xv) and 7(b). Therefore, she is a necessary party to the suit. Her absence makes the whole suit to collapse.

Having gone through the submissions of parties through their respective counsels, the issue for determination is whether the application has merits or not. I will start by reproducing the provisions of section 43(1)(a), (b) and (2) of the Land Disputes Courts Act, Cap 216, R.E 2019 as follows;-

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

(a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;

(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.

(2) In the exercise of its revisional jurisdiction, the High Court shall have all the powers in the exercise of its appellate jurisdiction."

The basis of revision as provided in the quoted provisions here in above, is only when the lower tribunal has acted illegally, or if this court finds errors material to the merits of the case. I have perused the records at hand from the trial tribunal, the proceedings and pleadings of the parties and satisfied myself that, there is nothing to revise as far as the decision and orders of the trial tribunal are concerned in Land Application No. 26

of 2018. The records show that, on the 23rd September, 2021, the applicant's counsel prayed to drop the 3rd defendant from the suit, the respondent's counsel on the other hand resisted against the prayers and insisted that, the case be withdrawn in favour of all three defendants. It is because the same cannot proceed without the 3rd respondent.

The trial tribunal after hearing the arguments of the parties, warned them as follows;-

"Kesi hii ipo hatua ya kutengeneza viini. Pia Mahakama hii ndio iliyoamuru Mjibu Maombi namba 3 aongezwe katika Shauri hili. Hivyo sio rahisi akaondolewa na baraza hili".

Mr. David, Advocate for the applicant insisted on the discharge of the 3rd respondent from the suit as she is not the necessary party. Hence on the 3rd November, the 3rd respondent was dropped, followed by the striking out of the case. To me, it appears that the learned chairperson followed the procedures correctly, heard the parties and gave the decision accordingly. There is nowhere on the records at hand, showing that he acted illegally, rather he exercised his powers appropriately. In that case, this application is devoid of merits.

Eventually, the application is hereby dismissed with costs.

Costs to follow the event.




T.N MWENEGOHA,
JUDGE,
29/11/2022