

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

LAND REVISION NO. 36 OF 2022

(Arising from Application No.1208 of 2021, in the District Land and Housing Tribunal for Kinondoni).

ELIAS SHAMTE.....1ST APPLICANT

JOAQIM NDIALE.....2ND APPLICANT

VERSUS

PATRICK TAIRO.....RESPONDENT

R U L I N G

Date of Last Order: 11. 10.2022

Date of Ruling:

31/10/2022

T. N. MWENEGOHA, J

This Application was brought under **Sections 43(1)(a) and (b) of the Land Disputes Courts Act, Cap 216, R. E. 2019**. The applicant wants this Court to call for and examine the correctness, legality and regularity of the Order and decision of the District Land and Housing Tribunal for Kinondoni District in respect of Land Application No. 1208 of 2021.

The respondent on the other hand raised a preliminary objection on point of law that the 2nd applicant has no locus standi in respect of Land Application No.1208 of 2021 as he was not a party to the said case.

In his written submissions, Mr. Frank Kilian, the counsel for the respondent maintained that, the Application violates **Regulation 11 (2) of the Land**

Disputes (District and Housing Tribunal) Regulations of 2003. He insisted that, an application made ex-parte by the District Land and Housing Tribunal of Kinondoni cannot be challenged by way of Revisions, rather by an application to set aside the ex-parte order. He cited the case of **Irene D/O Edward Kaminyonge and Another versus Juma Poyongo, Misc. Land Application No. 51 of 2020, High Court of Tanzania at Kigoma(unreported)**. He insisted that, above all the 2nd respondent lacks locus standi as he was not party to the original case as stated in **Magu District Council and Another versus Mhande Nkwabi (1997) TZH 19(unreported)**.

In reply, the Advocate Joseph Mbogela for the applicant argued that, the respondent has raised a new point of law touching the violation of rule 11(1)(c) of the Tribunal regulations. However, the said rule does not apply in execution proceedings, rather in main proceedings where evidence and testimony is involved and the Tribunal has announced ex-parte judgment. Therefore, there is no way the applicants can challenge the exparte order given in execution proceeding other than by way of Revision. Hence, the case of **Irene D/O Edward Kaminyonge (supra)** is distinguishable to the case at hand.

Furthermore, the applicant's counsel maintained that, since the 2nd applicant was not a party to execution proceedings, but he has interest in the fencing wall, he has no right to appeal, rather a right to apply for Revision of the matter as stated in number of authorities including the case of **Jacqueline Ntuyabaliwe Mengi and Others versus Abdueli Reginald Mengi and Others, Civil Application No. 332/01 of 2021, Court of Appeal of Tanzania at Dar es Salaam.**

After going through the submissions of parties given by their respective counsels, the issue for determination is whether the objection has merits or not.

I will start my discussion of the issue above by stressing on the rule that parties are bound by their pleadings. As argued by Mr. Mbogela, the respondent has raised a new point of law which was not contained in his notice of objection. The same touches the violation of Rule 11(1)(c) of the tribunal regulations. Since, the said objection was not raised, this court will not allow such surprises to be entertained as decided in **YARA Tanzania Limited vs. Charles Aloyce Msemwa and 2 others; Commercial case No5 of 2015 High Court Commercial Division DSM (unreported)**, that;-

"it is a cardinal principle of law of civil procedure founded upon prudence that parties are bound by their pleadings. That is, it is settled law that parties are bound by their pleadings and that no party is allowed to present a case contrary to its pleadings".

The 1st point of objection is therefore disregarded. As for the other objection, that, the 2nd respondent has no locus standi, I find this objection to be devoid of merits. The rules are well settled that, any interested person who was not party to the concluded case, may challenge the same by way of Revision as he or she has no right of appeal, see **Jacqueline Ntuyabaliwe Mengi and Others versus Abdueli Reginald Mengi and Others supra**. This objection is overruled.

Having overruled the objection in question as expressed above, I order the main application to proceed into hearing until its final determination.

Costs to follow the event.

It is so ordered.




T.N MWENEGOHA
JUDGE