

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

**REVISION NO. 44 OF 2021**

**JOHNSON LEONARD MAHURURU.....APPLICANT**

**VERSUS**

**ORESTO ALPHONCE MASKINI .....1<sup>ST</sup> RESPONDENT**

**MSAFIRI HASSAN MKUMBA** as an Administrator Estate of the late

**HASSAN MOHAMED MKUMBA.....2<sup>ND</sup> RESPONDENT**

**KINONDONI MUNICIPAL COUNCIL.....3<sup>RD</sup> RESPONDENT**

**R U L I N G**

*Date of last Order: 06/10/2022*

*Date of Ruling: 31/10/2022*

**T. N. MWENEGOHA, J.**

This is a consolidated Ruling, arising out of two Applications, Land Revision No. 44 of 2021, instituted by the 1<sup>st</sup> applicant herein and Land Revision No. 54 of 2021, filed by the 2<sup>nd</sup> applicant.

The factual setting giving rise to the instant case are that the 1<sup>st</sup> respondent sued the 2<sup>nd</sup> and 3<sup>rd</sup> respondents before the District Land and Housing Tribunal of Kinondoni, vide Land Application No. 26 of 2019. The dispute was over ownership of a land, described as Plot No. 256, located at Bahari Beach, within Kinondoni Municipality. According to what they submitted in Court, the 1<sup>st</sup> applicant unsuccessfully sought for a leave of the Tribunal to

be joined as a party in the said case, vide Misc. Application No. 1092 of 2021 and the 2<sup>nd</sup> applicant did not take any legal action on reasons that, it had already been finalized when he learned of its existence.

Both applicants are aggrieved by the decision of Hon. Mwakibuja given in Land Application No. 26 of 2019. They decided to seek for a Revision of the proceedings and Orders of the District Land and Housing Tribunal of Kinondoni, vide Land Application No. 26 of 2019. Therefore, they each approached the Court praying for it to examine the correctness and legality or propriety of the proceeding of the whole case and after such examination, the Court be pleased to revise the said proceedings, quash the decision that arose out of it and set aside the orders emanating from the same.

The applicants each preferred a separate case, though both were brought under **Section 95 of the Civil Procedure Code, Cap 33 R.E. 2019**. The two cases were also accompanied by the affidavits of the applicants and on the basis of this background, the need to consolidate the two cases arose.

The case was argued by way of written submission. Either; apart from arguing their applications, the parties were ordered to address the Court of two more issues, raised by it *suo motto*. These were; -

- 1. Whether the applicants who were not part of the trial Tribunal have the right to file Revision.*
- 2. Whether the instant Application is proper before the Court even without the existence of the Attorney General as necessary party.*

Therefore, I will start by determining the issues raised by this Court and later if necessary, discuss the merit or otherwise of the Application at hand.

The submissions of the applicants as presented by their learned counsels, Advocate Dickson Sanga for the 1<sup>st</sup> applicant and Karoli V. Tarimo for the 2<sup>nd</sup> applicant were that the applicants have the right to challenge the Decision of Hon. Mwakibuja by way of Revision as they have been affected by the said Decision and they were not parties to the suit. Hence, they have no other remedy apart from Revision. The counsel for the 2<sup>nd</sup> applicant relied on the case of **Jacqueline Ntuyabaliwe Mengi and Others versus Abduel Reginald Mengi and Others, Civil Application No. 332/01 of 2021, Court of Appeal of Tanzania at Dar es Salaam** while the 1<sup>st</sup> applicant's counsel referred to the Court to the case of **Ahmed Ally Salum versus Ritha Baswali & Another, Civil Application No. 21 of 1999, Court of Appeal of Tanzania at Dar es Salaam, (unreported)**.

In reply, Advocated Florence Aloyce Tesha for the 1<sup>st</sup> respondent was of the view that, based on the nature and stage at which the case has reached so far, the applicants cannot challenge it by Revision. That, the 1<sup>st</sup> respondent was declared as a lawful owner of the disputed land by the decision of Hon. Mwakibuja. That, immediately the applicants have claimed each to have ownership of the disputed land. Therefore, the available remedy to them is to institute a fresh case to contest the ownership of the said land.

It was his submission that the reasons for Revisions are well known and the same are not fitting in the case at hand.

It was his argument that Revision is available to the affected party if he or she has no other remedy and was not a party to the lower Court proceedings. That, in the case at hand, the applicants are claiming ownership of the land by filling the Revision case in this Court. However, the Court cannot reverse the decision of the trial Tribunal because it has not heard the evidence brought forward by the applicants. The 1<sup>st</sup> respondent's counsel cited the case of **Transport Equipment Ltd versus Devram P. Valambhia (1995) TLR 161 (CAT)**. The same was the view of Advocate Yuda Dominic for the 2<sup>nd</sup> respondent and Mr. Netho Philemon Mwambalawa, Municipal Solicitor for the 3<sup>rd</sup> respondent.

In their rejoinder submissions on the issue the applicants' counsels reiterated their submissions in chief.

On the second issue whether applicants' Application for Revision is proper before this Court of Law without joining Attorney General, the applicants were of the view that at this stage of Revision it is not proper to join Attorney General for the fact that he was not part to the proceedings. However, they were of the view that he should have been joined at the Tribunal stage. That, when the matter was filed at the Tribunal, **Section 6(2) of the Government Proceedings Act, Cap. 5 R. E. 2019** was already amended by **Section 2 of the Written Law (Misc. Amendment) Act No. 30 of 1994** which required Attorney General to be joined before filing the suit at Tribunal.

In addressing the concern, the Respondents through their advocate referred to Government Proceeding Acts R. E. 2019 as amended by Act No. 1 of 2019

and stated that the law requires to be applicable to the proceedings which commence after the establishment of the law. He argued that the case by the 1<sup>st</sup> Respondent was already pending in Court and not about to commence. It was his view that the Amendment of 2020 should not have concerned pending case at the Tribunal. That they complied with the requirements of the law before and the new enactment ought not to apply retrospective.

Having gone through submissions of both parties I will proceed to determine 2<sup>nd</sup> issue raised by the Court before addressing the rest need be. It is undisputed fact that in all proceedings against the Government, the Attorney General must be joined as a necessary part. This position is provided under **Section 6(2) of the Government Proceedings Act, Cap. 5 R. E. 2019.**

This Court finds that the 2<sup>nd</sup> respondent correctly argued that the applicant could not join the Attorney General at this stage of the Revision because he was not party to the main proceeding. However, he notes that the absence of the Attorney General from the original matter is irregularity and that is why he prayed for this Court to use overriding objective to cure this irregularity. The 1<sup>st</sup> respondent was of the view that the new enactment should not apply retrospectively.

This Court notes that the position of joining Attorney General in case involving government institutions is well established, both in law and in precedents.

In the matter at hand, Kinondoni Municipal was sued without the inclusion of the Attorney General as the law requires. However, on 23/04/2021 the

Tribunal framed issues and the matter began to be determined, without the Attorney General even though such was a requirement already established by law. It is further a settled view that when amendment is on procedural law, it will apply retrospectively. Again, it is noted this is even more so, on the matter at hand where hearing had not commenced.

Hence joining the Attorney General at that stage was necessary. Therefore, this makes the case at the Tribunal incompetent for non-joinder of the Attorney General.

Having said that failure to join Attorney General is a serious error and therefore affects the proceedings in the Tribunal; and with such omission from the Trial Tribunal its decision cannot stand. Therefore, I use my discretionary power to quash and set aside the Tribunal's findings for such defect. Any interested part may file a fresh suit.

As this Application has its root from Application No. 26/2019 whereby the applicant sued 2<sup>nd</sup> respondent who is Kinondoni Municipal without joining the Attorney General, consequently, the current Application is also affected by the incompetence of the decision of the Tribunal and as the said decision is quashed and set aside consequently this Application lack legs to stand.

I therefore strike out the current Application for being incompetent

Each part to bear their own costs.

It is so ordered.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**31/10/2022**