

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

LAND REVISION NO. 34 OF 2020

(Originating from Ilala District Land and Housing Tribunal, Misc. Application No. 404 of 2016,)

KESI ALLY
JABIR SANZE
KASAMBALA }**APPLICANTS**

VERSUS

GIDION KAINO MANDESI.....RESPONDENT

R U L I N G

Date of Last Order: 08. 03.2022
Date of Judgment: 31.03.2022

T. N. MWENEGOHA, J.

Before the District Land and Housing Tribunal for Ilala, the respondent, Gidion Kaino Mandesi, applied for an execution order, vide Misc. Application No. 404 of 2016. He was granted as prayed. However, Before the order for execution has been issued, the applicants, 2nd and 3rd applicants in particular, being respondents in the execution proceedings, claimed to have applied for a stay of the said execution. Their claim was disregarded and that prompted the instant application, where the applicants are seeking to revise the decision of A.R. Kirumbi, learned Chairperson of the Ilala District, land and Housing Tribunal, dated

11/08/2020. The same was brought under Section 43 (1) (b) of the Land Disputes Courts Act, Cap 216, R. E. 2002, supported by the affidavit of Gibson Ngojo, Advocate for the applicants. The respondent on the other hand is against the application at hand. He advanced four preliminary objections as follows; -

1. The application for revision contravenes the law and procedures for representative suit.
2. the application for revision is incompetent for being a new suit with new parties, while omitting the proper and necessary parties.
3. The affidavit in support of the application is incurably defective.
4. The application is not accompanied with mandatory official receipt, with the signature and official seal of this court.

Hearing of the objections was by written submissions, the respondent appeared in person, while the applicants were represented by the learned Advocate Samuel Shadrack.

In his submissions on the 1st objection, the respondent maintained that, the instant application is incompetent and has no legs to stand owing to the reasons that the same has been jointly instituted by numerous applicants as representative suit. That, the procedures for filing a representative suit were not followed as no leave for the same was sought before instituting the case. That is contrary to Order I Rule 8 of the Civil Procedure Code, Cap 33 R. E. 2019.

He went on to argue on the 2nd objection that, the application for revision is unmaintainable for non-joinder of a proper and necessary parties who are Kassimu Mkumba na ndugu zake and one Kambambala. These are the parties involved in the original case, Misc. Application no. 404 of 2016. He insisted that, the current case has got new parties hence it is a new case,

it should not be treated as an application for revision. That, the law is settled, parties who were not involved in the original case cannot exercise the right to apply for revision, as stated in **Ahmed Ally Salum vs. Ritha Baswali and Another, Civil Appeal No. 21 of 1999, Court of Appeal of Tanzania, (unreported)**.

On the 3rd objection, it was submitted by the applicant that, the affidavit by Mr. Gibson Ngojo is incurably defective, for stating that, the Misc. Application was before Kinondoni District, Land and Housing Tribunal, instead of Ilala District Land and Housing Tribunal. The statement is at paragraph 2 of the affidavit. He insisted that, even if the said paragraph is expunged, the whole affidavit will be meaningless, hence the remedy is to declare the affidavit as a whole to be defective and proceed to strike out the entire application. Lastly on the 4th objection. The respondent's arguments are that, the instant application is incompetent as the same was filed in this court without payment of the fees due. That, there is no official exchequer receipt attached to it.

In reply, Advocate Shadrack for the applicants argued firmly that, in respect of the 1st objection, the same is misplaced. That, this case is not a representative suit hence the 1st objection is baseless. As for the 2nd objection, it was insisted by the counsel for the applicants that, there is no law which compels any party in a former case to file a revision application. Therefore, Mr. Kassim Mkumba, being a party to the original case, is not duty bound to file a revisional case against the respondent. With regard to the defective affidavit, the counsel for the applicant maintained that, the objection is on factual issues, hence it offends the rule envisaged in **Mukisa Biscuits Manufacturing Co. Ltd. Vs West End Distributors Ltd. (1969) EA**. The same arguments were given in

respect of the 4th objection. That, it is not on point of law, rather on facts, hence it should be disregarded.

In his rejoinder, the respondent reiterated his submissions in chief and insisted that, the objections have merits and this application should be dismissed.

In consideration of the parties' submissions, I'm of the firm observation that, the all four objections by the respondent here in above are baseless. My reasons for that are grounded on the settled law given in the two cases of **Mukisa Biscuits Manufacturing Co. Ltd. Vs West End Distributors Ltd, supra** and **Lyamuya Construction Company Ltd versus Board of Registered Trustees of Young Women Christians Association of Tanzania, Civil Appeal No. 2 of 2010 (Unreported)**. The **Mukisa's case** (supra), the emphasize was that any preliminary objection should be on the points of law and not facts. On the other hand, the **Lyamuya's case** (supra) gave us the meaning of a point of law. It insisted that it should be seen on the face of it. Should not be the one which is drawn from a long line of arguments from parties.

Starting from the 1st objection, that the instant application is a representative suit. As argued by the applicant, this one is a misconception on the part of the applicant. What is before this court is not a representative suit, rather an application for revision, originating from a Misc. Application No. 404 of 2016, as decided by the District Land and Housing Tribunal for Ilala District. There is no law which has been offended by the parties/applicants in filling the instant application, therefore the 1st objection is overruled.

As for the 2nd objection, that the application is incompetent for being filed by new parties. I find this objection to have no merit and proceed to overrule it. As stated in **Ahmed Ally Salum versus Ritha Baswali and Another, supra**, that a person who was not a party to the court proceedings, he cannot have a right to appeal, but revision is the only remedy available. As for the 3rd on the defective affidavit in support of the application. The defect so stated in my opinion is a minor defect. The same is curable by amending the affidavit in question, to remove the word Kinondoni and substitute it by Ilala. In **Samweli Kimaro vs. Hidya Didasi, Civil Application No. 20 of 2012, Court of Appeal of Tanzania at Mwanza, (unreported)**. it was observed by Msofe JA that,

"In dispensing justice, the courts are no doubt rendering or giving a very valuable service to the society at large and to the consumers of our justice system in particular. If so, the society/ consumers must continue to have trust and faith in our system. These will be lost if cases are sometimes struck out on flimsy, cheap or too technical reasons. I think it is to the best interest of any one that cases should reach a finally without being hindered in the process by preliminary objections which could be avoided or which do not ultimately determine the rights of the parties".

Guided with the principles as given in the above cited case, I overrule the 3rd objection for want of merits.

Lastly, the 4th objection that the case was filed without the fees for the same being filed. The respondent's arguments on this, is the fact that there is no proof of the government receipt being attached with it. As I

said here in above, this is a factual matter which attracts arguments. This objection too is overruled.

In the end, all four objections are overruled accordingly with costs. The main application shall proceed into hearing until its final determination.

It is so ordered.

Dated at Dar es Salaam this **31rd** day of **March, 2022**.




T. N. MWENEGOHA
JUDGE