

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

**LAND REVISION NO. 37 OF 2021**

*(Originating from the District Land and Housing for Temeke in Land  
Application No.71 of 2021)*

**OMARY NDETE ..... APPLICANT**

**VERSUS**

**PILI SADAN ..... 1<sup>ST</sup> RESPONDENT**

**SHAN PETER ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

Date of last Order: 02.03.2022

Date of Ruling: 04.03.2022

**A.Z. MGEYEKWA, J**

This is an application for Revision against the decision of the District land and Housing Tribunal for Temeke at Temeke. The application is brought

under section 43 (1) (a) of the Land Disputes Courts Act, Cap 216. The application is supported by an affidavit sworn by Omary Ndete, the applicant.

The dispute pits the applicant against the respondents, and the applicant's prayer is for this court to invoke and exercise its revision jurisdiction to call and examine and revise the proceedings, records, and decision /order in respect of Temeke District Land and Housing Tribunal in Land Application NO.71 of 2021 delivered on 3<sup>rd</sup> August, 2021 by Hon. J.M Bigambo.

When the appeal was placed before me for hearing on 25<sup>th</sup> February, 2022, the appellant enlisted the legal service of Mr. Christian Rutagatima., learned counsel, and the respondent did not show appearance. Mr. Rutagatima urged this court to allow the parties to argue the appeal by way of written submission.

The matter was before Hon. Mango and by the court's consent, the preliminary objection was scheduled to be disposed of by the way of written submission whereby the respondent filed his submission in chief on 10<sup>th</sup> December, 2021 and the applicant's counsel filed his reply on 9<sup>th</sup> March, 2022.. The file was transferred before me and the matter was called for mention on 31<sup>st</sup> December, 2021. The ruling was delivered on 25<sup>th</sup> February, 2022 in the absence of the respondents.

Given the absence of the respondent's counsel, and having in mind that this matter is unnecessarily prolonged by his absence on several occasions, on 25<sup>th</sup> February, 2022, Mr. Rutagantima, learned counsel for the applicant, prayed that this appeal be disposed of by way of written submissions. The court granted the prayer and proceeded to schedule the submissions dates as follows: "1. Submissions in chief by 11<sup>th</sup> March, 2022, reply by 25<sup>th</sup> March, 2022 and rejoinder, if any, by 30<sup>th</sup> March, 2022. Ruling was scheduled on 31<sup>st</sup> March, 2022. The respondents have defaulted to the court order which was made at the prayer of the Appellant's counsel. As per the court order, the reply submissions were to be filed by 25<sup>th</sup> March, 2022. At the time of drafting this judgment on 31<sup>st</sup> March, 2022, no such submissions had been filed yet.

The respondents did not appear in court on 21<sup>st</sup> February, 2022, 25<sup>th</sup> February, 2022 and 31<sup>st</sup> March, 2022 and no word has been heard from them, the records shows that the last time they appeared in court was on 18<sup>th</sup> November, 2021. This court has held time without number that failure to file written submissions as ordered by the court is akin to a failure to appear when the case is called on for hearing and consequent orders for such non-appearance are inevitable.

There is an unbroken chain of decisions of this court that so hold. These include **Hidaya Zuberi v Bongwe Mbwana** PC Civil Appeal No. 98 of 2003 DSM (unreported), **Tanzania Harbours Authority v Mohamed R. Mohamed** [2002] TLR 76; **Patson Matonya v Registrar Industrial Court of Tanzania & Another**, Civil Application No. 90 of 2011 and **Geoffrey Kimbe v Peter Ngonyani**, Civil Appeal No. 41 of 2014 (both unreported). In consequence of the foregoing, it is ordered that the matters be determined *ex-parte*, by considering the application based on the submission filed by the applicant.

In his written submission, the applicant's Advocate has raised grounds for revision which I have gone through them and noted that the same deserves to be grounds of appeal. That being the case, I had to inform the applicant's Advocate of the matter at hand. I have scrutinized the application for revision whereas the applicant is moving this court to examine and revise the proceedings, records, and decision/ order in respect of the District Land and Housing for Temeke in Land Application No. 71 of 2021 which was delivered on 3<sup>rd</sup> August, 2021. However, after going through the applicant's affidavit, I have noted the listed grounds are fit for appeal. There are a plethora of authorities to the effect that, revisional powers of the Court can only be

invoked where there is no right of appeal. In the case of **Augustino Lyatonga Mrema v Republic, & Another** [199] TLR 272', the Court held among other things that:-

*"To invoke the Court of Appeal's power of revision there should be no right of appeal in the matter; the purpose of this condition is to prevent the power of revision from being used as an alternative to appeal.*

Similarly, in the case of **Felix Lendita v Michael Long'idu**, Civil Application No. 312/17 of 2017, CAT held that:-

*"There is a plethora of authorities to the effect that, revisional powers of the Court can only be invoked where there is no right of appeal."*


Applying the above authorities, it is clear that where there is a right of appeal the power of revision of this Court cannot be invoked. Such powers are exercised in exceptional circumstances. The affidavit evidence contains mixed grill grounds which in my view are fit grounds for appeal. I am saying so because the issue of absence of assessors, an extension of time to file the WSD, and the issue of summons were all featured in the proceedings of the District Land and Housing Tribunal for Kinondoni at Mwananyamala. Therefore, in my view, I think that the applicant was in a better position to file

an appeal instead of filing a revision. Thus, I find no reason to proceed to determine this application.

In the upshot the application is incompetent before this court and therefore, I proceed to strike it out without costs.

Order accordingly.

Dated at Dar es Salaam this date 31<sup>st</sup> March, 2022.



A.Z.MGEYEKWA  
JUDGE  
31.03.2022

Ruling delivered on 31<sup>st</sup> March, 2022 in the presence of Mr. Rutagatima, learned counsel for the applicant.



A.Z.MGEYEKWA  
JUDGE  
31.03.2022