

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND REVISION NO07 OF 2022**

*(Originating from the Order of the District Land and Housing for Kinondoni at  
Mwananyamala in Land Application No.1135 of 2021)*

**YUSTO LEVILIAN KAIJAGE ..... APPLICANT**

**VERSUS**

**ABDI MSHANGAMA ..... RESPONDENT**

**RULING**

Date of last Order: 22.04.2022

Date of Ruling: 25.04.2022

**A.Z. MGEYEKWA, J**

This is an application for Revision against the decision of the District land and Housing Tribunal for Kinondoni at Mwananyamala. The application is brought under section 43 (1) (a) of the Land Disputes Courts Act, Cap 216, and section 95 of the Civil Procedure Code Cap.33 [R.E 2019]. The application is supported by an affidavit sworn by Yusto Levilian Kaijage, the applicant.

The dispute pits the applicant against the respondents, and the applicant's prayer is for this court to call the records of the District Land and Housing Tribunal for KInondoni in Misc. Land Application No.1135 of 2021 for purpose of revising the proceedings and orders of the Tribunal in Misc. Land Application No.1135 of 2021 and the same be tried *de novo*. The applicant also urges this court to declare the ruling emanating from Misc. Land Application No.1135 of 2021 nullity in failing to exercise its discretions judicially by ordering the matter to proceed *exparte* without allowing the respondent or judgment debtor to be heard.

The applicant prays for this court to nullify, quash and set aside the orders of the ruling of the District Land and Housing Tribunal for KInondoni in Misc. Land Application No.1135 of 2021 in failing to issue a notice to the respondents or judgment debtor of the date when the *exparte* order would be delivered so that the respondent would have afforded an opportunity to timely take reasonable steps to enforce his rights.

The respondent resisted the application and has demonstrated his resistance by filing a counter-affidavit deponed by Philemon Raulencio, the respondent. The instant application represents hit a snag. The respondents

have raised a preliminary objection that this application is overtaken by events as execution order of Misc. Land Application No.1135 of 2021 has been carried out.

When the application was called for hearing on before this court on 11<sup>th</sup> April, 2022, the applicant was represented by Mr. Andrew Chima, learned counsel, the respondent enjoyed the legal service of Ms. Grace Ntambi, learned counsel. By the court, consent parties argued the preliminary objection by way of written submission. Both parties have complied with the court.

As the practice of the Court, I had to determine the preliminary objection first before going into the merits or demerits of the application. That is the practice of the Court founded upon prudence which I could not overlook.

Arguing for the preliminary objection, in his written submission, Ms. Ntambi contended that, the application is bad in law since it has been overtaken by the event as an execution order with respect to Misc. Land Application No.1135 of 2021 has been carried out. It was her submission that the instant application for revision shows that it emanates from the execution proceedings and orders of Misc. Land Application No.1135 of 2021 by the District Land and Housing Tribunal of Kinondonu at Mwananyamala. She

submitted that in the said application the respondent was applying for execution of the tribunal's order in Land Application No. 251 of 2014 against the applicant and the same was decided in favour of the respondent on 8<sup>th</sup> February, 2022. The learned counsel for the respondent went on to argue that the Land Application No. 251 of 2014 was scheduled for hearing on 8<sup>th</sup> February, 2022 but the applicant did not show appearance without notice, and hence on the material date an eviction order was issued *ex parte* and the tribunal appointed MAK Auctioneers Mart who carried out the eviction order and demolished the demised property on 8<sup>th</sup> March, 2022.

It was Ms. Ntambi further submission that execution has already been carried out and the applicant has been evicted from the demised premises and the said premises have already been demolished. She added that thus the applicant's prayer set forth in his chamber summons is overtaken by event and this application is a gross abuse of the court process. To support her submission Ms. Ntambi referred this court to Regulation 23 (4) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations of 2003 which states that:-

*“ Where after expiration of 14 days there is no response or objection from the judgment debtor, the Chairman shall make execution orders and the thinks fit.”*

The learned counsel for the respondent continued to argue that the applicant had a chance to find out what transpired in court on 8<sup>th</sup> February, 2022 since she had an opportunity to set aside the tribunal *ex parte* order. She went on to submit that failure to apply for setting aside the tribunal orders means he failed to exercise such right and hence the tribunal was right to issue the eviction order which was indeed carried out on 8<sup>th</sup> February, 2022. The learned counsel for the respondent threw her last jab by contending that the applicant is no longer in the premises as they have been demolished and vacant possession afforded to the respondent. She submitted that it is settled policy that litigation must come to an end. To buttress her contention she cited the case of **Karshe v Uganda Transport Co.** [1997] EA 774.

On the strength of the above submission, Ms. Ntambi urged this court to sustain the preliminary objection and struck out the applicant's application with costs.

In reply, Mr. Andrew Mathew Chima contended that the objection raised by the respondent's counsel is not a point of law. To support his submission he referred this court to the famous case of **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd** [1969] E.A 696. He insisted that the objection does not qualify to be termed as a point of preliminary objection as

it involves scrutinization of the evidence hence this objection suffers the anomaly as it is not a pure point of law. He urged this court to dismiss the objection in its entirety with costs. To bolster his submission he also cited the case of **COTWO (T) OTTU Union & Another v Hon. Iddi Simba Minister of Industries & Trade and Another** TLR [2002].

It was his submission that at this juncture, the questions like what, when, why, and how are not virgin territory as they have been traversed and baptized by courts as a question or matter which require evidence hence out of scope governing preliminary objection. Fortifying his submission he cited the cases of **Sharifa Twahibu Massala v Thomas Mollel & three others**, Civil Appeal No. 67 of 2011, **the Board of Trustees of the National Social Security Fund v New Kilimanjaro Bazaar Ltd**, Civil Appeal No. 69 of 2007, **Eusto Tangalinda v Tanzania Fish Process Ltd**, Civil Application No. 8 of 2011 (all unreported) Mr. Andrew stressed that there is no doubt of flicker that a preliminary objection must be a pure point of law without ascertaining facts and evidence.

In conclusion, he urged this court to overrule the objection and dismiss the same with costs.

In her short rejoinder, Ms. Grace reiterated her submission in chief. She insisted that she has raised a pure point of law since the applicant in paragraphs 5 and 9 of his affidavit has agreed that the ruling and order in regard to execution were delivered and the respondent was in process of evicting the applicant. She added that the respondent in his counter affidavit also stated that execution was carried out. Therefore in her view, the point of law is pleaded in the applicant's affidavit. She urged this court to sustain the preliminary objection with costs.

Having heard the rival arguments of both learned counsels for the applicant respondent for and against the preliminary objection raised, the only question to be determined here is *whether the preliminary objection is meritorious*.

Before addressing the preliminary objection raised by Ms. Ntambi that the instant application is overtaken by event. I am not in accord with the submission made by Mr. Andrew that the objection raised is not a pure point of law. In the case of **Mukisa Biscuits** (supra) one of the ingredients of the point of law is that a preliminary objection may dispose of the suit. The case of **Mukisa Biscuits** (supra) has defined the term preliminary objection as:-

*"A point of law which has been pleaded, or which arises by clear implication out of pleadings and which if **agreed as a preliminary point may dispose of the suit.**" [Emphasis added].*

Applying the above authority in the instant application, I am of the considered opinion that the point of objection raised by the respondent's Advocate arises from the pleadings and the same disposes of the application. And after noting that the execution in regard to Misc. Land Application No. 1135 of 2021 has been overtaken by event, there will be no any proper application to be determined by this court. Therefore, in my considered view, this is a pure point of law that needs to be determined by this court before determining the application on merit.

In the matter at hand, it is on record that before the lodgment of this application, some developments had ensued with regard to the decision of the District Land and Housing Tribunal in Misc. Land Application No. 1135 of 2021 relate to the execution of the challenged decree having relevance in the determination of this application. As rightly pointed out by Ms. Ntambi on 21<sup>st</sup> February, 2022 the respondent through a court broker executed the impugned decree and evicted the applicant from the disputed premises.



It is therefore clear that at the time of lodging this application on 7<sup>th</sup> March, 2022 the decree which relates to the matter at hand was already been executed. That being the situation, there is no proper application before this court. It is therefore our considered view that the circumstances in respect of the application have gone beyond the stage at which determining the application for revision in Misc. Land Application No. 1135 of 2021 which was already been executed will be meaningless.

In that regard, I am in accord with the learned counsel for the respondent that the application at hand is overtaken by events. Whenever it is shown that the application will no longer serve the purpose it was intended to or that an application has been overtaken by events, the Court has in a number of cases dismissed such application. For instance in the case of **Seleman Zahoro & 2 others v Faisal Ahmed Abdul (legal representative of the deceased Ahmed Abdul)**, Civil Application No. 1 of 2008 the Court of Appeal of Tanzania upheld a preliminary objection for the reasons that the decision of the learned judge sought to stay was overtaken by event. See also the cases of **Project Manager of Nomreco v Joseph Urion and Nakara Auction Mart**, Civil Application No. 72 of 1998 and **Shell and BP Tanzania Limited v The University of Dar es Salaam**, Civil Application No. 68 of


1999 ( unreported). In the case of the **Project Manager of Nomreco** (supra) the Court of Appeal of Tanzania held that:-

*“ ... on a matter which has been executed cannot serve any useful purpose because the matter has been overtaken by event.”*

In the circumstances, I am satisfied that the application is misconceived because it has been overtaken by the event as it was lodged after execution of the impugned decree in Misc. Land Application No. 1135 of 2021 which is the subject matter in the instant application. Consequently, I sustain the preliminary objection raised by the learned counsel for the respondent and proceed to strike out the application without costs.

Order accordingly.

DATED at Dar es Salaam this 25<sup>th</sup> April, 2022.

A.Z.MGEYEKWA  
**JUDGE**  
25.04.2022

Ruling delivered on 25<sup>th</sup> April, 2022 in the presence of Mr. Andrew Chima, learned counsel for the applicant and Ms. Grace Ntambi, learned counsel for the respondent.



  
A.Z.MGEYEKWA

**JUDGE**

25.04.2022