

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

LAND REVISION NO. 22 OF 2021

(Originating from Land Appeal No. 59 of 2019

Arising from Land Complaint No. 06/2016 at Mzenga Ward Tribunal.)

MAULID SELEMANI NASSORO APPLICANT

VERSUS

SAIDI SELEMANI KITORA RESPONDENT

RULING

13/4/2022 & 20/4/2022

A. MSAFIRI, J

The applicant Maulid Seleman Nassoro is praying for revision of the proceedings and judgment of the District Land and Housing Tribunal for Kibaha at Kibaha in Misc. Land Appeal No. 59 of 2019 which originates from Land Complaint No. 06 of 2016 at Mzenga Ward Tribunal.

The applicant is moving the Court to exercise its revisionary powers as follows;

1. That, this Honourable Court be pleased to call for the record of the proceedings in District Land and Housing Tribunal decided by Hon. S.L. Mbuga on 24th June 2020 between the above mentioned parties and revise part of the proceedings and judgment thereon or make such orders as it deems fits. That the costs of this application be in course. *Aelle*

2. Any other order(s) that this Honourable Court may deem just and equitable to grant.

The application was preferred under section 79(1) (c) of the Civil Procedure Code, Cap 33 R.E 2019 and Section 41 (1) of the Land Disputes Court Act Cap 216 R.E 2019. It was supported by an affidavit sworn by Michael Peter Mahende, learned advocate of the applicant while in opposition, the respondent himself filed a counter affidavit.

By consent of the parties, the hearing of the application was by way of written submissions and both parties have complied with the court's schedule. The submissions by the applicant were drawn and filed by Michael Peter Mahende, advocate, while the respondents' submissions were drawn and filed by himself.

In his submission, Mr. Mahende gave a brief background of the matter. He said that initially there was a land dispute No. 06/2016 before Mzenga Ward Tribunal whereby Said Selemani Kitola (respondent) sued Maulid Selemani Nassoro (applicant) over a piece of land located at Mzenga Ward, Kisarawe District.

The Ward Tribunal decided in favour of the applicant, then the respondent decided to appeal before the District Land and Housing Tribunal at Kibaha.

However, the respondent was out of time so he made an application for extension of time to file the intended appeal out of time. The District

Aelle

Tribunal granted the application and allowed the respondent to appeal out of time.

The applicant was aggrieved by the decision of the District Tribunal and decided to appeal to this court. Prior to filing the appeal, the applicant requested for copies of the Ruling and proceedings which took six months to be supplied to the appellant. Since he was late in obtaining copies of proceedings and judgment from the District Tribunal, the applicant had to apply for extension of time within which to file his appeal out of time, and therefore, filed an Application No. 110 of 2020.

Mr. Mahende stated further that, when the applicant was striving to file Application for extension of time, the Hon. Chairperson proceeded to hear the Land Appeal No. 59 of 2019 preferred by the respondent herein. That, the applicant has notified District Tribunal's Chairperson that her decision to extend time has been challenged vide Misc. Land Application No. 119 of 2020 at High Court Land Division.

That the applicant orally requested that the proceedings at the District Tribunal be stayed pending hearing and determination of Application No. 119 of 2020. That, despite the fact that the applicant prayed orally for the Hon. Chairperson to stay off pronouncing the judgment pending hearing and determination of Application No. 119 of 2020, the Hon. Chairperson proceeded to pronounce judgment without taking into consideration that there was application in the High Court. He said that, technically, the pronouncement of judgment defeated all appellate steps and proceedings preferred by the applicant herein in Application No. 119 of 2020 hence this revision.

Aelle.

In reply, the respondent cited the provisions of Section 8 of the Civil Procedure Code, Cap 33, and argued that, the issue of irregularity and illegality of the proceedings before the District Tribunal as raised by the applicant has no legs to stand on as the prayers for stay of the matter did not meet the ingredients set under section 8 of the Civil Procedure Code.

The respondent argued further that, in order to pray for the stay of the suit, the matter prayed for should be directly and substantially in issue in the first suit. That in the current matter, application instituted by the applicant is for extension of time to challenge decision of the District Tribunal, whereas such application depends on the discretion of the Court. He concluded that, the applicant wanted to move the District Tribunal to stay the case while it was already scheduled for the judgment while the case at the High Court was at preliminary stage. He prayed for the court to dismiss the application.

I have gone through the affidavit and counter affidavit for and against the application, the written submissions from both parties and the court records.

The law requires this Court to exercise its revisional jurisdiction in a case where it appears that there has been an error material to the merits of the case involving justice. This is provided under Section 43 (1) (b) of the Land Disputes Court Act, Cap 216 R.E 2019. The pertinent issue is whether there was any error material to the merit of the case i.e. Land Appeal No. 59 of 2019 which was delivered on 24/6/2020. *Adelle.*

In his submission, counsel for the applicant has pointed out the irregularity of the proceedings and judgment of District Tribunal as that; first, the Chairperson erred in law and fact by failing to take into consideration that the applicant has commenced appellate proceedings before the High Court, a court superior to the District Tribunal. He stated that, the Chairperson has ignored the call for records by the higher Court.

Second, he stated that, the Chairperson curtailed the applicant's right to be heard by not taking into consideration the prayers made by the applicant herein to stay proceedings pending hearing and determination of Misc. Land Application No. 119 of 2020. To him, this is totally irregularity as the right to be heard is very fundamental.

He pointed that, **it is a fundamental principal that once the lower Court has knowledge that there is any case or application instituted in the higher Court on the same nature and same parties, the lower Court, *suo motu* has to stay proceedings pending determination of the ruling or judgment of the higher court.**

I have perused the proceedings of the District Tribunal in Land Appeal No. 59 of 2019. The question I have asked myself is whether the appellate District Tribunal had knowledge of existence of Application No. 119 of 2020. *Adle.*

According to the contents of the affidavit of the counsel for the applicant which are propounded in his written submission before this court, on 24/6/2020 the counsel informed the appellate Tribunal Chairperson that Application No. 119 of 2020 was set for mention before the High Court to schedule the date of hearing. That, the applicant prayed for the said District Tribunal to stay off proceedings.

However, having perused that proceedings, the same are silent on the purported information and request by the applicant and his advocate for the District Tribunal to stay off proceedings. The proceedings of the appellate Tribunal on 24/6/2020 shows that on that day, the appellant appeared in person. The respondent (who is now the applicant) was represented by Consetta Boniface, learned advocate. That matter was coming for judgment. It shows that the judgment was delivered in presence of parties. There is no any prayer or request by the advocate for the respondent before the Tribunal to stay the delivery of judgment.

I went further to peruse the proceedings since the institution of appeal No. 59 of 2019, there is nowhere the records shows that the applicant or his advocate informed the Court of the institution of the application No. 119 of 2020. Furthermore, there is no evidence or proof that the appellate Tribunal refused or ignored the call for records by the High Court. In that regard, I have failed to see any material irregularity in the proceedings and the judgment of the appellate District Land and Housing Tribunal of Kibaha in Land Appeal No. 59 of 2019.

Aelle

I have noted a photocopy of the summons served to the respondent to appeal before the Court for mention on 18th May, 2020 before Hon. Opiyo, J, in application No. 119 of 2020. The summons is dated 17th March, 2020. In my findings, there is no dispute that there was an Application No. 119/2020 instituted by the applicant before this Court to challenge the decision of the appellate District Tribunal. The reason for my findings is that the records are silent on whether the appellate Tribunal was informed of the Application No. 119/2020.

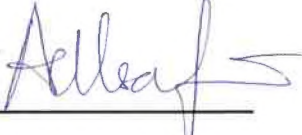
Furthermore, the affidavit of the counsel for the applicant reveals that the prayers for stay of the suit was made orally. I am of the view that the application for stay of proceedings should have been made formally before the District Tribunal. In absence of any evidence that the District Tribunal was made aware of the ongoing proceedings before the High Court, I find that the applicant's claims have no basis.

In the upshot, I find that this application has no merit as my perusal of records has failed to see any proof of the applicant's claims or any irregularity in the proceedings and judgment of the appellate District Tribunal. I hereby dismiss this application with costs.

It is so ordered. Right of appeal explained.

Dated at Dar es Salaam this 20th April, 2022.




A. MSAFIRI
JUDGE