

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

LAND REVISION NO. 41 OF 2018

*(Arising from the District Land and Housing for Temeke in Land Application
No.329 of 2012)*

SAMARIA MANFRED MACHANGE APPLICANT

VERSUS

RABAN MSAMILA AMBAKISYE 1ST RESPONDENT

RODA MWANGILINDE 2ND RESPONDENT

PRIDE (T) LIMITED 3RD RESPONDENT

TULVIN INVESTMENT CO. LTD 4TH RESPONDENT

SAID MOHAMED KHAMIS 5TH RESPONDENT

RULING

Date of last Order: 29.04.2022

Date of Ruling: 11.05.2022

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 sections 41 and 43 (1) (a) & (b) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The application is supported by an affidavit sworn by Samaria Manfred Machange, the applicant. The 2nd respondent resisted the application and demonstrated his resistance by filing a counter-affidavit deponed by Roda Mwangilinde, the 2nd respondent.

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 the proceedings of Temeke District Land and Housing Tribunal in Land Application N0.329 of 2012. As exist serious irregularities that amount to exceptional circumstances in the conduct of the Tribunal's proceedings.

When the matter was placed before me for hearing on 29th April, 2022, the appellant enlisted the legal service of Mr. Wilson Ogunde, learned counsel, the 1st respondent appeared in person, and the 5th respondent had the legal service of Mr. Emmanuel Machibya, learned counsel. The applicant served the 2nd 3rd and 4th respondents through substitution of service on April, 2022 and the matter was set for hearing on 19th April, 2022, and again on 29th April, 2020. However, the 2nd, 3rd, and 4th respondents did not show appearance. Given the absence of the respondents', and having in mind that

this matter is unnecessarily prolonged by their absence on several occasions, this court granted the applicant's Advocate prayer to proceed *ex parte* against the 2nd, 3rd, and 4th respondents.

In supporting the application, Mr. Wilson, learned counsel for the applicant urged this court to adopt the applicant's affidavit to form part of his submission. He submitted that the applicant has lodged an application at the District Land and Housing Tribunal for Temeke against the respondents and the 3rd respondent filed his counter-affidavit. It was his submission that at the hearing date the tribunal did not issue an order to proceed *ex parte* against the 1st, 2nd, 4th and 5th respondents. He went on to submit that during the hearing the 1st to 5th respondents were given an opportunity to argue their case and they cross-examined the applicant.

Mr. Wilson forcefully contended that the participation of the 1st, 2nd, 4th and 5th respondents was fatal since they were not allowed to argue their case. To buttress his contention he referred this court to Order VIII Rule 14 of the Civil Procedure Code Cap.33 [R.E 2019] and stressed that the matter was required to proceed *ex parte* against the 1st, 2nd, 4th, and 5th respondents.

On the strength of the above submission, the learned counsel for the applicant beckoned upon this court to nullify the District Land and Housing Tribunal proceedings and remit the file to the District Land and Housing Tribunal for Temeke and order the matter to proceed *ex parte* against the 1st, 2nd, 4th and 5th respondents.

Submitting in rebuttal, the learned counsel for the respondent submitted that the records show that 1st, 2nd, 4th, and 5th respondents cross-examined the applicant while they were not part of the hearing. It was his submission that after noting the said default, the Chairman expunged the cross-examination proceedings in regard to the 1st and 5th respondents from the record. Thereafter, the Chairman ordered to proceed with the defence case, the 3rd respondent was called to defend his case. Therefore, in his view, it was proper for the Chairman to proceed with the hearing since the cross-examinations part was already been expunged from the record. Mr. Emmanuel valiantly argued that the applicant is praying delaying tactics.

On the strength of the above submission, the learned counsel beckoned upon this court not to grant the applicant's application.

In his submission, the 1st respondent had not much to say. He admitted that the respondents were given a chance to cross-examine the applicant and later they were informed that the file was transferred to this court.

The applicant's counsel rejoinder was mainly an elaboration of what was stated in chief. Mr. Wilson stressed that after noting that there were some defects, the Chairman was already *functus officio*. It was his view that the only remedy for the Chairman was to apply for reference instead of expunging the proceedings.

The learned counsel for the applicant wound up by urging this court to nullify the proceedings and proceed *ex parte* against the 1st, 2nd, 4th and 5th respondents.

I have gone through the records and as rightly submitted by both learned counsels, the 3rd respondent is the only one who filed his Written Statement of Defence. For ease of reference, I reproduce the relevant party of the Chairman order issued on 18th April, 2018 hereunder:-

"...Going through the records, the only respondent who filled a WSD was the 3rd respondent, therefore it was the 3rd respondent only who was required to make his defence. Hence it is the 3rd respondent who

has the right to make his defence. Likewise as the 1st, to the 5th respondents participated in cross-examining the applicant, and the records in respect of their participation in particularly the cross-examination is expunged from the records. So the matter is fixed for 3rd respondent defence.”

From the above excerpt, it is clear that it was the 3rd respondent only who filed his Written Statement of Defence. Failure for the 1st, 2nd, 4th and 5th respondents to file their Written Statement of Defence is presumed that the respondents did not object the application, therefore, the matter was required to proceed *ex parte* against 1st, 2nd, 4th and 5th respondents.

Considering the findings which I have just made, it is my respectful view that, it was proper for the Chairman to expunge the cross-examination proceedings of the 1st, 2nd, 4th and 5th respondents, as along as the Chairman noted the defects before closing the hearing of the case. In doing so, the Chairman was regulating the tribunal proceedings, thus, he was in a position to rectify the errors by expunging the said proceedings. However, after going through the tribunal records, I have noted that the Chairman did not issue an order to proceed *ex parte* against the 1st, 2nd, 4th and 5th respondents. For that reason, I fully subscribe to Mr. Wilson submission that the Chairman's

omission vitiated the proceedings starting from the hearing date on 28th February, 2017 to 20th June, 2018. The said omission renders the proceedings of the tribunal starting from the day of hearing to the last date of hearing the applicant's case nullity.

On the way forward, I invoke the power vested on this court under section 43 (1), (b) of the Land Dispute Courts Act, Cap.216 [R.E 2019], I hereby quash and nullify the proceedings of the District Land and Housing for Temeke at Temeke starting from 28th February, 2017 to the last date of hearing the applicant's case. I, therefore, remit the file to the District Land and Housing for Temeke at Temeke to proceed with hearing by the same Chairman. If for any reason the Chairman will not be available, I order another Chairman with jurisdiction to step into his shoes.

The application is allowed and given the peculiar circumstances of the case where the error is purely the tribunals, I make no order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 11th May, 2022.



Ruling delivered on 11th May, 2022 in the presence of the 1st respondent and Mr. Adeni William, learned counsel holding brief for Mr. Ukunde, learned counsel for the applicant and Mr. Emmanuel Machibya, learned counsel for the 5th respondent.

