

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

MISC. LAND APPEAL NO. 74 OF 2021

(Arising from Land Application No. 834/2020 of the District Land and Housing
Tribunal for Kinondoni at Mwananyamala)

DEODATUS FAUSTINE MVULA (suing as a personal legal
representative of **FAUSTINE MICHAEL MVULA**) **APPELLANT**

VERSUS

KULWA FRANCIS MIONJO **1ST RESPONDENT**

ABUBAKARI SAID SALUM **2ND RESPONDENT**

VERONICA MSAMBICHAKA **3RD RESPONDENT**

JUDGMENT

Date of Last Order: 08/12/2021

Date of Judgment: 24/01/2022

A. MSAFIRI, J

The appellant Deodatus Faustine Mvula has instituted this appeal after having been aggrieved by the Ruling and Drawn Order of the District Land and Housing Tribunal of Kinondoni at Mwananyamala in Land Application No. 834 of 2020 whereby Hon. S.H. Wambili decided in favour of the respondents and rejected the application for Revision made by the appellant who was by then the applicant. In his grievances, the appellant has filed six grounds of appeal as follows;

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1. *That, the Honourable Tribunal Chairman erred in law and in fact in finding that in Dispute No. 15 of 2018 of Makuburi Ward Tribunal, it was the children of the late Faustine Michael Mvula who were sued and not the late Faustine Michael Mvula.*
2. *That, the Honourable Tribunal Chairman erred in law and in fact in not allowing the Revision after himself admitting that through Land Dispute No. 15 of 2018 in the Ward Tribunal for Makuburi Ward the Respondents succeeded to sue the deceased Faustine Michael Mvula and subsequently succeeded to execute the Ward Tribunal Judgment against the same deceased person through Application No. 279 of 2018 in the District Tribunal.*
3. *That, the District Tribunal Chairman erred in law and in fact in not allowing the Revision on failure of the Respondents to sue the Administrator of the estate of the deceased Faustine Michael Mvula while the dispute involved the property of the late Faustine Michael Mvula.*
4. *That, the District Tribunal Chairman erred in law and in fact in not allowing the Revision after noting that in Ward Tribunal for Makuburi Ward, the respondents sued the children of the late Faustine Mvula instead of the administrator of the estate of the late Faustine Michael Mvula.*
5. *That, the District Land Tribunal Chairman erred in law and in fact in not allowing the Revision on failure to observe that the land in dispute is surveyed and therefore the Ward Tribunal was incompetent to entertain the dispute No. 15/2018 for want of joining the Commissioner for Lands and therefore want of jurisdiction.*

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6. That the District Tribunal Chairman erred in law and in fact in not allowing the Revision on failure to observe/notice that the 2nd Respondent Abubakar Said Salum has no interest in the land in dispute.

By order of the court, the appeal was argued by way of written submissions whereas the appellant's submissions (which includes submission in chief and Rejoinder) were drawn and filed by A.J. Kannonyele, learned advocate and the respondents' reply submission was drawn and filed by Mr. Gabriel M. Maros, learned advocate.

After going through the submissions from the parties and reading carefully the records from the lower court i.e. the District Land Tribunal of Kinondoni and the Ward Tribunal of Makuburi, it is important to, albeit briefly, narrate the background of this appeal. According to the records, the dispute started at the Ward Tribunal of Makuburi where the present respondents instituted a suit, Dispute No. 15 of 2018. The dispute was instituted against "the children of Faustine Mvula," who is deceased and is the father of the appellant Deodatus Faustine Mvula. In the said dispute, the respondents were claiming that the said children of the late Faustine Mvula has invaded and close the pathway leading to their homes. That, the said pathway was allowed to them to use by the late Faustine Mvula who sold them their respective parcels of land. That the said pathway was allowed/given to them by the late Faustine Mvula so as they can pass through and be able to reach their parcels of land.

The Ward Tribunal decided in favour of the respondents that they should continue to use the pathway as they were permitted by the late Faustine

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Mvula because they have no any other way to pass through and the children of the deceased should respect the arrangement. The decision was delivered on 14/06/2018 and it was ex-parte after failure of the respondents to appear before the Ward Tribunal despite of being summoned by the same.

Aggrieved by that decision, the appellant filed an application for revision at the District Land and Housing Tribunal of Kinondoni. In the said Application No. 834 of 2020, the then applicant was moving the District Tribunal for the following Orders: -

- a) This Hon. Tribunal be pleased to make an order for extension of time within which to file an application for revision against the judgment, decree and orders of the Ward Tribunal for Makuburi Ward in Land Dispute No. 15 of 2018.....*
- b) This Hon. Tribunal be pleased to call for and examine the records and proceedings of Land Dispute No. 15 of 2018 of Ward Tribunal for Makuburi for the purpose of satisfying itself as to determine (sic) its propriety, correctness or otherwise legality as against the deceased person Faustine Michael Mvula*

By order of the District Tribunal, the hearing of the application was by way of written submissions. In the impugned Ruling of the Hon. Chairman, he decided in favour of the respondents hence this appeal.

This being the first appeal, I believe that I have a duty to reappraise the evidence adduced at the hearing of Application No. 834 of 2020 at the District Tribunal. In appraising the evidence during the hearing, as the

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hearing was conducted by written submissions, I have to go through the pleadings of the application and the written submissions by both parties. In the chamber summons filed by the applicant before the District Tribunal, he prayed that he be heard on application for extension of time within which to file Revision out of time and for the Revision of the ex-parte decree and orders of the Ward Tribunal of Makuburi in Land Dispute No. 15 of 2018. In his affidavit which supported the chamber application, the applicant adduced the reasons for delay to file for the application for Revision within the time. The reasons can be observed on paragraphs 9,10,12,13 and 15 of the applicant's affidavit.

In his submissions, the applicant through his advocate argued the application by starting with the first limb that is for the extension of time to prefer a Revision out of time. He adduced the reasons for the delay in taking action at that time.

On the second limb of his application, the applicant prayed for the District Tribunal to call for and examine the records and proceedings of the Land Dispute No. 15 of 2018. In the submission, the applicant stated that the grounds for Revision are well set in the applicant's affidavit and proceed to analyze them.

In reply submissions by the respondents which were drawn and filed by their advocate, the respondents vehemently opposed the applicant, and stated that the applicant has simultaneously chased two remedies at once i.e. seeking for extension of time to file Revision and the Revision itself.

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The respondents argued further that the applicant has not adduced good and sufficient cause for the delay and that the application for revision is of no value at this juncture, as the applicant ought to pass the extension of time's tests first. That, arguing the Revision while the extension has not been granted, will be like giving an automatic right to a party when one seeking revision out of statutory time.

I have read the Ruling of the Hon. Chairman on the Application for Revision. Surprisingly, the Hon. Chairman did not address the prayers by the applicant as they were filed and submitted before him.

I am of the view that, the Hon. Chairman should have address first the fact that the applicant, as it was rightly put by the respondents in their submissions, was chasing the two remedies at once, which were first; praying for extension of time to file Revision out of time, and second, the Revision itself.

The Hon. Chairman should have first addressed whether this practice by the applicant is proper and acceptable before the Court. And if the Hon. Chairman would have been satisfied that the practice by the applicant was proper and acceptable, he was then supposed to determine first the application for extension of time, and then second, to determine the revision itself.

However, with due respect, the Hon. Chairman failed to properly determine the application before him by going directly to determine or revised the proceedings and decision of Dispute No. 15 of 2018 without considering that the application for Revision was hopelessly out of time.

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This fact is revealed from pages 4,5 and 6 of the impugned Ruling. By this, the Hon. Chairman automatically seems to have granted the application for extension of time to file Revision without determining the reasons for the delay and without considering the submissions of the other party i.e. the respondents who were opposing the application.

It is my opinion that the Hon. Chairman should have noted that the applicant has lumped two prayers in a single application, the practice which has been termed as omnibus application and has been discouraged by the Court in numerous decisions. It is a common understanding through these decisions that two or more independent matters cannot go together in one application, unless they are interrelated and can conveniently be jointly determined by the court.

(See the case of **Geoffrey Shoo & another vs. Mohamed Said Kitumbi & 2 others**, Misc. Land Case Application No. 109 of 2020, High Court Land Registry, Dar es Salaam (unreported).

I agree with the respondents' submissions during the hearing of the application at the District Tribunal that the applicant ought to pass the extension of time tests before arguing the Revision. I am of the view that, the two prayers in the then applicant's chamber summons are not related hence they should have been filed and argued separately. Therefore, an application for extension of time to file Revision should have come first and separate from the application for Revision. If an application for extension of time could have been granted, then it is when the applicant should have filed the application for Revision.

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With respect, the Hon. Chairman should have addressed this and decide upon it. I find that the Hon. Chairman erred when he failed to address and determine properly the issues in the application before him.

Because of the irregularity and errors in the decision and Ruling of the Hon. Chairman in Application No. 834 of 2020, I see no need to address and or determine the grounds of appeal by the appellant as they are based on the findings and Ruling which is improper. I hereby invoke the revisional power vested in this Court by Section 42 of the Land Disputes Court Act (Cap 216 R.E 2019) and nullify, quash and set aside the proceedings, Ruling and Order made by the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Application No. 834 of 2020.

Appeal is allowed to that extent only. The appellant is at liberty to file the competent application(s) (if any) before the competent District Land and Housing Tribunal to pursue his rights. I make no order for the costs. Order accordingly. Right of appeal explained.





A. MSAFIRI

JUDGE

24/01/2022

