

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND REVISION NO. 1 OF 2021

HELENA BUSHMELI APPLICANT

VERSUS

LEBEKA DAUDI 1st RESPONDENT

DOTTO ELIAS 2nd RESPONDENT

(Arising from the Ruling and drawn order of the District Land and Housing Tribunal for
Katavi at Mpanda)

(G. K. Rugalema, Chairman)

Dated 20th day of April 2021

In

Misc. Application No. 8 of 2021

RULING

Date: 11/05 & 09/06/2022

NKWABI, J.:

The applicant is earnestly seeking this court's indulgence and revise the decision of the District Land and Housing Tribunal in Misc. Application no. 8/2021 which allowed execution to proceed as per the decision of the Ward Tribunal. The Majimoto Ward Tribunal decided in favour of the 1st respondent (Lebeka Daudi) in this application in Land Dispute No. 14 of 2020.

The Ward Tribunal, on 26/11/2020 had these words to say while deciding against the 2nd respondent (Dotto Elias):

"Baraza baada ya kusikiliza maelezo ya mashahidi wa upande wa malalamikaji ikaonekana kuwa maelezo ya mlalamikaji na maelezo ya shahidi yanafanana, Baraza likaona kuwa mama huyu apewe haki ya kumiliki nyumba zake mbili (2) na bila kubughudhiwa na mtu yeyote, nyumba zenyewe moja inaangalia upande wa kusini na ya pili inaangalia upande wa magharibi."

The Misc. Application No. 8/2021 which had its ruling delivered on 20th April, 2021 in the District Land and Housing Tribunal for Katavi was between Lebeka Dauti v. Dotto Elias. It is clear, therefore, that the applicant in this application for revision was neither a party in the Ward Tribunal nor in the District Land and Housing Tribunal.

Admittedly, a person who is not a party to proceedings may file an application for revision as per **Jacqueline Ntuyabaliwe Mengi & 2 others v Abdiel Reginald Mengi & 5 others**, Civil Application No. 332/01 of 2021 where it was observed:

"...It is common knowledge that an aggrieved party may appeal against a decision of the court. However, an interested party may apply for revision of the decision of the court.

... Despite the Court being conferred with both the appellate and revisional jurisdiction against the decisions of the High Court, such powers do not co-exist. Whenever there is a right of appeal, then, that right must be pursued first. ..."

It is also mundane law that right to revisions cannot, generally, be exercised where a party has a right to appeal or any other avenue to get redress. The pertinent question is, is or was the applicant having no any other avenue to get redress if she was illegally condemned in the execution proceedings?

I am aware that a person who is neither a party to execution proceedings nor the main case (decree) may file an application to the executing court to investigate as to the legality of the execution order be it attachment or vacant possession to satisfy as to the owner of the property subject of the execution process or attachment order.

In his submissions, the counsel for the applicant did not expound or relate on how the mentioned enabling provisions are applicable in this application apply, regard being had to the fact that the matter originated from the Ward Tribunal.

If the decree were inexecutable as the counsel for the applicant tries to impress upon me, that ought to have been raised in objection proceedings against the execution of the decree. In which, the District Land and Housing Tribunal would hear the parties and determine the matter. That is because, the provisions of Order XX Rule 9 of the Civil Procedure Code ordinarily will apply to suits originating from District Courts, the Courts of Resident Magistrates and the High Court, it is inapplicable for instance for matters that originate from Primary Courts, see **Julius Petro v Cosmas Raphael** [1983] TLR 346:

"... the Civil Procedure Code Act No. 498 of 1966 does not apply to the High Court when hearing appeals originating from Primary Courts. It applies to the High Court, Resident Magistrates' Court and District Courts when they exercise original civil jurisdiction and

also applies when the High Court hears appeals originating from the District Court or Resident Magistrates' Court;"

The applicant cannot be heard to talk about the rights of the 2nd respondent. I do not know if he is an advocate or a duly legally appointed representative of the 2nd respondent. So, the complaint that the 2nd respondent was not heard and that he was no proof of service of summons to the 2nd respondent cannot be entertained by this court in this application. They are dismissed. Further, the claim that there was no any right of challenging the tribunal decision which was explained in its ruling and drawn order, with the greatest respect to Mr. Lawrence John, learned counsel for the applicant, to me that claim seems to be a misapprehension of the law. If a sale can be set aside by the executing court before it has become absolute, why not an order for vacant possession?

As to the claim that right of appeal was not explained, even if it were explained, it was not intended to the applicant as she was not a party. In any way, right of appeal is provided under the law, failure to explain it to the parties is admittedly an irregularity, but that irregularity does not preclude a

party from appealing if one has such right under the law. That complaint is unmerited and it is dismissed.

In the upshot, I dismiss the application for revision not only for want of merits but also for being a wrong forum.

It is so ordered.

DATED at **SUMBAWANGA** this 9th day of June, 2022



J. F. NKWABI

JUDGE