

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

REVISION NO. 13 OF 2022

*(Originating from the decision of Hon. Kirumbi -Chairperson dated
09th March 2022 in Execution No. 09 of 2022 at Ilala District Land and
Housing Tribunal)*

PEARL HOTEL CO. LTD APPLICANT

VERSUS

IBRAHIMU YUSUPH ABDALLAH RESPONDENT

RULING

Date of Last order: 16.06.2022

Date of Ruling: 22.06.2022

A.Z.MGEYEKWA, J

This is an application for Revision against the decision of the District Land and Housing Tribunal for Ilala at Mwalimu House at Mkuranga, in Land Application No. 117 of 2018 delivered on 28.02.2019. The application is brought under section 43 (1) (b) of the Land Disputes Courts Act, Cap.216 [R.E. 2019] The application is supported by an affidavit deponed by Adnani Abdallah Chitale (applicant's Advocate).

The genesis of the controversy between the parties appears that the saga emanated from Kariakoo Ward Tribunal, where the respondent had instituted the SHAURI LA ARDHI NA. 26/2021 against the applicant, of which its decision was delivered on 01.06.2021 in favour of the respondent, in which the Applicant was ordered to repair, renovate of sheets, ceiling board and carpet of all rooms on destroyed areas and hand over the same to the respondent within forty (40) days.

Aggrieved by the decision of the trial tribunal, the applicant appealed to the District Land and Housing Tribunal for Ilala at Mwalimu House Land Appeal No. 62 of 2021. The Chairman decided on the matter and ended up dismissing the appeal on the ground that the Ward Tribunal decision was unappeasable because the Kariakoo Ward Tribunal was sitting as Conciliatory Board under section 8 (1) of the Ward Tribunal, Act No.7 of 1985.

Hence that such a decision from the Ward Tribunal was not appealable. Having so informed, the respondent filed MAOMBI MADOGO NA. 09 OF 2022 to execute the decision of the Ward Tribunal delivered on 01.06.2021 to the District Land and Housing Tribunal for Ilala at Mwalimu House.

The application was granted by the DLHT on 09.03.2022, it is from that decision of the District Land and Housing Tribunal the applicant knocking

the doors of this court to make the revision and examine the records of Proceedings of Ilala District Land and Housing Tribunal in Execution No. 09 of 2022 to satisfy itself as to the correctness, legality, and propriety of the order issued by the said Tribunal to the Effect that, the applicants make renovation of sheets, ceiling board and carpets of all rooms on destroyed areas and hand over the same to the respondent within forty days while the decision of Kariakoo Ward Tribunal in Shauri la Ardhi Na. 26/2021 which formed the foundation of the order of execution according to the decision of the District Land and Housing Tribunal for Ilala was not executable as was reconciliatory.

When the matter came for hearing the applicant was represented by Adnani Chitali, learned Advocate while the respondent was present in person without any legal representation.

Mr. Adnan Chitali in his submission prayed to this court to revise the decision made by the Ward Tribunal and District Land and Housing Tribunal for Ilala at Mwalimu House. He prayed for this court to allow the appeal and quash the decision of the District Land and Housing Tribunal for Ilala.

In reply, the respondent contended that there was an agreement between the applicant and the respondent and the parties agreed that the applicant shall renovate the respondent's house to the damages caused

as per Annexure AB made in the Local Government Office at Kariakoo on 1st March, 2021. Hence, the respondent instituted the case to Kariakoo Ward Tribunal upon the applicant's failure to repair the respondent's house, He added that the Ward Tribunal visited *locus in quo* and ordered the applicant to renovate the respondent's premises within 40 days. It was his view that the Ward Tribunal decision was sound and reasoned and the same was confirmed by the District Land and Housing Tribunal in Land Appeal No. 62/2021.

In conclusion, the respondent urged this court to decide this matter based on the evidence from both sides.

In rejoinder, the Applicant reiterated submission in chief and added that the District Land and Housing Tribunal Chairman had misdirected himself in dealing with Execution No. 09 of 2022 because the same was not executable as was the result of mediation.

After a careful consideration of the parties' submissions and having scrutinized both tribunals' records, I have to say from the outset that it appears that the decision of the Kariakoo Ward Tribunal ni Land Cause No. 26/2021 which was the genesis of the Execution Order which arises from the Execution Application No. 09 of 2022 delivered on 1st June, 2021.

At the Ward Tribunal issued the said decision, it had full mandate to give a binding decision, as it was before the amendments which were made through the Written Laws Miscellaneous Amendment Act, 2021 which waved away, the powers of the Ward Tribunal in adjudicating cases save for only mediation. The amendments came into operation on 11th October, 2021 and the Ward Tribunal order was delivered on 1st June, 2021. For ease of reference, I reproduce the Ward Tribunal order hereunder:-

“Hivyo baraza limempa Pearl Hotel CO.LTD siku 40 kuanzia tarehe 01/06/2021 mpaka tarehe 10/07/2021 kufanya ukarabati wa mabati, silingiboard na kapeti ya vyumba vyote kwenye sehemu iliyoharibiwa na kukabidhi kwa mdai ndugu Ibrahimu Yusuph ndani ya muda huo. Maanuzi hay yamesomwa leo tarehe 01/06/2021 mbele ya mwenyekiti na baraza.”

Examining the above excerpt, shows clearly the decision of the Ward Tribunal decided the matter and its order was binding and executable. In that regard, the Kariakoo Ward Tribunal when delivering its decision was exercising its adjudicating power under section 13 (2) of The Land Disputes Court Act, Cap 216 [R.E 2019] in which the same was appealable under section 19 of the Land Disputes Court Act, Cap.216 [R.E 2019].

For the aforesaid findings, I hold that the District Land and Housing Tribunal for Ilala was not correct in dismissing the applicant's appeal because the nature of the Ward Tribunal decision was binding and executable.

However, I am aware of the amendment as of today under Section 45 (a) of the Written laws Miscellaneous Amendment Act, 2021 that took away the powers of the Ward Tribunal to adjudicate cases by deleting section 13 (2) of the Land Disputes Court Act, Cap. 216 [R.E 2019] in which Ward Tribunal remained with reconciliation powers through mediation. However, I am of the view that the retrospective effect of a judicial decision is excluded from cases already finally determined.

This position was accentuated in the cases of **DPP v Iddi Hassan Chumu & Another**, Criminal Appeal 430 of 2019, **Makorongo v Consiglio** [2005] 1 EA 247 (CAT); **The Director of Public Prosecutions v Jackson Sifael Mtares & Three Others**, Criminal Appeal No. 2 of 2018; **Jovet Tanzania Limited v Bavaria N.V**, Civil Application No. 207 of 2018; **BIDCO Oil and Soap Ltd v Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 89 of 2009; and **Lala Wino v. Karatu District Council**, Civil Application No. 132/02 of 2018 (all unreported) where the Court of Appeal held that:

"Judicial decisions which set a precedent in law do have retrospective effect. First of all, the case which decides the point applies it retrospectively in the case being decided because the wrong being remedied occurred before the case was brought. A decision in principle applies retrospectively to all the persons who, before the decision, suffered the same wrong or a wrong, whether as a result of the application of an invalid statute or otherwise, provided of course they are entitled to bring proceedings seeking the remedy in accordance with the ordinary rules of law such as a statute of limitation. It will also apply to cases pending before the courts. That is to say that a judicial decision may be relied upon in matters or cases not yet finally determined But the retrospective effect of a judicial decision is excluded from cases already finally determined. This is the common law position. "

Similarly, the Court in the case of **Suzarra Jorrede St Jorre and 4 Others v. Nacisse Stevenson**, Civil Appeal SCA 5 and 6/2015 (Consolidated) stated that:-

"There is indeed a general presumption under the rule of law principle that statute and judicial decisions do not have retrospective effect on decided cases but that presumption against retrospectivity is not absolute"

The Court went further to state that: -

"As regards judicial decisions, recent authorities have reaffirmed the principle that a judicial decision which establishes a precedent has retrospective effect in the case being decided and in other cases which are pending or still to come before the courts"

In the upshot, I quash and set aside the both decision of the District Land and Housing Tribunal for Ilala in Appeal No. 62 of 2021 and Execution Application No. 09 of 2022. The applicant is hereby ordered to file a fresh appeal to the District Land and Housing Tribunal. I proceed to grant leave to the applicant to file an appeal before the District Land and Housing Tribunal for Ilala.

Order accordingly



A.Z. MGEYEKWA

JUDGE

22.06.2022

Ruling delivered on 22nd of June, 2022 via video conferencing whereas Mr. Adinani Chitale, learned counsel for the applicant and the respondent were remotely present.



A.Z. MGEYEKWA

JUDGE

22.06.2022