

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

AT DAR ES SALAAM

LAND REVISION CASE No.47 OF 2020

VICTOR ALLY KIPENGELE

(Administrator of Estates of late

Abdallah Ramadhani Mkumba)APPLICANT

VERSUS

KIJOGOO MWISHEHE.....RESPONDENT

RULING

05/05/2022 & 06/06/2022

Masoud, J.

The application by the applicant, suing as the administrator of his deceased father's estate, namely, Abdallah Ramadhan Mkumba, invited the court to revise the proceedings and order of the District Land and Housing Tribunal of Mkuranga (herein after the district tribunal) in Misc. Application No. 06 of 2017. The basis of the application was that the Chairman of the district tribunal refused the applicant's application for execution order. The order refusing granting of execution was based on a reasoning that there was a pending case in the Court of Appeal.

The district tribunal had already granted an execution order in the favour of the applicant's deceased father before the deceased passed away. The order was not acted upon prior to his death. Having been appointed as an administrator of the estate of his deceased father, the applicant made follow-ups and learnt that the order had already expired. He made a fresh application for execution, which was however, refused as already stated herein above.

The instant application is sought in relation to Misc. Application No. 06 of 2017, on the grounds that, there is no case lodged by the applicant or respondent in the Court Appeal as was held by the Hon. Chairman when he refused to grant execution order; that, there is no application for stay of execution which could have justified refusing granting of the order; that, even if there is a case in the Court of Appeal, it cannot operate as an automatic stay.

The application was opposed by the respondent. In a nutshell, the basis of disputing the application by the respondent boiled down to a claim that the application is baseless and hopeless.

The application was heard by filing written submissions pursuant to the order of the court which was duly complied with. I have considered the rival arguments in the relevant submissions of both parties. The applicant was simply saying that the reasons shown justify granting of his prayer for revision of the proceedings and order in Misc Application No. 06 of 2017, while the respondent was in a nutshell saying that the application is baseless and has to be dismissed.

On my part, I am bound to agree with the respondent albeit on a different reasoning. The application essentially invited the court to revise proceedings and order of the district tribunal in Misc Application No. 06 of 2017, while the said proceedings and order had nothing to do with the alleged refusal of granting of the execution order. In fact, the said proceedings and order related to the order which was granted before the decease passed away and not the alleged order refusing execution. The proceeding and order of the district tribunal refusing to grant the execution was not made a subject of the present application.

As such, the alleged errors on the basis of which the court is being asked to revise the proceedings and order of the district tribunal are not relevant and reflected in Misc Application No. 06 of 2017.

With the above finding, there is no basis for the revision of Misc Application No. 06 of 2017 in view of the reasons and the manner in which the application was brought.

In the upshot of the foregoing, the application is baseless on the account of the reasons given and the proceedings and order sought to be revised.

It is thus struck out with costs.

It is so ordered.

Dated at Dar es Salaam this 6th day of June 2022.


B. S. Masoud
Judge



