

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

LAND REVISION NO. 50 OF 2021

(Originating from Kinondoni District Land and Housing Tribunal, Misc. Application No. 784 of 2021)

JOSEPH MKIRAMWENI.....APPLICANT
VERSUS
ACHING SARUNGI.....RESPONDENT

R U L I N G

Date of Last Order: 09. 06.2022
Date of Ruling: 20.06.2022

T. N. MWENEGOHA, J.

The applicant is aggrieved by the decision of the District Land and Housing Tribunal for Kinondoni to allow the execution of the orders given in **Misc. Application No. 495 of 2020, vide Misc. Application No. 784 of 2021.** He has filed the instant application under Section 43 (1) (a), (b) and (2) of the Land Disputes Courts Act, Cap 216, R. E. 2019. He accompanied his application with an affidavit sworn by himself. He wants this Court to call for and examine the records of the District Land and Housing Tribunal for Kinondoni District in respect of Misc. No. 784 of 2021, in order to satisfy itself as to the correctness, legality or propriety of the Ruling so entered in that application.

The application was heard by way of written submissions, the applicant enjoyed the legal services of Advocate Godfrey Martin Silayo, while Advocate

Karilo Mulembe appeared for the respondent.

In his submissions, Mr. Silayo praying to adopt the affidavit in support of the application, was of the view that, the reasons for the applicant to seek for Revision of the Misc. No. 784 of 2021 by the Kinondoni District Land and Housing Tribunal for Kinondoni are due to irregularities occurred during the site visit. That, firstly when the chairperson visited the locus in quo, he acted as a land surveyor, by holding the tape measure and putting marks along the boundaries. Also, the chairperson did not take notes while at the site. She also failed to record observations views, opinion and conclusions. She also failed to draw the sketch map of the area. Mr. Silayo supported his arguments with a case of **Kimnidimitri Mantheakis vs. Ally Azim Dewj and 14 Others, Civil Appeal No. 2018, Court of Appeal of Tanzania (unreported)**.

In reply, Mr. Karilo argued that, what the applicant's counsel has submitted in support of the application are new facts. The same were not included in the applicant's affidavit. That, the said statements by the applicant's counsel in his submissions are from his own imagination, they have no factual basis to be relied upon. They are statements borne out of the affidavit in support of the application. Hence, they have no evidential values. That, since the parties are to be bound by their pleadings, the applicant's counsel ought to have been confined on what was stated by the deponent in his affidavit.

I have gone through the submissions of the parties through their learned counsels. Also, I made a perusal on the affidavit and counter affidavit submitted by the parties in support and against the application. The question for determination is whether the application has merits or not. To answer this question, I dwell under the provisions of the law which form the basis of the

instant application. These are Section 43(1) (a) and (b), and (2) of the Land Disputes Court Act, Cap 216, R. E. 2019. The same provide as follows;-

43.-(1)“ In addition to any other powers in that behalf conferred upon the High Court, the High Court- (a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;

(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit.

(2) In the exercise of its revisional jurisdiction, the High Court shall have all the powers in the exercise of its appellate jurisdiction.”

Plainly, based on the quoted provisions herein above, the basis of Revision is found on the fact that, the lower tribunal has committed an error material to the merits of the case resulting into injustices to the parties; the applicant in particular. In this case, the applicant has complained on how the execution proceedings were conducted especially when the District Land and Housing Tribunal for Kinondoni visited the *locus in quo*. This has been stated in the affidavit in support of the application as well as the submissions by Mr. Silayo.

The records at hand show that, on the 13th of September, 2021, the District Land and Housing Tribunal for Kinondoni made a site visit. While on site, the District Land and Housing Tribunal for Kinondoni District made some measurements of the disputed area and further, it demarcated the same. All these activities were done in the presence of the parties and their Advocates. As an emphasis of what I have observed herein above, I will reproduce part of the said proceedings which state as follows:-

"Kupima Baraza limeweka futi Kamba na kupima, kuweka demarcation, beacons kuonyesha njia."

However, the case before it, vide Misc. Application No. 784 of 2021 was in respect of execution proceedings. The orders to be executed resulted from the decision of the same tribunal given in Misc. Application No. 495 of 2020. The question I ask myself here is whether it was proper for the tribunal to make a site visit during execution proceedings and make new measurements. It has been settled in number of authorities that site visitation is for verifying the evidence given by the parties to the suit in order for the court to arrive at a just decision as far as the dispute before it is concerned. In **Kimono Dimitri Mantheakis**, (supra), it was observed that:-

"A view of locus a locus in quo ought to be, I think to check on the evidence already given and where necessary and possible, to have such evidence ocularly demonstrated in the same way a court examines a plan or map or some fixed object already exhibited or spoken in the proceedings. It is essential that after a view of a judge or magistrate should exercise great care not to constitute himself a witness in the case. Neither a view nor personal observation should be a substitute for evidence".

That is to say, we do site visit during when the case is on trial, before the decision is made. Once the court has finalized the matter, there is no room for visiting the *loqus in quo*.

Now, it is obvious that, the act by the district land and Housing Tribunal for Kinondoni to visit the site *locus in quo* while entertaining execution proceedings was wrong and an irregularity illegal. It is a clear manifestation of an irregular exercise of the Tribunal's jurisdiction. By so doing, the District Land and Housing Tribunal for Kinondoni made an error which is apparent on the face of its records in respect of Misc. Land Application No. 784 of 2021. What the District Land and Housing Tribunal for Kinondoni did indicates that the judgment in question was either not amenable for execution or the said tribunal acted illegally. Therefore, revising these proceedings and the decision including the orders that accrued from the said case is inevitable.

Eventually, the proceedings given in Misc. Land Application No. 784 of 2021 are hereby revised, the decision is set aside and the orders given are hereby quashed. I further order that, Misc. Land Application No. 784 of 2021 be retried accordingly.

The application is allowed.

It is so ordered.




T. N. MWENEGOHA

JUDGE

20/06/2022