IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 36 OF 2020
(Arising from the decision of District Land and Housing Tribunal for Temeke in Land Application No. 182/2009)

VEDASTO LESTEH LWIZAH..... APPLICANT

VERSUS

AHMADI MUSSA CHOMBO.....1st RESPONDENT
HAMISI SAID.....2nd RESPONDENT

RULING

16/05/2022 & 23/06/2022
Masoud, J.
When the parties herein had already filed their rival written submissions in respect of the application for revision of the decision and proceedings of the District Land and Housing Tribunal of Temeke in Application No. 182 of 2009 and before the judgment was composed, the first respondent represented by Ms Rita Chihoma, Advocate, moved the court by a notice of preliminary objection to the effect that this court has no jurisdiction to entertain the application. The gist of the objection that this court has no jurisdiction to entertain the sought revision was that the decision sought to be challenged in this appeal was a subject of an appeal in this court in

Land Appeal No. 111 of 2011 which appeal was heard and determined by Mwaimu J. (as he then was).

With the leave of this court, rival written submissions were duly filed by the parties. It was the submission of the counsel for the first respondent that since this court had already by way of appeal in Land Appeal No. 111 of 2011, decided on an appeal arising from Application No. 182 of 2009 sought to be revised in this application, the court lacks jurisdiction to entertain the proceedings.

The thrust of the submission by the first respondent's counsel was hinged on the position that the question of jurisdiction is so fundamental that courts as a matter of practice should be assured of their jurisdictional position at the commencement of the case as it is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction. Reliance was on this position made on the case of **Fanuel Mantiri Ng'unda v. Herman M. Ng'unda & Others** [CAT] Civil Appeal No. 8 of 1995. It was also based on the argument that with the decision of this court in Land Appeal No. 111 of 2011, the court is accordingly functus officio. On this, reliance was made on **Malik Hassan Suleiman vs SMZ**

[2005]TLR 237, and the case of **Medard v Minister for Lands Housing and Urban Developments and Another** [1983]TLR 250.

Replying to the submission on the preliminary point of objection by the counsel for the first respondent, Mr Shaibu Changuluma, learned Counsel for the applicant, maintained an opposing stance, notwithstanding the revelation of the existence of the decision of this court in Land Appeal No. 111 of 2011 which arose from the Application No. 182 of 2009 of the District Land and Housing Tribunal of Temeke. In his opposition, he argued as follow:-

One, he complained that the objection was not raised at the earliest opportunity possible but after the parties had already submitted on the application and an order for judgment made. For such reason, the objection was a mere abuse of the court process. He cited no authority in support save for Order VIII, Rule 2 of the Civil Procedure Code cap. 33 R.E 2019, and **Kig Bar Grocery and Restaurant Ltd v Garabaki and Another** [1972] EA 504.

Two, the failure to raise the objection at such earliest possible time meant that the first respondent waived his right to raise the same. Three, the existence of the said Land Appeal No. 111 of 2011 in this court which is used as the basis of the argument that this court does not have the jurisdiction to entertain the application was doubtful. It was in such respect argued that such judgment had never been availed to the applicant nor to the court. And four, even if the judgment was indeed in existence, it could not apply in the matter at hand as the applicant herein was not a part to the said proceedings. With those points, the court was invited to dismiss the application with costs for lack of merit.

Having considered the rival submissions whose points of arguments were summarized herein above, the question I am to decide is whether this court is indeed precluded from entertaining the jurisdictional point as raised by the first respondent. And if not whether the point as raised is meritorious. As indicated herein above, this point of objection was raised when the parties had already filed their respective written submissions on the merit or otherwise of the application for revision. It was however raised when the court was still yet to determine the application on merit.

Thus, going by the authority of **Mohamed Enterprises (T) Limited vs Masoud Mohamed Nasser, Civil Application No.33 of 2012 (CA),** it means that since this court was yet to make its decision in this application, it was still competent to entertain the preliminary point of objection raised.

As if the foregoing is not sufficient, I was equally mindful of the principle that preliminary points of objection must be raised at earliest possible time. I am likewise aware that jurisdictional points may be raised at any time before the matter before the court is disposed of, and may also be raised at appeal stage. See, **Richard Julius Rukambura v. Issack N. Mwakajila & Another** [CAT] Civil Appeal No. 3 of 2004, and **Tanzania Revenue Authority v. Kotra Co. Ltd** Civil Appeal No. 12 of 2009.

I have no doubt that such objection may as well be raised in respect of an application for revision as is in the present instance. Once such point of objection is thus raised, it must be determined before dealing with the merit of the matter. In the case of **The Commissioner General TRA vs. Mohamed Al-Salim & Another Civil Appeal No. 80 Of 2018, CAT**, it was held that

"Preliminary objection on jurisdiction can be raised at any stage of the proceeding. Once it is raised the court should determine it before dealing with the merits of the matter."

With the foregoing, the rival arguments by the applicant's counsel are all misplaced. Whether or not the decision of this court in Land Appeal No.111 of 2011 was not availed to the applicant or this court is not relevant. What is relevant is the existence of the decision and whether or not is in respect of Application No. 182 of 2009 sought to be revised by this court in the instance application.

In so far as this matter is concerned, I have no doubt that there is in existence Land Appeal No. 111 of 2011 between Hamisi Saidi, as the appellant, and Ahmed Chombo, as the respondent, which arose from the decision of the District Land and Housing Tribunal of Temeke in Application No. 182 between Ahmed Chombo as the applicant in the trial tribunal and Hamisi Saidi, as the respondent.

The record of the judgment and decree of the said Land Appeal of which I take judicial notice was delivered on 4/04/2013 by Hon. Mwaimu, J. (as he then was). At page 3 of the typed judgment, his Lordship was of the finding that the appeal before him"... appeal has no merit and that the

tribunal rightly decided the case in favour of [Ahmed Chombo], the respondent [in the said appeal]."

If I may add, section 79 (1) of **the Civil Procedure Code, Cap 33 R.E 2019** ("**The C.P.C"**) is equally relevant to the situation that I am facing, pertaining to a decision of the trial tribunal, which has been appealed from, and which is now again a subject of the present revision application. The provision of the said section provides that:-

> *"The High Court may call for the record of any case which has been decided by any court* ***subordinate to it*** *and in which no appeal lies thereto,"* (emphasize applied).

As the above cited provision clearly stipulates, this court can only entertain the Application for revision of the decision decided by the courts or Tribunals subordinate to it. It cannot revise its own decision as after delivering the judgment the court becomes functus officio, and hence unable to change its own decision either by way of appeal or revision.

Although, in the application at hand, the applicant wanted this court to revise the decision of the trial Tribunal in Application No. 182 of 2009, the

decision intended to be revised was appealed against and its decision upheld by this court in Land Appeal No.111 of 2011. Revising the said decision will amount into revising the decision of this court in Land Appeal No. 111/2011, delivered on 04/04/2013.

Therefore, I am joining hands with Ms Chihoma that the court has no jurisdiction to entertain the matter at hand as it had already decided the same on appeal. The proper remedy for the applicant would have been to file revision of the decision of this court in Land Appeal No.111 of 2011 to the Court of Appeal.

In the upshot of the above findings, the preliminary objection raised is meritorious. Consequently, the instant application for revision is hereby dismissed with costs.

It is so ordered.

Dated at Dar es Salaam this 23rd day of June 2022

B. S. Masoud
Judge

THE HIGH COURT OF TANZANIA
LAND DIVISION