

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND REVISION NO. 59 OF 2022**

*(Arising from the decision of the District Land and Housing Tribunal for Ilala at Ilala in Land Application No. 824 of 2021 Hon. Kirumbi-Chairperson)*

**HAMZA RAMADHANI MWANGO ..... APPLICANT**

**VERSUS**

**REGISTERED TRUSTEES ANGLICAN CHURCH OF TANZANIA**

**(DIOCESE OF DAR ES SALAAM.....1<sup>ST</sup> RESPONDENT**

**LUCAS R. MBARUKU (Administrator of the Estate of**

**GEORGE KIMWERI MBARUKU).....2<sup>ND</sup> RESPONDENT**

**ALMA R. MBARUKU.....3<sup>RD</sup> RESPONDENT**

**REMINA AUCTION MART.....4<sup>TH</sup> RESPONDENT**

*Date of last order: 20/7/2022*

*Date of Judgment: 3/8/2022*

**RULING**

**A. MSAFIRI, J.**

This is a ruling on application for revision lodged in the Court by the above named applicant on 21/12/2021 under Sections 79 (1), 68 (e) and 95 of the Civil Procedure Code [CAP 33 R.E 2019]. Essentially the applicant has moved the Court to invoke its powers of revision vested to it, to revise *Allis.*

the order made by District Land and Housing Tribunal for Ilala (hereinafter to be referred as the Tribunal) dated 22/11/2021. I have gone through the said order whereby there is a pending application before the Tribunal and it ordered the applicant not to be evicted from the disputed land and he should proceed with his business of selling motor vehicles.

Contrary to the Tribunal's order referred in the foregoing paragraph, the 2<sup>nd</sup> and 4<sup>th</sup> respondents evicted the applicant and took his motor vehicles. The applicant therefore decided to file an application before the Tribunal for orders that the 2<sup>nd</sup> and 4<sup>th</sup> respondents be called to show cause why they should not be sent to prison for disobeying the lawful order.

After hearing the applicant, the Tribunal found that the 2<sup>nd</sup> and 4<sup>th</sup> respondents disobeyed its order and because they did not enter appearance, the Tribunal ordered for their immediate arrest. Moreover the Tribunal ordered the 2<sup>nd</sup> and 4<sup>th</sup> respondents to return to the applicant several motor vehicles namely T. 148 CSL make Mercedes Benz, T 670 CVA Nissan Civilian, T 665 CVW, T 759 CVF, T 307 CZF, T 855 CWR both make Coaster, T 340 ACE and T 192 ASD both Toyota Hiace. *Adelle.*

When this application was called on for hearing on 20/7/2022, Mr. Gasper Henry learned advocate appeared for the applicant. The 1<sup>st</sup> respondent appeared through Fr. William Msaky whereas the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents did not enter appearance.

Mr. Gasper learned advocate, prayed to adopt the contents of the affidavit in support of the application and he contended that there are five prayers as per chamber summons. The learned advocate was of the view that the order of the Tribunal to commit the 2<sup>nd</sup> and 4<sup>th</sup> respondents to the prison was too difficult to implement as it was too general and upon seeking guidance before the Tribunal he was told that if he was dissatisfied with the said order the remedy was to come to this Court.

Now the learned advocate was of the view that the Tribunal erred when it issued an order to commit the 2<sup>nd</sup> and 4<sup>th</sup> respondents as civil prisoners instead they were supposed to summon them to show cause why they disobeyed the order of the Tribunal for maintenance of status quo. Similarly the learned advocate faulted the Tribunal for ordering the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents to return the motor vehicles while it was only the 4<sup>th</sup> respondent who was supposed to return the said motor vehicles. *Acts.*

The learned advocate prayed that the decision of the Tribunal be quashed and set aside and other prayers on the chamber summons be granted.

The 1<sup>st</sup> respondent had nothing to say as it did not file counter affidavit to contest the application.

Having gone through the submission by the learned advocate for the applicant, the sole issue that calls for the Court's determination is whether the present application has merits.

I wish to point out that this Court derives its powers of revision over the proceedings or any order from the Tribunals under section 43 (1) (b) of the Land Disputes Courts Act [CAP 216 R.E 2019]. The said provision provides;

***43.-(1) In addition to any other powers in that behalf***

*conferred upon the High Court, the High Court-*

*(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*

*Alle -*

*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. [Emphasis added].*

From the foregoing provision of the law, in an application of revision like the present one, the applicant must show that there is an error material to the merits of the case involving injustice. In the present application from the affidavit as well as the submission by the learned advocate, I can state without hesitation that, there is no any error material which has caused injustice to the applicant which has been established by the applicant.

I would like to address a few aspects, first on the issue of the motor vehicles complained of. It is on record that, the Tribunal ordered the 2<sup>nd</sup> and 4<sup>th</sup> respondents to return to the applicant the motor vehicles mentioned above. Similarly in the present application the applicant maintains the same prayer. On relief no. 3 on the chamber summons reads that;

*3. "That this Honorable Court may be pleased to make an order that the 4<sup>th</sup> respondent to return all motor vehicles* *Alle.*

*owned by the applicant at the premises pending the hearing and final determination of Land Application No. 444/2021"*

I am of the settled mind that the same could not have been raised and determined by the Tribunal in application subject of this revision because whether or not there were applicant's motor vehicles taken by the 4<sup>th</sup> respondent, that could have been dealt with by ordinary courts. It was an error for the Tribunal to order the above mentioned motor vehicles alleged to have been taken to be returned to the applicant instead it ought to have advised the applicant to open a civil claim before the court vested with jurisdiction.

Claims of motor vehicles do not fall within the matters to be determined by the Tribunal. Equally this Court cannot entertain let alone grant the prayer on the chamber summons to compel the 4<sup>th</sup> respondent to return the applicant's motor vehicles.

Secondly there are claims on paragraph 6 (i) and (iii) of the affidavit in support of the application, that the decision of the Tribunal was arrived at in total violation of the principles of natural justice. There was no explanation by the applicant how principles of natural justice were violated *Alla.*

as far as he is concerned. He lodged his application before the Tribunal and accordingly he was heard and the orders were issued as prayed by the applicant. Hence there was no any violation of the principles of natural justice as alleged by the applicant otherwise the applicant ought to have specifically pointed out such violation if any in his affidavit. The learned advocate for the applicant had nothing to say on this aspect in his submission.

Lastly I wish to address on the propriety of the order committing the 2<sup>nd</sup> and 4<sup>th</sup> respondents as civil prisoners. It is on record that the 2<sup>nd</sup> and 4<sup>th</sup> respondents were issued with summons to appear before the Tribunal but they did not enter appearance. The Tribunal proceeded ex parte with the matter and at the end it ordered the police to arrest the 2<sup>nd</sup> and 4<sup>th</sup> respondent and commit them as civil prisoners.

Now as it could be gathered from the record, in Application No. 444 of 2021, the Tribunal had ordered maintenance of status quo pending hearing of the main application. In the Application No. 824 of 2021, the applicant was complaining of disobedience of the orders in Application No. 444 of 2021, as the 2<sup>nd</sup> and 4<sup>th</sup> respondents evicted the applicant from the disputed premises. This to me, if things being equal, amounted to *Alibi.*

contempt of court. I have gone through the record and I found that there was a brief submission by the learned advocate for the applicant praying for the 2<sup>nd</sup> and 4<sup>th</sup> respondents be arrested and also be ordered to return the applicant's motor vehicles mentioned above.

The applicant has claimed that the order for arrest and committing the 2<sup>nd</sup> and 4<sup>th</sup> respondents as civil prisoners was unjustifiable. But very unfortunate the applicant could not say anything to substantiate how the said order was unjustifiable. However for the application for contempt of court to succeed three elements must be established;

- i. That there was a formal court order.*
- ii. The said formal court order was brought into the attention of the contemnor.*
- iii. The contemnor willful disobeyed the court order.*

The above elements must be proved beyond reasonable doubt, which in the matter at hand they were not because, there was just a brief submission by the learned advocate for the applicant. I am of the settled mind that, it was the 2<sup>nd</sup> and 4<sup>th</sup> respondents who should have complained against such order and not the applicant. This is because there was no any proof that the 2<sup>nd</sup> and 4<sup>th</sup> respondents were aware of the order of *Ally*



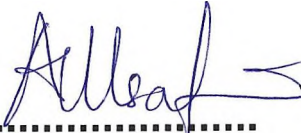
maintenance of status of quo and willfully or deliberately disobeyed the said order. Also there was no proof that the 2<sup>nd</sup> and 4<sup>th</sup> respondents took the applicant's motor vehicles as no evidence was adduced before the Tribunal.

As there was an order for maintenance of status quo and the same is claimed to have been violated, the Tribunal having issued arrest warrant should have waited for the 2<sup>nd</sup> and 4<sup>th</sup> respondents to be arrested and be brought before the Tribunal to show cause why they should not be committed as civil prisoners instead of making an order directly committing them as civil prisoners. This should have been complained by the 2<sup>nd</sup> and 4<sup>th</sup> respondents.

It is for those reasons I hold that the present application lacks merits and it is hereby dismissed. I will make no order as to costs because the 1<sup>st</sup> respondent though duly appeared, it did not file any counter affidavit.

Order accordingly.



  
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**A. MSAFIRI,**  
**JUDGE**  
**02/8/2022**