

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

LAND REVISION NO. 10 OF 2022

(Arising from the Proceedings and Orders in respect of Application No. 313 of 2021, in the District Land and Housing Tribunal for Ilala at Mwalimu House which is pending before Hon. Kirumbi-Chairperson)

ABDULWAA RITHI MUDIRIKU.....1st APPLICANT
MWINYIMVUA SELEMANI ZUNGO.....2nd APPLICANT
JOAN GODWIN.....3rd APPLICANT
MSONDA H. MWIMANZI.....4th APPLICANT
ABILAHI SALUM MBEGU.....5th APPLICANT
OMARI ALLY BWENGO.....6th APPLICANT
DAINES ABENISON MWAMATANDALA.....7th APPLICANT
JAFARI ABDALAH KAMBI.....8th APPLICANT
MOHAMED BAHATISHA.....9th APPLICANT
GULAMALA MLANGILA.....10th APPLICANT
SANIA AHMAD.....11th APPLICANT
FRIDA VUMILIA KESY.....12th APPLICANT
MORISIA FRANSICE MTWEYE.....13th APPLICANT
NEEMA IRUGA.....14th APPLICANT
GWAMAKA MLANGILA.....15th APPLICANT
BURTON NGWEWE.....16th APPLICANT
HANIFA HALIFA.....17th APPLICANT
LONGESO SANGA.....18th APPLICANT

AND

SHABANI HARUNA KAPELELE.....RESPONDENT

R U L I N G

Date of Last Order: 29. 07.2022
Date of Ruling: 16.08.2022

T. N. MWENEGOHA, J.

This application was brought under Section 41(1) and 43(1)(b) of the Land Disputes Courts Act, Cap 216, R. E. 2019. The applicants want the court to call for the records of the proceedings in respect of Land Application No. 313 of 2021, revise the same and quash the orders given thereto. Further, the applicants want this court after revising and quashing the said orders given in Application No. 313 of 2021, strike out the said case for contravening Section 13(4) of the Land Disputes Courts Act, Cap 216, R. E. 2019. They also prayed for the costs of the application be paid by the respondent and any other relief this court will see fit to grant. The application was supported by the affidavit of Mr. Hardson Mchau, learned Advocate for the applicants.

In hearing of the instant application by written submissions, the parties argued for and against it as follows.

Mr. Mchau maintained that, the applicant's are challenging the legality of the proceedings of the pending matter before the trial Tribunal. The same have disobeyed the legal requirement for the parties therein to settle for their grievances amicably before the Ward Tribunal first. That, it settled that, any proceeding affecting the title to or any interest in land shall be first resolved before the Ward Tribunal on amicable way and the Ward Tribunal has certified that it has failed to settle the matter amicably as per Section 13(4) of the Land Disputes Courts Act, (Cap. 216 R. E. 2019) as amended by Section 45(c) of the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2021, which provides as follows; -

"13-(4) Notwithstanding subsection

(1), the District Land and Housing Tribunal shall not hear any proceeding affecting the title to or any interest in land

unless the ward tribunal has certified that it has failed to settle the matter amicably."

That, due to noncompliance of the mandatory provisions above, the application before it is incompetent for being prematurely filed. To beef up his arguments, he cited the case of **Edward Kupingwa vs. Matrinda A. Pima, Civil Appeal No. 107 of 2018, Court of Appeal of Tanzania at Tabora**, where it was observed that:-

"Having quashed and set aside the above stated proceedings and Judgments, ordinarily and in line with the decision of the Court in Adelina Koku Anifa and Joanitha Sikudhani Anifa(supra) we would have directed for the suit to be heard denovo. However, in the advent of the recent amendments made to the Act by the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2021, whereby the powers of the Ward Tribunals to inquire into and determine disputes arising under the Land Act and the Village Land Act and also the powers to order recovery of the possession of land and other powers the Ward Tribunals used to have under Section 13(2) and 16(1) of the Act have been immensely stripped off by the said amendments, we find it not practicable to order the suit to be heard denovo. In these circumstances, we thus direct the respondent, if she so wishes, may file her claims afresh in accordance with the current procedure and law."

In reply, the respondent who appeared in person was of the view that, the applicants in this Revision seeks to challenge the interlocutory orders of the trial tribunal of Ilala, before which has dismissed a preliminary objection filed

advanced by the applicants. The application was ordered to proceed into hearing by Hon. Kirumbi, presiding chairperson, A.R Kirumbi. This being an interlocutory order, the same cannot be Revised as stated in the case of **Samuel Theophilus Balige vs. Selemani Rotali Mapunda, High Court of Tanzania at (Land Division)**. That, the case cited case of **Edward Kubingwa vs. Matrinda A. Pima (supra)** is distinguishable in these circumstances.

In his rejoinder, Mr Mchau reiterated his submissions in chief and insisted that, the arguments by the respondents are irrelevant to the application filed by the applicants before this Honourable Court. That, the applicants herein are challenging the procedural irregularities by the Tribunal in admitting and conducting the proceedings which affects title to land. The same were not referred before the Ward Tribunal for amicable settlement as required under the law.

Having gone through the submissions of both parties, the issue for determination is whether the application has merits. At hand, I have the records from the District Land and Housing Tribunal for Ilala District, vide Land Application No. 313 of 2021. The same has been scheduled for hearing on the 22nd August 2022. The order which the applicants need to be revised was issued on the 15th of March, 2022 against the preliminary objection raised by them (applicants) who were respondents therein. Therefore, basing on these facts, it is obvious that, what the applicants need, is for this Court to revise an interlocutory order.

Now, the position of law, as given in Section 79(2) of the Civil Procedure Code, Cap.33, R. E. 2019, does not allow aggrieved parties in an interlocutory proceedings or decision to apply for revision or file an appeal in court. The

exception given by the same provision applies only when such decision or order has an effect of determining the suit to its finality. For quick reference, I will reproduce the said provision as follows; -

(2)“ Notwithstanding the provisions of subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of the Court unless such decision or order has the effect of finally determining the suit”.

As I have already explained earlier, the impugned decision subject to this application is an interlocutory decision. Above all, it has not finalised the matter before the tribunal, hence the court can not revise such decision as it has not finalised the suit. To do so is to go against the provisions of Section 79(2) (supra) as well as the case of **Augusto Masonda vs. Widmel Mushi, Civil Application No. 383/13 of 2018, Court of Appeal of Tanzania, at Iringa (unreported)**.

To that end, I find this application to be incompetent before this Court and the same is hereby struck out with costs. I further order that the matter be remitted before the Ilala District Land and Housing Tribunal to proceed from the stage it has reached before the filing of this application.

Ordered accordingly.




T. N. MWENEGOHA
JUDGE
16/08/2022