

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 18 OF 2022

(Originating from the Judgment of District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 48 of 2010 before Hon. Lung'wecha -Chairperson)

SELEMANI HAMISI 1ND APPLICANT

ANTONY MASANJA MANGU 2ND APPLICANT

ANANIA MARKOI LOHAY 3RD APPLICANT

VERSUS

**JOHARI MIKIDADI (As the Administratrix of
Of the estate of Mikidadi Mohamed Mikidadi)..... 1ST RESPONDENT**

**ALLY SABENA BUNGA (As Administrator of
Of Sabena Ally Bunga) 2ST RESPONDET**

RULING

Date of last Order: 24.08.2022

Date of Ruling: 26.08.2022

A.Z. MGEYEKWA, J

This is an application for Revision against the decision of the District land and Housing Tribunal for Kinondoni at Mwananyamala, in Land Application No. 48 of 2010 delivered on 17th September, 2018.

The application is brought under section 41 (1) and 43 (1)(a) and (b) of the Land Disputes Courts Act, Cap 216 [R.E. 2019] The application is supported by an affidavit deposed by Selemani Hamisi, the 1st applicant.

When the matter came for hearing on 24th August, 2022, the applicant enlisted the legal service of Mr. Nickson Maganya, learned advocate, the 2nd respondent appeared in person while the 1st respondent did not show appearance. Therefore, following the prayer by the applicant's Advocate to proceed *ex parte* succeeding the absence of the respondent, this court granted the applicant's advocate prayer. The matter proceeded *ex parte* against the respondent.

The applicant's counsel was the first one to kick the ball rolling. The learned counsel stated that the Land Revision No. 48 of 2010 was heard and determined in absence of the 2nd respondent by then Sabena Ally Bunga, the father of the 2nd respondent who died before the commencing of the hearing of the matter at the tribunal. The learned counsel of the applicant submitted that the tribunal was aware that Sabena Ally Bunga passed away on 25th November, 2014, but the 2nd respondent nor his Administrator one Ally Sabena Bunga was not joined as a party to that application. To bolster his submission Mr. Nickson cited the case of **Abdullatiff Mohamed Hamis vs Mehboob Yusuph Osman & Another**, Civil Revision No. 6 of 2017 the Court held that:-

“The legal representative of the deceased was necessary...”

The learned counsel for the applicant went on to submit that the District Land and Housing Tribunal proceedings do not show whether the legal representative of the deceased was joined, thus he prayed for this court to find that the entire proceeding of the District Land and Housing Tribunal was a nullity.

The learned counsel for the applicant went on to submit that the applicants are the lawful owners of the suit land, however, they were not joined in the Application No. 48 of 2010. In his view, the omission was fatal and a denial of their right to be heard. The counsel added that they have no right to appeal therefore the only available remedy for them is revision. Supporting his submission he cited the cases of **Moses J Mwakibeta v The Editor Uhuru, Magazeti ya Chama & Others**, (TLR) [1995] 134 and **Alliance Law Chemie v Wella Attorney General** TLR 16 [1996] in both decisions the Court held that 'where the appellate judicial process has been blocked the applicant may file revision '

On the strength of the above submission, the learned counsel for the applicant beckoned upon this court to revise the District Land and Housing Tribunal Judgment of the tribunal in order to correct the errors and order

the applicant in this application to join the suit since they have interest on the suit land.

Having gone through the District Land and Housing Tribunal records, I have noted that, the applicant among other things was not a party to the Application No. 48 of 2010 which was delivered on 17th September, 2018 and followed by Execution No. 238 of 2019 which is not before this court. However, before composing the Judgment, I called the parties to address the court whether the applicant lodged objection proceedings before filing the instant application before this court.

Mr. Maganya submitted that there was an Application No.77 of 2020 between the 1st and 2nd applicants against the 1st respondent and Application No. 363 of 2022 involving the same parties. He went on to submit that the 3rd applicant also lodged Application No. 388 of 2020 suing the 1st respondent and on 27th November, 2020 both of them decided to withdraw the applications. It was his view that since there is no pending at the District Land and Housing Tribunal, the applicants can lodge an application for revision. To support his submission he cited the case of **Khalidi Hussein Muccadam v Ngulo Mtiga (as legal personal representative of the estate of Abubakar Omar said Mtiga and another**, Civil Application No. 234/17 of 2019 (unreported). He urged this court to grant the applicant's application.

Since there is no pending application before the District Land and Housing Tribunal then the application is fit for revision before this court. Now I am in position to determine it.

I have perused the tribunal proceedings to find out what transpired during the hearing of the matter at the tribunal and noted that the matter was instituted against Sabena Ally Bunga. In the tribunal's record there is a Special Power of Attorney dated 9th January, 2014 whereas Sabena Ally Bunga appointed Issa Juma Msoma to be her Attorney and assign an advocate in Land Case No. 48 of 2010 and execute any order. On 25th November, 2014, the respondent informed the tribunal that the matter was scheduled for hearing however, Issa Juma who had the Power of Attorney of Sabena Ally passed away. After the death of Issa Juma Msoma, the tribunal was required to halt the hearing of the case and allow the respondent in the original case to appoint an administrator.

Again, the records shows that Ally S. Bunge was appointed to administer the estate of the late Sabena Ally Bunga in 2015 when the matter was ongoing. However, the deceased name was not substituted as a result the judgment was delivered on 17th September, 2018 against the deceased and the administrator of the estate of the late Sabena Ally Bunga had no *locus standi* to proceed with hearing.

Similarly, naming a person who was party while in actual fact he has already perished is improper and against the law. In the case of **Lujuna Shubi Balonzi, Senir v Registered Trustee of Chama Cha Mapinduzi, CCM** (1996). This court held that:-

"(i) Locus standi is governed by common law accordingly to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with."

From the above findings, it is clear that the judgment was delivered against the deceased. This ground alone suffice to allow the application and since the said ground is based on irregularities then this court cannot determine the other grounds raised by the applicant's counsel.

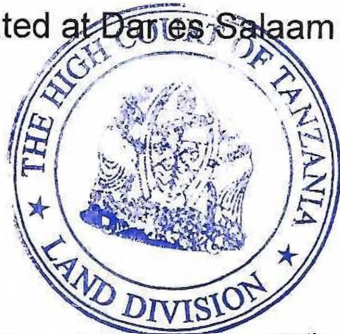
Following the above findings and analysis, I invoke the provision of section 43 (1), (b) of the Land Dispute Courts Act, Cap. 216 which vests revisional powers to this court and proceed to revise the proceedings of the District Land and Housing Tribunal for Kinondoni in Application No. 48 of 2010 in the following manner:-

- (i) The Judgment, Decree, and the proceedings of the District Land and Housing Tribunal in Application No. 48 of 2010 are quashed and set aside.
- (ii) The parties are at liberty to lodge a fresh suit.

- (iii) As the errors was caused by the District Land and Housing Tribunal, no order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 26th August, 2022.




A.Z.MGEYEKWA

JUDGE

26.08.2022

Ruling delivered on 26th August, 2022 via video conferencing whereas the learned counsel for the applicant was remotely present.




A.Z.MGEYEKWA

JUDGE

26.08.2022