

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

LAND REVISION NO. 05 OF 2023

(Arising from Execution No. 620 of 2020 and originating from Land Application No. 499 of the District Land and Housing Tribunal for Kinondoni District at Mwananyala)

MICHAEL M. KIMARO 1ST APPLICANT

PETER IGNAS RINGIA 2ND APPLICANT

VERSUS

ROSE PAUL WETTAKA RESPONDENT

Date of last Hearing: 27/04/2023

Date of Ruling: 27/04/2023

RULING

I. ARUFANI, J

Before me is an application for revision filed in the court by the applicants under section 43 (1) (a) and (b) of the Land Disputes Courts Act Cap 216 [R.E 2019]. The applicants are beseeching the court to call for the records, proceedings and decision of the Kinondoni District Land and Housing Tribunal (henceforth the tribunal) relating to Execution No. 620 of 2020 which arose from Land Application No. 499 of 2011 that resulted into the ruling and decision issued by the tribunal on 25th January, 2023. The applicants are urging the court to revise the records, proceedings and decision of the tribunal with a view of giving necessary

directions for the interest of justice to be done in the matter on the ground that there is an error material to the merit involving injustice.

The application was supported by an affidavit sworn by Ms. Bernadeta Shayo, learned counsel for the applicant and the respondent filed in the court a counter affidavit sworn by Mr. Protace Kato Zake to oppose the application. When the matter came for hearing today 27th day of April, 2023 the applicants were represented by Ms. Bernadeta Shayo, learned advocate and the respondent was represented by Mr. Theodory Primus, learned advocate. Before hearing of the matter, the counsel for the applicants notified the court she has received a letter from RK Rweyongeza & Co. Advocates which is a firm representing the respondent in the matter which notified her they were not intending to oppose the application she has filed in the court.

The counsel for the respondent, Mr. Theodory Primus told the court it is true that they are not opposing the application as they have found the proceedings of the tribunal which gave rise to the ruling and decision which the counsel for the applicant is praying to be revised involves presentation made by Mr. Protace Kato Zako who on the date of making his presentation he had not renewed his practising license. After the stated reply from the counsel for the respondent, the counsel for the applicant prayed the application be granted and the proceedings of the

tribunal be quashed and the file of the tribunal be remitted to the tribunal to proceed from where it had reached before the proceedings which involved presentation made by the counsel who had not renewed his license of practising as an advocate.

Having seeing the application is not contested the court has gone through the copy of the letter addressed to the counsel for the applicants and copied to this court, records, proceedings and the impugned ruling of the tribunal together with what is deposed in the affidavit supporting the application and find there is no justifiable reason to make it to refuse to grant the application. The court has arrived to the stated finding after seeing the counsel for the applicants deposed at paragraph two and three of the affidavit that, on 27th December, 2022 she received a summons from the tribunal which showed the matter was coming for mention on 25th January, 2023.

She stated after receiving the summons she attended the tribunal and as it was during courts vacation she believed the tribunal was going to fix a date for hearing of the matter. She deposed at paragraphs four and five of the affidavit that, after appearing before the Chairman of the tribunal, one Protace Zake Kato introduced himself as the advocate for the decree holder and requested the tribunal to order the execution of the decree of the tribunal to proceed forthwith. She stated that, although the

Court of Appeal had stayed the execution and the tribunal was well aware of the decision of the Court of Appeal but the Chairman of the tribunal indicated he would have proceeded with hearing of the substantive issues in the execution.

She deposed further that, although she reminded the Chairman that the execution was coming for mention and she requested the Chairman to fix a date for hearing of the matter when the applicants could have been heard but he refused and said he had given the applicants fourteen days from 25th January, 2013 within which they would have moved from the suit property and demolish the house standing on the land in dispute, otherwise he would have ordered the brokers to evict the applicants and to demolish the house on the suit land.

She argued that, the decree sought to be executed does not order eviction but the applicants to accord vacant possession after demolishing any structure on the suit property and the decree does not give time frame within which to vacate and demolish the structures which it was important to hear the applicants as regards to the time frame. She deposed at paragraph 6 that, upon perusing the list of the advocates allowed to practice she discovered Mr. Protace Kato Zake had no right to address the tribunal as he had not renewed his practising certificate.

That being the position of the matter the court has found that, as the law provides and specifically sections 39 (1) (b) and 40 of the Advocates Act, Cap 341 R.E 2019 no person is allowed to practice as an advocate in our courts unless he has in force a practising certificate. Since it is not disputed that Mr. Protace Kato Zake had no in force a certificate empowering him to practice as an advocate on the date it is alleged he addressed the tribunal, the court has found the proceedings involved his submission which resulted into the impugned ruling and decision of the tribunal is irregular and deserve to be revised for the purpose of putting the record of the matter proper and right.

In the premises the proceedings of the tribunal conducted on 25th January, 2023 in Execution No. 620 of 2022 and the decision made thereon is hereby revised and quashed as prayed by the counsel for the applicants and supported by the counsel for the respondent. The court is ordering the records or files of the tribunal to be remitted to the tribunal for expeditious hearing of the matter to continue from where it had reached before the proceedings and order issued by the tribunal on 25th January, 2023 which has been quashed by the court. Since the application is uncontested the court has found proper to order each party to bear his own costs. It is so ordered.

Dated at Dar es Salaam this 27th day of April, 2023



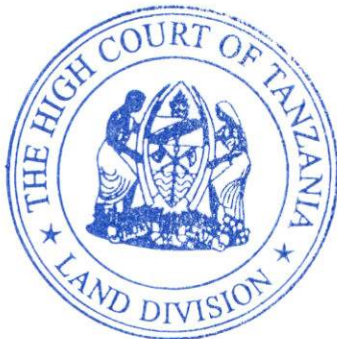
I. Arufani
I. Arufani

JUDGE

27/04/2023

Court:

Ruling delivered today 27th day of April, 2023 in the presence of Ms. Bernadeta Shayo, learned advocate for the applicants and in the presence of Mr. Theodory Primus, learned advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

I. Arufani

JUDGE

27/04/2023