

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.188 OF 2023
(Arising from Land Application No. 10 of 2019)**

1. CHRISTINE DAVID
2. YUSUF ABDALLAH NASSIR
3. JOHN KIMARO

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..... APPLICANTS

VERSUS

MAX STEPHEN COLBERT RESPONDENT

RULING

Date of the last Order: 04.05.2023

Date of the Ruling: 10.05.2023

A.Z.MGEYEKWA, J

This is an omnibus application is brought under a Certificate of Urgency. The application is made under section 14 (1) of the Law of Limitation Act, Cap.89 [R.E 2019]. The applicant is applying for an extension of time to file a Revision. The application is supported by an affidavit deponed by Sigano M. Antoni, the applicant. The application has encountered

formidable opposition from the respondent and has demonstrated his resistance by filing a counter affidavit deponed by Mr. Philemon Mujumba, the learned counsel for the respondent. Mr. Mujumba lodged the following preliminary objection:-

That the application is bad in law for abuse of the Court process.

When the matter was called for hearing on 4th May 2023, the applicant enjoyed the legal service of Mr. Sigano and Mr. George, learned counsels and the respondent had the legal service of Mr. Philemon Mujumba, learned counsel.

As the practice of the Court has it, I had to determine the preliminary objection first before going into the merits or demerits of the appeal. That is the practice of the Court founded upon prudence which this Court could not overlook.

In support of the preliminary objection, Mr. Mujumba submitted that the application is an abuse of the Court process. He valiantly argued that the application at hand is an application for extension of time to file an application for Revision against *tan exparte* Judgement which was delivered in 2021 at the District Land and Housing Tribunal for Kinondoni. Mr. Mujumba we are saying that the application at hand is an abuse of the court process because the applicant wants to challenge an *exparte* order and Regulation 11 (2) of GN 174 of 2003 states that the aggrieved party

is required within 30 days to set aside the *ex parte* order and in case they will not succeed, then the aggrieved party can file an appeal to the higher court. He went on to submit that this was done, the applicant filed a Land Application No.620 of 2022 to set aside the *ex parte* order but the same was filed out of time and hence it was dismissed. Mr. Mujumba added that the applicant filed Application No. 106 of 2023 for an extension of time to file an application for restoration out of time, but the same was struck out. It was his view that the applicants were required to file an appeal against Application No. 620 but they did not do so instead they opted to file the instant application. He stressed that the applicant filed a new application instead of doing what is stated by the law. The learned counsel for the respondent went on to submit that in case this Court will grant the instant application then they will file revision while it is not a proper remedy.

In conclusion, Mr. Mujumba beckoned upon this Court to dismiss the application with costs.

In his rebuttal submission, Mr. Sigano valiantly opposed the objection. He submitted that the application is properly filed before this Court and Regulation 11 of the Land Disputes Courts Act (District Land and Housing Tribunal) Regulation, 2003 states that the aggrieved party may within 30 days apply to set aside the order and in case of refusal appeal to the High Court. Mr. Sigano stated that the word 'may' is an option not mandatory

as stated in section 53 (1) of the Interpretation of Laws Act, Cap.1 [R.E 2019]. The learned counsel for the applicant went on to submit that the Application No. 620 and Application No. 606 are made by the first applicant in exclusion of applicants.

Regarding the issue of setting aside an *ex parte* order, the contention by the learned counsel is that the law states that where there is an *ex parte* judgment, the remedy is for the aggrieved party to file an appeal but there are special circumstances where the applicant can apply for revision. To support his submission he cited the cases of **Transport Equipment Ltd v Devram P. Valambhia** [1995] TLR 161 and **Veri Oscar v Isambaa** Civil Revision No. 1 of 2021. He argued that in the circumstances of the case at hand, there are a lot of irregularities and illegalities arising from the impugned decision, such as the issuance of service of summons. In his view filing an appeal is not a proper remedy instead revision will serve the purpose to enable this Court to go through and examine the District Land and Housing Tribunal for Kinondoni's decision.

Mr. Sigano strongly contended that the filing of the instant Application does not amount to an abuse of the court process. Mr. Sigano submitted that the instant Application is lodged by the 1st applicant with the exclusion of other applicants. It was his contention that an abuse of the court process would only occur when there is a pending matter before the Court.

He stressed that the word abuse must involve pending cases before the court which defeats the ending of litigation but there are no any pending applications. To buttress his submission he cited the case of **Halima Said Salim v Tangamano Transport Service Co. LTD and 4 others** Misc. Land Application No. 49 of 2021. He went on to submit that the previous Application was dismissed and the other Application was struck out, thus in his view, he thinks that the applicants are not precluded to file the instant Application for extension of time to file a Revision before this Court.

In conclusion, the learned counsel for the applicant urged this Court to find that the objection is misconceived, hence, the same be dismissed with costs.

In his rejoinder, Mr. Mujumba reiterated his submission in chief. He argued that the issue of service is prematurely raised but the summons was properly effected. He valiantly argued that Mr. Sigano's submission is unfounded. The learned counsel for the respondent distinguished the cited case by stating that the exceptions in filing an Application for Revision instead of an appeal do not apply in the matter at hand. He submitted that the *ex parte* order of the District Land and Housing Tribunal for Kinondoni is intact, therefore, revision is not a suitable remedy to challenge the DLHT order. He added that the Tribunal delivered its decision, and the applicants want this Court to go back to the first Ruling

while there are other decisions delivered by the District Land and Housing Tribunal.

On the alleged interest to pursue a Revision, the contention by Mr. Mujumba is that the applicant's counsel submission would hold water if only there were no any previous Applications before the District Land and Housing Tribunal. Mr. Mujumba distinguished the cited authorities by stating that the same is irrelevant to the matter at hand because the applicants did not follow the proper procedure to challenge the District Land and Housing Tribunal's impugned decision. Ending, Mr. Mujumba maintained his submission that the application at hand is an abuse of the court process, and the same be dismissed with costs.

I have dispassionately leafed through both counsels' submissions. As I delve into the substance of the parties' disputation, it behooves me to go straight to the sole objection that castigates the applicant's action, terming it an abuse of the court process.

The applicant's counsel opposed the objection by stating that the respondent's counsel objection on abuse of court process does not fit anywhere in the definition of an abuse of the court process. The law is settled in this respect. It is to the effect that, courts are enjoined to ensure that they protect themselves from any possible abuse of its powers or procedures in the conduct of proceedings. They must, as a matter of

implicit obligation, guard against the actions of unscrupulous parties who turn the courts into a theatre for endless, repetitive, and frivolous litigations, and actions that are known as an abuse of the court process. This was held by this Court in numerous cases. See the case of **Zephrenus Clement Marushwa v The Attorney General & 4 Others**, Land Application No. 241 of 2018 HC at Mwanza (unreported). The term abuse of court process has been a subject of varied judicial interpretation. In **Amaefule & Others v The State** (1998) 4 SCNJ 69 at 87, Oputa ISC held that:-

"A term generally applied to a proceeding which is wanting in bonafides and is frivolous, vexatious and oppressive. In his words abuse of process can also mean abuse of legal procedure or improper use of the legal process."

The Court further held that:

"... abuse of court process create a factual scenario where appellants are pursuing the same matter by two court process. In other words, the appellants by the two court processes were involved in some gamble a game of chance to get the best in the judicial process."

I now turn to the gist of the Application. The respondent's counsel has taken the view that the applicant's actions is an abuse of the court process, a contention that has been valiantly opposed by the plaintiff's counsel. The applicant's counsel is certain that the applicant can

challenge the decision of the District Land and Housing Tribunal by way of appeal instead of setting the same aside or filing an Application for Revision. Going through Regulation 11 (2) of the Land Disputes Courts Act (District Land and Housing Tribunal) Regulations, 2003, it is clear that the requirement of filing an appeal before this Court is after the refusal of the District Land and Housing Tribunal for Kinondoni to set aside the said order. For ease of reference, I produce Regulation 11 (2) hereunder:-

" A part to an application may where he is dissatisfied with the decision of the Tribunal under sub-regulation (1), within 30 days apply to have the orders set aside and the Tribunal may set aside its order if it thinks fit so to do in case of refusal appeal to the High Court."

There are two views of the learned counsels on how to challenge the decision of the District Land and Housing Tribunal, the applicants' counsel's view is that an appeal is not an option since there is an issue of illegality and irregularities in the Tribunal in Land Application No. 10 of 2019, thus, they preferred to file an Application for Revision. Mr. Mujumba's latter view is that the applicants had to file an appeal against the decision of the Tribunal in Land Application No. 620 of 2022. I choose to go along with the latter's view; once the Tribunal in Land Application No. 620 of 2022 dismissed the application for setting aside the *ex parte* order emanating from Land Application No. 10 of 2019, then the

applicants are precluded to file a revision challenging the *ex parte* order in Land Application No. 10 of 2019 doing so amounts to abuse of courts process. The option was for the applicants to file an appeal against the challenging the decision in Land Application No. 620 of 2022. For those reasons, the instant application for revision cannot succeed. There is nothing to prompt the applicant to pursue his aggrieveds by way of revision.

For the sake of clarity, I have read the case of **Halima Said Salim** (*supra*). In my view, this cited case is distinguishable from the instant case, the circumstances of the case are different. In the cited case, the applicant filed an application for extension of time to file a Notice of Appeal, his application was struck out for being incompetent and hence he filed a similar application which was also struck out. The Court of Appeal allowed the applicant right to withdraw his appeal thus, there was no any abuse of court process, and hence the applicant applied for extension of time to file a Notice of Appeal before this Court. While in the matter at hand as elaborated earlier, the applicants' abuse of the court process resides in an *ex parte* order of the Tribunal in Land Application No. 10 of 2019, while the Tribunal already issued another order in Land Application No. 620 of 2022 and it refused to set aside the *ex parte* order because the same was filed out of time.

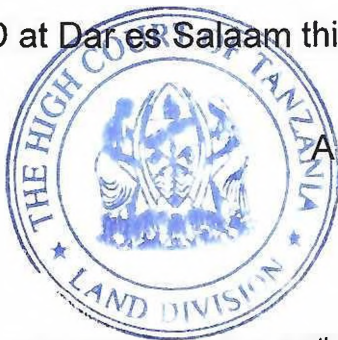
In the upshot, I find that this application for an extension of time, within which to file a revision against the District Land and Housing Tribunal of Temeke in Land Application No.10 of 2019 to this court, is ill-conceived, the intended revision cannot sail.

For the aforesaid reasons, I sustain the objection raised by Mr. Mujumba, counsel for the respondent and I restrain myself from determining the instant application for extension of time to file a revision.

In the upshot, I proceed to strike out the applicant's application. For the avoidance of doubt, the circumstances of this application are such that there should be no order to costs.

Order accordingly.

DATED at Dar es Salaam this 10th May 2023.




A.Z. MGEYEKWA
JUDGE
10.05.2023

Ruling delivered on the 10th May 2023 in the presence of Mr. George Chanaga. Counsel for the applicant also holding brief for Mr. Philemon Mujumba, counsel for the respondent.




A.Z. MGEYEKWA
JUDGE
10.05.2023