

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND REVISION NO.10 OF 2023

(Originating in Land Application No. 345 of 2020 by the District Land and Housing Tribunal for Kinondoni)

HABIBU HEMED MVUNGI.....APPLICANT

VERSUS

ACCESS BANK (T) LTD.....1ST RESPONDENT
SALOME FREDRICK MBWANGA.....2ND RESPONDENT
WAUNGWANA AUCTION MART.....3RD RESPONDENT

Date of Last Order: 07.06.2023

Date of Ruling: 30.06.2023

R U L I N G

T. N. MWENEGOHA, J.

The Applicant wanted this Court to call for, inspect and then revise the proceedings and decision given by Hon. Wambili, vide Land Application No. 345 of 2022, dated 27th January, 2023, given at the District Land and Housing Tribunal for Kisarawe. The Application was made under **section 43(1)(a) and (b) of the Land Disputes Courts Act, Cap 216 R.E 2019**. The same was supported by the affidavit of the applicant, Habibu Hemed Mvungi. It was heard by written submission and ex parte against the 1st and 3rd respondents. Advocate Dennis Malamba, appeared for the applicant, while Advocate Haruna Ntahema, represented the 2nd respondent.

Submitting for the Application, Mr. Malamba was of the view that, the proceedings were made without recording the assessors' opinion. This

was contrary to **Regulation 19(2) of the Land Disputes (District Land and Housing Tribunal Regulations), GN No. 174 of 2003 and section 23(2) of the Land Court Disputes Act, 216 R.E 2019**. Hence, the Trial Tribunal composed the judgment without the opinion of assessors. That is a fatal mistake and has led to miscarriage of justice. He also referred the case of **Tubone Mwambeta versus Mbeya City Council, Civil Appeal No. 287 of 2017, Court of Appeal of Tanzania** and **Ameir Mbarak and Azania Bank Corp Ltd versus Edger Kahwili, Civil Appeal No. 54 of 2015, Court of Appeal of Tanzania**.

In reply, the counsel for the 2nd respondent maintained that, this Application is incompetent as the applicant is challenging an order made by the Tribunal on the 17th November, 2022, where the defence hearing proceeded ex parte in absence of the applicant. He was supposed to apply for setting aside the said order, under **Regulation 11(2) of the Land Disputes (District Land and Housing Tribunal Regulations), GN No. 174 of 2003**. He cannot therefore, apply for a Revision. The instant Application is premature. Even if the applicant is not challenging the said order, but the whole proceedings and decision, the remedy available is an appeal and not a Revision, as provided for **under Regulation 24 of the Land Disputes (District Land and Housing Tribunal Regulations), GN No. 174 of 2003**. That this position was also well explained in **Transport Equipment Ltd versus Devram Valambhia (1995) TLR 161** and the case of **Christopher Lugiko versus Ahmednoor Mohamed Ally (2014) TLR 140**.

In rejoinder, the applicant's counsel insisted that, three remedies are available at the disposal of the applicant in respect of the impugned decision. That is to say, there is an Appeal, Review or Revision and no rule is in place to bar the applicant to make a choice on the three available remedies.

I have gone through the submissions of the parties through their respective counsels, along with their affidavit and counter affidavit. The issue for determination is whether the Application has merits or not.

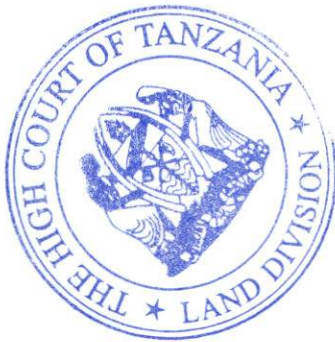
On records, I have the impugned decision, annexed to the affidavit (Annexure HHM-1). The same shows that, it was delivered on the 27th January, 2023, where the applicant was also a party (applicant) in the said case. He was in fact challenging the sale of a suit property, used as security for a loan from the 1st respondent. He participated in the hearing by parading his witnesses and producing exhibits, until the case came to an end, in favour of the respondents.

Being a party to the said proceedings which concluded the matter to its finality, he cannot seek to revise the same, while he has a right to appeal at his disposal. It has long been settled that, an Application for Revisions is not an alternative right to appeal see **Transport Equipment Ltd versus Devram Valambhia** (supra). Yes, I agree by the applicant's counsel that, there are number of remedies at the applicant's disposal, with regard to the impugned decision. However, the applicant cannot invoke the remedies blindly. Each remedy is there based on the circumstances surrounding the applicant. If the applicant was not party to the said proceedings, the Application for Revision was

not proper to him. As of now, the case is incompetent, owing to the right of appeal which is available to him.

In the end, the application is struck out with costs.

It is so ordered.





T. N. MWENEGOHA
JUDGE
30/06/2023