

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 09 OF 2023

EDMUND LUCAS SHAO.....APPLICANT

VERSUS

ASHELI MWANDA.....RESPONDENT

RULING

3rd & 24th July, 2023

L. HEMED, J.

On 31st day of January 2023, Land Application No.161 of 2012 which was instituted in the District Land and Housing Tribunal for Kinondoni at Mwananyamala (DLHT) by the applicant herein one **EDMUND LUCAS SHAO**, was scheduled to proceed for defence hearing. On the material date the respondent herein **ASHELI MWANDA** who is also the respondent in the matter at the DLHT prayed to amend his written Statement of Defence to raise a counter claim. The prayer was granted. The applicant herein was aggrieved by the said decision hence this application for revision made under section 43(1)(b) of the Land Disputes Courts Act, [Cap 216 RE 2019]. In the instant application, the applicant is

seeks for the following orders:-

"(a) That the court be pleased to call the record of the District Land and Housing Tribunal (DLHT) for Kinondoni District (trial tribunal) respecting Application No.161 of 2012 for purposes of revisiting the proceedings and decision dated 31.1.2023 and 7.2.2023 respectively, as there are errors material to the merits of the case involving injustices.

(b) That upon revision the court be pleased to quash and set aside all the trial tribunal proceedings and decision starting from 31.1.2023 and thereafter and lieu thereof the trial tribunal be ordered to continue with the defence hearing w.e.f the oral testimony of the respondent (DW1) from where it ended and per its order dated 21.1.2023.

(c) Costs of the revision be provided for by the respondent.

(d) Any other relief (s) which the court may deem fit and just to grant."

The application was supported by an affidavit of one **EDMUND LUCAS SHAO**. It was challenged *vide* the counter affidavit deponed by one **ASHELI MWANDA**. The respondent also filed a notice of preliminary

objection with one point of law that:-

"(i) That this Application for Revision is incurably defective for contravening section 79(2) of the Civil Procedure Code Act. [Cap 33 R.E 2019]."

On 5th June 2023, this Court ordered both the preliminary objection and the application be argued simultaneously. Submissions in chief were to be filed by 12th June 2023, reply submissions were to be lodged on or before 19th June 2023 while rejoinder submissions if any, ought to have been filed on or before 26th June 2023. Parties promptly complied with the order of the court.

Since both application and the preliminary objection have been argued together, I am bound to start with the preliminary objection. As aforesaid, the objection is centered on the propriety of the application in view of section 79(2) of the Civil Procedure Code, [Cap 33 RE 2019] that it has been preferred prematurely.

In arguing the preliminary objection and the application, parties were represented as follows; Mr. **Francis Mgare** learned advocate was acting for the applicant while Mr. **Frank Modestus** and Mr. **Manyangu Cleophas**, learned advocates represented the respondent.

In respect of the preliminary objection, the learned counsel for the respondent stated that the ruling subject for revision is an interlocutory one that cannot be subjected for revision, as it did not finalize the matter before the trial tribunal. According to them, on 31st day of January 2023 the Respondent herein prayed for the amendment of his Written Statement of Defence in Land Application No.161 of 2021 that is still pending for determination at the District Land and Housing Tribunal for Kinondoni at Mwananyamala (DLHT). On 7th February 2023, the trial tribunal delivered its ruling granting the prayer to amend the written Statement of Defence.

It was asserted by the counsel for the respondent that the ruling cannot be subjected to revision as it is an interlocutory ruling which in view of section 79((2) of the Civil Procedure Code, [Cap.33 RE 2019] is premature. To support their argument, they cited the decisions of the Court of Appeal of Tanzania in **Jitesh Jayantilah Ladwa & Another vs Dhirajlal Walji Ladwa & 2 Others**, Civil Application for Revision No.154 of 2020; **Total Tanzania Limited vs Mexon Sanga**, Commercial Case No.161 of 2018; and the decision of this Court in **Manoni Malawi Malando vs Chacha Mwita Wambura**, Land Case Revision No.2 of 2021. In all the said decisions, the courts were of the view that no appeal

or application for revision that can be made in respect of any interlocutory decision or order unless such decision or order has the effect of finally determining the suit.

It was argued that the order issued by the DLHT for Kinondoni to amend the written statement of defence did not determine the right of the parties nor finalized the suit and so the said order is an interlocutory order which is not subject to revision. They were of the view that the application at hand is thus defective for contravening section 79(2) of the Civil Procedure Code (*supra*).

In reply thereof, the counsel for the applicant has submitted that the preliminary objection is not on a pure point of law and is misconceived and therefore should be overruled. He was of the view that the application has been brought under section 43(1)(b) of the Land Disputes Courts Act, [Cap 216 R.E 2019]. In the opinion of the counsel for the applicant the Civil Procedure Code does not apply to the proceedings originating from the DLHT unless there is a lacuna or inadequacy to Cap.216 RE 2019. It was contended that in the instant case there is no such lacuna nor inadequacy to warrant the application of the CPC.

He asserted that even if section 79(2) of the CPC would have been applicable, still the provision applies to the High Court calling for the record of any case which has been decided by any court subordinate to it for revision purposes. He contended that DLHT is not a subordinate court to this court for purposes of section 79(2) of the CPC. Regarding the order issued on 7th February 2023 was an interlocutory order and that it has no effect of finally determining the case before the trial tribunal, he argued that, the said order of amendment of the respondent's WSD had by necessary implication an effect of finally determining the original application, because the tribunal ordered and allowed the respondent to file a counterclaim which in our contention is a new case.

In their rejoinder submissions, the learned counsel for the respondent reiterated their submission in chief. They further stated that section 79(2) of the CPC applies even in application for revision lodged under section 43(1) (b) of the Land Disputes Courts Act, (supra).

Having considered the rival submissions the issue for determination is whether the preliminary objection is meritorious. I have gone through the application and found that the impugned Ruling dated 07th February 2023 granted the prayer of the Respondent herein to amend his Written

Statement of Defence. The trial Tribunal directed the WSD to be filed within 14 days. According to the affidavits deponed in support or against the application, together with the rival submissions, it is factual that the suit is still pending before the trial Tribunal. Since the matter before the trial tribunal has not been determined to the finality, the ruling dated 7th February 2023 falls in the category of interlocutory rulings. Section 79(2) of the Civil Procedure Code, [Cap 33 RE 2019] provides thus:

"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."

The above provision prohibits application for revision of interlocutory decisions which do not have effect of finally determining the matter. The position in the above provision was insisted in the case of **Jitesh Jayantilah Ladwa & Another vs Dhirajlal Walji Ladwa & 2 others**, Civil Application for Revision No.154 of 2020, that:

"In the light of the settled position of the law, it is clear that an interlocutory ruling or order is not appealable save where it has the effect of finally

determining the charge, suit or petition.”

It was argued by the learned counsel for the applicant that the application at hand was brought under section 43(1)(b) of the Land Disputes Courts Act, [Cap 216 RE 2019], thus section 79(2) of the CPC is irrelevant to the matter at hand. It was argued by the counsel for the applicant that, application of the CPC is only when there is lacuna in Cap 216. I must clearly state that application of the CPC with limitations is only for the District Land and Housing Tribunals and not the High Court. The argument of the counsel for the Applicant prompted me to revisit section 51(1) of the Land Disputes Courts Act, (supra). I found it providing as follows:-

*"51.-(1) In the exercise of **its jurisdictions, the High Court shall apply the Civil Procedure Code and the Evidence Act and may, regardless of any other laws governing production and admissibility of evidence, accept such evidence and proof which appears to be worthy of belief.***

*(2) The District Land and Housing **Tribunals shall apply the Regulations made under section 56 and where there is inadequacy in those Regulations it shall apply the Civil Procedure Code.**" (Emphasis supplied)*

From the above-cited provisions, subsection (1) requires fully application of the CPC in the High Court when exercising its jurisdiction in land matters while subsection (2) allows application of the CPC in the District Land and Housing Tribunal only when there is inadequacy in the Land Disputes Courts (the District Land and Housing Tribunals) Regulations, GN.No.174 of 2003. Since the instant application for Revision has been filed in the High Court where the CPC is entirely applied, then section 79(2) of the CPC becomes relevant in the matter at hand.

Being mindful of the fact that the application has been brought under section 43(1)(b) of the Land Disputes Courts Act,(supra), I decided to consider it as to whether the same allows application for revision of interlocutory rulings or orders. The said section provides thus:-

"43.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-

(a)...;

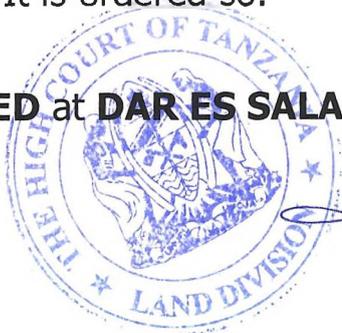
*(b) may in **any proceedings determined in the District Land and Housing Tribunal** in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order*

therein as it may think fit.” (Emphasis added).

The words “**any proceedings determined in the District Land and Housing Tribunal**” as used in the above provision supposes that for the Court to evoke its revisional powers on the proceedings of the District Land and Housing Tribunal it has to be finally determined. In the matter at hand, the order preferred for revision emanates from interlocutory ruling which in view of section 43(1)(b) of the Land Disputes Courts Act, [Cap.216 RE 2019] and section 79(2) of the Civil Procedure Code, [Cap.33.RE.2019] is premature.

In the end, I find the preliminary objection worth to dispose of the application. Since the suit is still pending in the District Land and Housing Tribunal for Kinondoni, the application for revision of the ruling and the order to amend the written statement of defence is prematurely lodged in this Court. The entire application is thus struck out. Each party to bear its own costs. It is ordered so.

DATED at DAR ES SALAAM this 24th July, 2023.



[Handwritten signature]
L. HEMED

JUDGE