

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 40 OF 2023

FATUMA SELEMAN SEIF 1ST APPLICANT

ELINAMI SAM 2ND APPLICANT

JOYCE PETER RAPHAEL (As Legal Personal Representative

of Raphael Kenyeka Geras) 3RD APPLICANT

VERSUS

REMIJA MSHUKA RESPONDENT

RULING

13^d September, 2023

L. HEMED, J.

This is an application for revision preferred under section 43(1) and (2) of the Land Disputes Courts Act [Cap 216 R.E. 2019]. In this application, the applicants seek to challenge the ruling of the District Land and Housing Tribunal for Temeke in Misc. Land Application No. 60 of 2023, dated 26th July 2023, on the ground that an order of the

Tribunal to appoint the broker to close his business is serious of illegality.

The prayers in the chamber summons are as follows: -

- "1. This Honourable Court is pleased by the 1st Applicant herein to call for and inspect the records of The District Land and Housing Tribunal for Temeke at Temeke in respect of Misc. Application No. 60 of 2023 between Remija Mshuka versus Fatuma Seleman Seif and 2 Others, the Drawn Order and Order which are dated 26th July, 2023 made by Hon. L. R Rugarabamu – Chairperson so as to identify the legality in which caused injustice to the Applicant herein and to nullify the Orders and Proceedings emanating from for the interest of Justice (sic)*
- 2. This Honourable Court is pleased to make any other order as may deem just and fit to grant.*
- 3. This Honourable Court is pleased to grant order for cost against the Respondent herein." (sic)*

The Application has been taken at the instance of **BSM ATTORNEYS ADVOCATES AND LEGAL CONSULTANCY** and is supported by the affidavit of **FATUMA SELEMAN SEIF**, the 1st

applicant in this application. The Respondent contested by the counter affidavit deponed by one **Remija Mshuka**. The respondent also raised preliminary objection on point of law that: -

- "1. That, the Honourable court lacks jurisdiction to entertain the Application as it is arising from an interlocutory order contrary to section 79(2) of the Civil Procedure Code CAP 33 R.E 2022*
- 2. That, application is incompetent for want of affidavits of 2nd and 3rd Applicants contrary to order XLIII Rule of the Civil Procedure Code CAP 33 R. E 2022*
- 3. The Application is overtaken by events as per the Judgment of the District Land and Housing Tribunal of Temeke dated 28th August 2023 in Application No. 24 of 2023."*

On the 13th day of September 2023, when the matter was called on for hearing of the preliminary objection, **Mr. Benard Maguha**, the learned advocate who appeared representing the applicants conceded to the preliminary objection particularly to the 3rd limb. He stated that, the main application before the trial Tribunal has already been conclusively

determined and the judgment was delivered on 28th August 2023. He prayed the application to be dismissed without costs.

On the other hand, **Mr. Beda Kapinga**, learned advocate for the respondent had no objection to the prayer to concede the preliminary objection but he objected the prayer for waiver of costs on the reason that the respondent has incurred costs to defend this application and that, the applicant filed this application deliberately. He therefore prayed for the costs to be awarded.

Having gone through the arguments of both parties, I have considered the applicant's prayer to concede to the preliminary objection and the prayer for the dismissal of the application without costs. However, I am at one with Mr. Kapinga that the respondent has incurred costs to defend this application. I have considered the decision in the case of **Hezekia Kyakatuka vs James Felix Nyarugenda**, Civil Application No. 27 of 2020, where the Court of Appeal of Tanzania had this to say: -

"Admittedly, the learned counsel for the applicant has readily conceded to the preliminary objection.

Also, true is the fact that the respondent engaged an advocate who has entered appearance today and has spent time and

***resources to research, file an affidavit in reply
and file the present preliminary objection.
The respondent is certainly entitled to have
his costs. "[Emphasis added]"***

On the strength of the above-cited authority, I hereby find that the respondent deserves to be indemnified for the costs he incurred to defend this application. In the circumstances, I dismiss the entire application for being overtaken by event. The applicants having decided to concede to the preliminary objection, they have saved precious time of the court and of the parties. In the circumstance the respondents are awarded half of the costs.

DATED at DAR ES SALAAM this 13th September 2023.

A circular blue seal of the High Court of Tanzania, Land Division. The seal features a central emblem with a scale of justice and a book, surrounded by the text "THE HIGH COURT OF TANZANIA" and "LAND DIVISION".
A handwritten signature in blue ink, appearing to read "L. HEMED".
**L. HEMED
JUDGE**