

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

**AT DAR ES SALAAM**

**LAND REVISION NO. 35 OF 2023**

**HADIJA MWINSHEHE SEIF as Administratrix of the Estate of the  
late TANO SEIF KIWOPE.....APPLICANT**

***VERSUS***

**SAUDA ADAM SOSELO as Administratrix of the Estate of the late  
ZENA SEIF KIWOPE.....RESPONDENT**

**RULING**

*28<sup>th</sup> August, 2023 & 5<sup>th</sup> October 2023*

**L. HEMED, J.**

Before the District Land and Housing Tribunal for Temeke at Temeke, there is a pending Land Application No.91 of 2020. It is presided over by K.A Sosthenes, the honourable Chairman. It appears that the applicant had requested the trial Chairman to recuse from the conduct of the said matter. However, by his ruling delivered on 23<sup>rd</sup> June, 2023, refused to disqualify himself from the conduct of the matter. The applicant was aggrieved by said ruling hence the instant application presented for filing on 12<sup>th</sup> July 2023 for the following orders:-

- "1. That this Honourable Court may be pleased to call for record of proceedings of the District Land and Housing Tribunal for Temeke District in respect of Application No.91 of 2020 before Hon. Kiiza (Chairman),(sic) and examine on the propriety and legality of the order made on the 23<sup>rd</sup> June, 2023 and give directions as it shall be deemed fit.*
- 2. That costs be provided for.*
- 3. Together with any other relief(s) as this Hon. Tribunal (sic)may deem fit and just to grant."*

The application was taken at the instance of the Applicant and supported by an affidavit of one **HADIJA MWINSHEHE**. It was contested by the respondent vide the Counter Affidavit of **EMMANUEL RICHARD MACHIBYA**. I directed parties to argue the application by way of written submissions, however, by the time the file was placed before me to compose this ruling, only submission in chief was in the case file. Efforts to trace the availability of the reply submission proved futile, hence the court drew inference that the respondent did not file the reply submissions.

**Mr. Edward George Mtaki** (advocate) drafted and filed the submission in chief on behalf of the applicant. It should also be noted that although the respondent could not file reply submissions, on 28<sup>th</sup> August 2023 when scheduling order for filing submissions was made, **Mr. Emmanuel Richard Machibya** (advocate) appeared to represent the respondent.

I have extensively gone through the submission of the applicant. It has been asserted that in the course of hearing the defence case, it came to her attention concerning the impartiality and fairness of the trial chairman. The applicant formed the opinion that the trial chairman has demonstrated a potential bias and secret interest in the respondent's case. The counsel for the applicant added that the applicant took the step of addressing a letter directly to the trial chairman, formally requesting his recusal from presiding over the matter but refused.

It was argued further that the applicant has preferred for this revision for purposes of ensuring that justice is seen to be done. He cited the decision in **Zabron Pangalameza v. Joachim Kiwalaka**, [1987] TLR 140. He was of the view that, from the circumstances surrounding the case

together with the complaints advanced by the applicant, one would have expected the trial chairman to have readily given the benefit of doubt in favour of the applicant. To substantiate his point, he cited the decision of the Court of Appeal of Tanzania in **Issack Mwamasika & Two others vs CRDB Bank Limited**, Civil Revision No.6 of 2016 that, among the reasons for a judge to recuse himself in the case is bias. He concluded by praying this court to intervene the proceedings of the trial Tribunal pursuant to section 43(1)(a)(b) and (2) of the Land Disputes Courts Act, [Cap.216 RE 2019].

Having gone through the submission and the rival affidavits, the question for consideration is whether the instant application has merits. In fact and as aforesaid, the applicant seeks for intervention of this court by way of revision to the ruling of the trial chairman refusing to recuse himself from the conduct of a suit which is still pending before him.

Before I embark to the merits of the application let me state at the outset that, recusal is a principle which aims at offering fair trial to parties. A party who wants a judicial officer out of the proceedings in a matter, has to place request for recusal to the same judicial office who will have to

make ruling on whether or not to recuse from the conduct of the matter before him/her. However, an order for recusal must be reached upon following a judicious consideration. In the case of **Issack Mwamasika and 2 Others vs CRDB Bank Ltd**, (supra), the Court of Appeal held *inter alia* that the yard stick should be whether the events in question rise to reasonable apprehension or suspicious on the part of a fair minded and informed member of the public that the judicial officer was not impartial.

It should also be noted that removal of the judicial officer from the conduct of the matter is within the exclusive jurisdiction of the same judicial officer presiding over the matter. It is neither the judicial officer in charge of the station nor the court of higher rank who or which have power to remove the judicial officer from the conduct of the matter assigned to him or her. In other words, the decision of the judicial officer refusing to disqualify himself/herself from the conduct of the matter cannot be subject for appeal or revision. The person aggrieved by such refusal has to wait the final determination of the matter for appeal.

I am also convinced that ruling or order of the judicial officer in regard to the request/prayer to recuse from the conduct of the matter falls

within the interlocutory orders which are not subject of appeal or revision. This is pursuant to section 79(2) of the Civil Procedure Code, [Cap.33 RE 2019] which provides thus:-

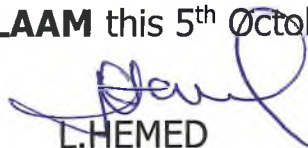
*"Notwithstanding the provisions of subsection (1), no **application for revision shall lie** or be made in respect of any preliminary or **interlocutory** decision or order of the Court unless such decision or order has the effect of finally determining the suit." (Emphasis added).*

From the above-cited provision, it is obvious that the order of the trial chairman refusing recusal from the conduct of the matter did not have the effect of finally determining the suit before him, thus falling within the category of interlocutory orders which cannot be subjected for revision.

From the foregoing, I find no merits in the application. I hereby dismiss the entire application with costs. It is so ordered.

**DATED at DAR ES SALAAM** this 5<sup>th</sup> October 2023.



  
L. HEMED

**JUDGE**