

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND REVISION NO. 49 OF 2022

(Originating in Misc. Application No. 156 of 2022 arising in Application No. 62 of 2007 in the District Land and Housing Tribunal at Kibaha)

**THE REGISTERED TRUSTEE OF KANISA
LA PENTEKOSTE TANZANIA.....1ST APPLICANT
TANZANIA INVESTMENT BANK LTD.....2ND APPLICANT**

VERSUS

**RAHMAT ALLY FUNGAMEZA (As personal legal Representative of
ALI HASSAN FUNGAMEZA, deceased.....1ST RESPONDENT
FATUMA RASHIDI RUPINDA as personal legal Representative of
RASHIDI SELEMANI RUPINDA, deceased.....2ND RESPONDENT
TATUSAID MIKUYA (As personal legal representative of SAIDI
MAULIDI MIKUYAH deceased.....3RD RESPONDENT**

Date of Last Order: 12. 12.2022

Date of Ruling: 17.01.2023

R U L I N G

T. N. MWENEGOHA, J.

The Applicants had approached this Court praying for the Court to call for inspection the records of Kibaha District and Housing Tribunal in Misc. Land Application No. 156 of 2022 and revise it as it deems fit.

Before hearing commenced, the respondents, through their advocate, Denis Michael Msafiri raised preliminary objections as follows:-

1. The Application for Revision is hopelessly misconceived for being preferred as an alternative to or instead of an appeal permitted under regulation 24 of the Land Disputes Courts (District Land and Housing Tribunals) Regulations, 2002;
2. The Application is incurably defective thus incompetent for not being supported by affidavit of the 2nd Applicant contrary to mandatory requirements of law;
3. The application by the 1st Applicant is incurably defective for not being accompanied by an affidavit made or sworn by any one or more of the trustees of the said 1st Applicant; and
4. The Affidavit purportedly sworn by one Job Cyprian Sembuche is incurably defective for:-
 - a. Containing matters in paragraph 6, 7 and 8 which are not verified at all;
 - b. Lacking locus standi to swear that affidavit as a mere principal officer without more without having been so authorized by the trustees thereof.

Hearing of the P.O was done by way of written submission. Advocate Denis Michael Msafiri appeared for the respondents, while the applicants enjoyed the legal services of Advocate Nehemia Gabo.

In the first objection, Mr. Msafiri submitted that Execution of the Decree before the District Land and Housing Tribunal is dealt with under Part V. of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2002 G. N. No. 174 of 2003 published on 27th June, 2003.

He referred to provision of Regulation 24 which indicates that any person aggrieved by the decision of Tribunal has the right to appeal. He then cited the case of **Transport Equipment Limited Vs. Devron P. Valambhia (1995) TLR 161** and insisted that Revision is not an alternative to appeal.

In reply, Nehemia Gabo, counsel for the applicant submitted that the position of law is clear that execution orders are not appealable because they are not among appealable orders provided for by order XL and Section 74 of the Civil Procedure Code (CPC). To him Part V of the (Land District and Housing Tribunals) Regulations is irrelevant to this application.

Having heard the counsels' submission I now have determine if the appeal has merit on the first point of the preliminary objection, I am enclined to agree with the view that, Regulation 24 the (Land District and Housing Tribunals) Regulations is distinguishable to the matter at hand. I find it difficult to believe that, Regulation 24 applies when a person wants to challenge the decision of the Tribunal given in Execution proceedings. For easy reference I will reproduce Regulation 24 the (Land District and Housing Tribunals) Regulations as follows;-

"Any party who is aggrieved by the decision of the Tribunal Appeal shall subject to the provisions of the Act, have the right to appeal to the High Court (Land Division)".

Based on the wording of the above quoted provision, one can argue that, the provision refers to the judgment and decrees issued by Tribunals in exercise of its original or appellate jurisdiction in land disputes. That, it does not cover Rulings emanated from Execution proceedings. However,

as this point of preliminary objection being an arguable fact I will not discuss it further or give it any weight of consideration as I see it unfit to be a preliminary objection as per the celebrated case of **Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd (1969) E.A.** With this note, I find the first objection raised by the respondents cannot stand.

Moving to the 2nd objection, it was argued by Mr. Msafiri that, the Application is incurably defective thus incompetent for not being supported by affidavit of the 2nd applicant. He insisted that, since there are two applicants in this application, each of them must swear an affidavit and the same must be attached to the chamber summons. This was also the view of the Court in **The Registered Trustees of St Anita's Greenland School (T) & 6 Others versus Azania Bank Limited, Civil Application No. 168/16 of 2020, Court of Appeal of Tanzania(unreported).**

In reply to the 2nd objection, Mr. Gabo was of the view that, he is aware that, **Order XLIII Rule 2 of the Civil Procedure Code, Cap 33 R.E 2019** requires every application be supported by an affidavit. However, failure of the 2nd applicants to file an affidavit in this application, does not render the application incompetent.

On this objection I am enclined to agree with Mr. Msafiri. The rules are well settled, where there are two or more applicants, each of them must swear an affidavit or they must swear a joint affidavit, signed by each applicant. At hand, I have only one affidavit in support of the application.

The same appears to be of the principal officer of the 1st applicant. The 2nd applicant did not swear any affidavit to support this application. Impliedly, she is either against it or unaware of its existence. Therefore, as of now she cannot be part of it unless an affidavit from her is produced to support the same. Hence, two people of different interests cannot be tied together in this Application. This application, therefore, must fail, unless the rules so stated herein above are complied with. This being the case and guided by the rules given by the Court of Appeal of Tanzania, in **The Registered Trustees of St Anita's Greenland School (T) & 6 Others versus Azania Bank Limited**, (supra), I find merits in the 2nd objection, and I sustain it accordingly.

As findings in the 2nd objection has the effect of striking out the entire application. I see no need to discuss other points of preliminary objections raised.

The application is struck out with cost as prayed.

It is so ordered.




T. N. MWENEGOHA

JUDGE

17/01/2023