

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION - DAR ES SALAAM)**

AT MOROGORO

LAND REVISION NO. 15 OF 2021

(Arising from the District Land and Housing Tribunal for Morogoro, at Morogoro in Application No. 180 of 2021 Between Faraja Trust Fund Vs. NCBA Bank (T) Limited, Adili Auction Mart & Jonas Estomih Nkya, & From the District Land and Housing Tribunal for Morogoro, at Morogoro in Application No. 86 of 2018 Between Faraja Trust Fund Vs. Commercial Bank of Africa and Jonas Nkya & Civil Case No. 149 of 2015 of the High Court (T) Between Commercial Bank of Africa Vs. Jonas Estomih Nkya).

BETWEEN

- 1. NCBA BANK TANZANIA LIMITED 1ST APPLICANT**
- 2. ADILI AUCTION MARK LIMITED 2ND APPLICANT**

VERSUS

- 1. FARAJA TRUST FUND 1ST RESPONDENT**
- 2. JONAS ESTOMIH NKYA 2ND RESPONDENT**

RULING

30th Nov, 2022

CHABA, J.

In this application, the applicants have filed an application for revision for the purpose of ascertaining the correctness, legality, propriety or otherwise of the ruling of the District Land and Housing Tribunal for Morogoro, at Morogoro in respect to Land Application No. 180 of 2021.



In summary, the matter arises in this way: Sometimes on 24th day of September, 2012, the 2nd respondent, **JONAS ESTOMIH NKYA** applied and was given a loan facility to the tune of TZS. 155,000,000/= by the 1st applicant, **NCBA BANK TANZANIA LIMITED**. To secure the said loan facility, the 2nd respondent created a legal mortgage in favour of the 1st applicant over a Right of Occupancy on Plot No. 162, Medium Density, Morogoro Township under Certificate of Title No. 19854 registered in the names of Jonas Nkya (2nd respondent). As gathered from the records, the 2nd respondent breached his repayment obligations on the outstanding loan facility to the tune of TZS. 211,267,273.68/=, hence the 1st applicant instituted the case before the High Court of Tanzania, praying for orders directing the 2nd respondent to repay all the outstanding sum, for orders allowing the 1st applicant to sell the mortgaged property to recover the outstanding sums plus interests and costs of the suit.

The record reveals further that, the High Court (this Court) issued a decree on a judgment entered on admission on 12th July, 2016 against the 2nd respondent before Hon. Dyansobera, J. It appears that, the parties were satisfied with the judgement pronounced by this Court, and therefore the 1st applicant filed an application for execution before this Court seeking to execute the decree of the judgment by



way of attachment and sale of Plot No. 162 under the Certificate of Title No. 19854 located at Morogoro Township/Municipality. The order of execution was delivered on 23/7/2019 by Hon. J. E. Fovo, Deputy Registrar, High Court of Tanzania, Dar Es Salaam Zone.

In pursuit of her rights, the respondents knocked the doors of the DLHT for Morogoro vide Land Application No. 86 of 2018, which was dismissed for want of prosecution on 17th July, 2020, and Application No. 194 of 2019 which again was dismissed for want of prosecution on 15th July, 2021.

With all the above acrobatics, things could not end there because the 1st respondent filed a land matter which were registered as Land Application No. 51 of 2021 and Misc. Land Application No. 180 Of 2021 against the 1st applicant and the 2nd respondent which triggered the present revision application.

Dissatisfied with what was transpiring before the DLHT for Morogoro, at Morogoro the 1st applicant moved this Court under the certificate of most extreme urgency inviting the Court vide the chamber summons made and taken out under the provisions of section 79 (1) (a) and section 95 of the Civil Procedure Code, [Cap. 33 R. E, 2019], to call the records of the proceedings of the DLHT of Morogoro in Land Application No. 180 of 2021 for purposes of this



Court to satisfy itself as to the correctness, legality or propriety of the said proceedings in the light of the judgment and decree of the High Court of Tanzania in Civil Case No. 149 of 2015 between the Commercial Bank of Africa and John Estomih Nkya dated 12th July, 2016 and the ruling and orders issues by the DLHT for Morogoro in Application No. 86 of 2018 between Faraja Trust Fund, Commercial Bank of Africa and Jonas Nkya (herein the 1st respondent, 1st applicant and the 2nd respondent).

The application was supported by an affidavit deposed by Mr. Peter Kibatala, learned counsel. The application encountered formidable opposition from the respondents who demonstrated their resistance by filing a counter affidavit and notice of preliminary objection claiming that; **One**, The application is incurably incompetent and bad in law for having been lodged as omnibus application, and **Two**, That, the application is frivolous and vexatious an abuse of Court process. However, the objections were overruled, and the Court proceeded to hear and determine the application on merits.

When the matter was called on for hearing on 13th Sept, 2022 the Mr. Endrew Chima, learned counsel entered appearance for the the respondents. Mr. Chima also held brief for Mr. Alphonse Nachipyangu, learned counsel for the applicants. Thus, with the



parties' consensus, it was agreed that the matter be disposed of by way of written submissions.

Arguing in support of the application for revision, Mr. Nachipyangu commenced his submission by responding to the allegation aired by the respondent's counsel that, the matter should be dismissed as the subject matter in dispute has already been sold and hence taken by an event. He went on arguing that, the present application does not challenge the ownership of the said subject matter, rather it is calling the Court to satisfy itself as to jurisdictional correctness, propriety and legality of the proceedings concerning the Judgment and Decree of this Court in Civil Case No. 149 of 2015 between the parties herein dated 12th July, 2016 and of 15th July, 2020, Orders issued by the DLHT for Morogoro vide Application No. 86 of 2018, Application No. 180 of 2021 and all prayers made in the chamber summons in respect of this Application for Revision challenging procedural issues done by the DLHT for Morogoro.

He submitted further that, the claim by the respondent's advocate that the property has been sold are mere words, with no official information regarding the same from real clients, nevertheless the same could not make this Court to evade from what the applicants have prayed for reasons set above. He added that, since the High of



Tanzania is the Court of record, anything done by subordinate Courts or Tribunals if left unchallenged while it is apparent not correct, not propriety, and it is procedural illegal, those kinds of actions will continue and leave scars to Judicial as whole.

He accentuated further that, the confusion that has been created by the DLHT for Morogoro in the way or manner in which are being conducted, has the net effect of delaying and derailing justice, as well as arresting lawful Execution of a High Court Decree.

It is on the strength of the above submission, the learned counsel for the applicants beckoned upon this Court to grant prayers made in the chamber summons with costs.

Opposing the application, Mr. Chima, learned counsel for the respondent's prayed first to adopt the contents of counter affidavit to form part of his reply to the applicant's submission and contended that, there is no pending matter before the DLHT for Morogoro, at Morogoro for this Court to call and examine the record perse. He continued to submit that, after all the cases filed in the DLHT were dismissed for want of prosecution and merits as well, and the sale of disputed landed property took place on the 25th June, 2022. He said, this Application has no legal base to warrant the Court intervene through revision as there is nothing for this Court to revise as to the



impropriety, legality and correctness of the applications filed by the applicants.

Mr. Chima stressed that, this application for revision (Land Revision No. 15 of 2021) has been overtaken by events as the Landed Property, to wit; Plot No. 162, with Title No. 19854 on 25th June, 2022 by the act of the 1st applicant through RAISSA COMPANY LIMITED was disposed by way of sale in public auction to one EDWIN BEDA KESSY. He underlined that, since the application for revision has been overtaken by events triggered by the applicants themselves, apparently there is nothing for this Court to revise. In other words, this application dies a natural death, and it ought to be dismissed in its entirety with costs.

To end up his submission, Mr. Chima insisted that this application has been overtaken by events due to the auction conducted by the applicants and further that up to this moment there is nothing pending at the DLHT for Morogoro as between the parties herein to warrant this Court execute the prayers sought by the applicants. He prayed this application be dismissed in its entirety with costs.

Having summarized the rival submissions from both parties and scrupulously gone through these rivalry submissions, the only issue



for consideration, determination and decision thereon is, whether the present application for revision has merit.

In the instant application, the Court is called upon to invoke the provisions of section 43 (1) (b) of the Land Disputes Courts Act [Cap. 216 R. E, 2019] (as per my ruling dated 1/6/2022) which provides tat:

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

(a) NA;

(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.

(2) NA.

As depicted from the above provisions of the law, this Court may invoke its revisional powers, where it appears that there has been an error material to the merits of the case involving injustice. Indeed, this is a cornerstone of the whole application for revision under



consideration upon which the Court is called upon to determine whether there are sufficient grounds for the Court to invoke its revisional powers to grant the orders sought by the applicants.

It is the applicant's complaint under paragraph 10 of his affidavit that, the confusion that has been created by the DLHT for Morogoro in the way or manner in which it has handled the proceedings before it, it has the net effect of delaying and derailing justice, as well as arresting lawful execution of a High Court Decree.

As far as this application is concerned, I am alive to the fact that, before and after the filing of this application, some developments had ensued regarding the decision of this Court in Civil Case No. 149 of 2015 pertaining to the execution of the landed property which is a subject matter of this application for revision. As rightly pointed out by Mr. Chima and evidenced by the relevant documentary evidence, on 25th June, 2022, the subject matter of this application was disposed of by way of sale in a public auction to one Edwin Beda Kessy. It is therefore clear that, as we speak, the decree which relates to the matter at hand has already been executed. In my considered opinion, the circumstances in respect of the application have gone beyond the stage at which to determine the application for revision in Misc. Land Application No. 180 of 2021 and Application No. 51 of 2021 which has



already been executed will be meaningless. In this regard, I am in accord with the learned counsel for the respondents that, the present application has been overtaken by events triggered by the applicants themselves and apparently there is nothing for this Court to revise.

Moreover, the prayers advanced by the applicants seeking intervention of this Court, is for this Court to call for the records of the proceedings in the DLHT for Morogoro vide Application No. 180 of 2021 so as to satisfy itself as to the question of jurisdictional, correctness, propriety and legality of the proceedings. However, this was already taken care of by the DLHT vide Application No. 51 of 2021, where the applicants raised preliminary objection on the same grounds on jurisdiction and the same being res-judicata. According to the records, the DLHT agreed with the applicants and sustained the objections, hence dismissing the application with costs. For ease of reference, I wish to quote what the Hon. Chairperson stated in its ruling dated 20th May, 2022 on pages 6 - 7: -

"Kwa kuegemea katika kifungu hiki cha sheria, na kwa kuwa wadaawa shauri lao la aina hii lilifutwa kupitia kanuni 11 (1) (b) supra, ilitakiwa ndani ya siku 30 kufungua maombi ya kutengua amri ya kufuta. Kitendo cha kufungua kesi mpya ni kinyume cha matakwa ya sheria na kinasababisha baraza



hili likubaliane na pingamizi hili kuwa halina mashiko na shauri hili linafutwa kwa gharama."

I wish to point out here that, whenever it is shown that the application will no longer serve the purpose it was intended to or that an application has been overtaken by events, the Court has in several cases dismissed such applications. For instance, in the case of **Seleman Zahoro & 2 Others Vs. Faisal Ahmed Abdul** (Legal representative of the deceased Ahmed Abdul), Civil Application No. 1 of 2008, the Court of Appeal of Tanzania upheld a preliminary objection for reasons that, the decision of the learned judge sought to stay was overtaken by event.

Similar principle was well articulated in the case of **Project Manager of Nomreco Vs. Joseph Urion and Nakara Auction Mart**, Civil Application No. 72 of 1998 wherein the Court held: -

"On a matter which has been executed cannot serve any useful purpose because the matter has been overtaken by event."

In the circumstances, I am satisfied that the application is misconceived because it has been overtaken by the event as the proceedings which were complained of had already been taken care



of by the same DLHT in favour of the applicants. I am therefore, of the considered opinion that, allowing this application will be an abuse of the Court process and useless because even if the application is granted it will not serve any purpose in law.

For the reasons I have endeavored to deliberate herein above, I am satisfied that, this application is without merits. It is hereby dismissed in its entirety with no order as to costs. **I so order.**

DATED at MOROGORO this 30th day of November, 2022.




M. J. CHABA

JUDGE

30/11/2022