IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE REVISION NO. 23 OF 2019

(Arising from the decision of the District Land and Housing Tribunal for Ilala in Land Application No. 218 of 2013 (Hon. Mbega, Chairman)

SHENAZ ISMAIL NORAY.....APPLICANT

VERSUS

DHIRAJIAL MULJI DURASA.....RESPONDENT

Date of Judgment: 16/11/2020

Date of Last Order: 16/09/2020

JUDGMENT

I. MAIGE, J

This is an application for revision against the ruling of the District Land and Housing Tribunal for Ilala ("the DLHT") overruling a preliminary objection as to jurisdiction. The application has been preferred under section 43(1) of the **Land Courts Disputes Act, Cap. 216, R.E., 2019, ("Cap.216").** The application is founded on the affidavit of the applicant. The respondent, in addition to deposing a counter affidavit, has filed a notice of preliminary objection to the effect that the application is an abuse of the court process

and is barred by Act No. 25 of 2002 since the main case is still pending at the **trial tribunal.**

In his brief written submissions in support of the preliminary objection, Mr. Ngudungi has informed the Court that according to section 79 of the **Civil Procedure Code, Cap. 33 R.E., 2019 ("the CPC")**, a revision does not lie against an interlocutory decision unless it finally and conclusively determines the matter in controversy. The counsel further referred the Court to the decision of the Court of Appeal in **Augustino Masonda vs. Widmel Mushi, Civil Application No. 383/13 of 2018** in support of that position. He therefore urged the Court to dismissed the application.

In rebuttal, Miss. Rwechungura who represented the applicant contends that, the provision of section 79 of the **CPC** in so far as it is limited to revisions under the **CPC** does not apply to the instant revision which is under section 43(1) of the **Cap.216.** She submits that in the said provision, there is no discrimination between final decisions and interlocutory ones. She thus urges the Court to overrule the preliminary objection.

I have considered the rival submissions and I am in agreement with Mr. Ngudungi that, the application is barred by section 79(2) of the **CPC**. Much as it is true that this application is not made under section 79(1) of the **CPC**, I do not agree with Miss Rwechungura that the provision of section 79(2) of the **CPC** is irrelevant in a revision preferred under **Cap 216.** I will justify my position as I go along.

Under the express provision of section 2 of the **CPC**, the provisions of the CPC apply, unless otherwise expressly provided by any other written law, *"to all proceedings in the High Court of the United Republic of Tanzania, courts of resident magistrates and district courts".* The provision of section 43(1) of **Cap. 216** is obviously one of such provisions. The provision however, aside from providing for a right to apply for revision, it is silent on whether the same can be preferred against interlocutory decision. The provision of section 79 of the **CPC**, I have read it between lines, does not exclude its application in revisional jurisdiction of the High Court conferred by other written laws save only for revisional jurisdiction under Magistrate Court Act which does not, according subsection (3) of section 79, fall under any limitations imposed by the section. For clarity, I will reproduce here below the subsection, thus:-

> *(3) Nothing in this section shall be construed as limiting the High Court's power to exercise revisional jurisdiction under the Magistrate's Courts Act"*

It is a rule of statutory interpretation that, when one or more things of a class are expressly mentioned, others of the same class are excluded. This principle emanates from the Latin maxim *expressio unius est exclusio alterius.* From the above principle therefore, in the absence of any other provision in **Cap. 216** expressly permitting revision against an interlocutory decision not finalizing the matter in controversy, the provision of section 79(3) of the **CPC** is applicable in the instant case. I will further substantiate my proposition hereinafter.

Section 51 (1) (b) of the same law expressly provides for application of the provisions of the CPC subject to the conditions therein stated. It provides as follows:-

51 (1) (b) of the Land Disputes Courts Act, Cap. 216, R.E, 2019 which provides as follows:-

> *51.-(1) In the exercise of the respective jurisdictions, the High Court and District Land and Housing Tribunal shall apply the Civil Procedure and the Evidence Act-*
>
> *(a) subject to regulations made under section 49 may accept such evidence as is pertinent and such proof as appears to be worthy of belief, according to the value thereof and notwithstanding any other law relating to adduction and reception of evidence.*
>
> *(b) shall not be required to comply or conform with the provisions of* ***any rule of practice and procedure otherwise generally applicable in proceedings in appellate or revisional court,*** *but may apply* ***any such rule where it considers the application thereof would be advantageous to the exercise of such jurisdiction.*** *(emphasis supplied)*

It is express in the above provisions that, though the provisions of the **CPC** are generally applicable to the High Court in exercise of its jurisdiction in land disputes, its application is not strict. It is regulated by two considerations. First, if the respective rule of practice or procedure is generally applicable in appellate or revisional jurisdiction of the High Court. Two, if the application of the rule is advantageous in the exercise of such jurisdiction. I submit that both the two conditions are available in the instant matter. I will explain.

The rule that appeals and revisions cannot be preferred against interlocutory decisions is a principle of general application in the High Court. The rule is advantageous in the exercise of the appellate and revisional jurisdiction of this Court as it prevents unnecessary multiplicity of appeals and revisional proceedings which would possibly be preferred after final and conclusive determination of the controversy by the trial tribunal without occasioning any failure of justice. For, the correctness or otherwise of the interlocutory decision in question can be raised at the moment in time the aggrieved party is challenging the final and conclusive decision. In my view, allowing parties to prefer appeals and/ or revisions against interlocutory decisions which do

not finalize matters in controversy, will create a room for abuse of the court process and thereby leading to unnecessary prolongation of proceedings.

It is for the foregoing reasons that I agree with Mr. Ngundungi, learned advocate for the respondent that the prohibition of applying for revision against interlocutory decisions under section 79(2) of the CPC applies in the instant application. As a result, I sustain the preliminary objection and strike out the application, with costs, for being premature.

It is so ordered.

I. Maige

JUDGE

16/11/2020

Ruling delivered in the presence of the applicant in person and Jacqueline Kulwa, learned advocate for the respondent this 16th day of November 2020.

I. Maige

JUDGE

16/11/2020