

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 29 OF 2019

(Arising from the Decision of the District Land and Housing Tribunal for
Temeke District in Misc. Land Application No. 211 of 2019)

MFAUME KILANGI APPLICANT

VERSUS

MAGRETH MKWEZI RESPONDENT

RULING

Date of Last Order: 14/06/2021 &
Date of Ruling: 09/07/2021

S.M KALUNDE, J:-

The ruling determines an application for revision filed by MFAUME KILANGI ("**the applicant**"). The application is preferred by way of Chamber Summons under section **43 (1) (b)** of **the Land Disputes Courts Act, Cap. 216 R.E 2019**. In support of the application, the applicant swore a two-page affidavit. It is the request of the applicant that this Court be pleased call and examine the records of the District Land and Housing Tribunal for Temeke District ("**the DLHT**") and satisfy itself of the correctness, legality or propriety of an order delivered on 25th October, 2019.

The facts leading to the impugned order as could be discerned from the records of the case file as well as the affidavit in support of the application is that, before the Makangarawe

Ward Tribunal ("the ward tribunal") the respondent filed **Case No. 38 of 2018** against the applicant, claiming that the applicant had trespassed into her land erected a wall and planted trees. On 27th December, 2018, the ward tribunal delivered a judgment in favour of the applicant. The respondent was aggrieved by the decision of the ward tribunal, on 08th February, 2019 he filed **Land Appeal No. 10 of 2019** at the DLHT. Upon hearing the parties, on 19th August, 2019, the DLHT (**Hon. A. R. Kirumbi, Chairman**) dismissed the appeal.

Upon dismissal of the appeal, the applicant filed an application for execution with the DLHT. The application was registered as **Misc. Application No. 211 of 2019**. Upon hearing the parties, on 25th October, 2019, the DLHT (**Hon. A. R. Kirumbi, Chairman**) delivered its ruling wherein it stated that:

"I have gone through the trial tribunal's records and the judgment which the applicant intends to execute is non executable because this judgment is invalid for lacking the signatures of the members who decided the matter, so its authentic is questionable.

Therefore, under the powers given to me under section 36 (1) and 2 of the Act No. 2 of 2002, I hereby revise the whole proceedings and judgement for being a nullity, and the party who think his right over the suit land has been interfered may file a fresh suit before the competent, tribunal/court.

It is so ordered. Right of appeal explained.

**Sgnd.
Chairman
25.10.2019**

The above order of the DLHT in Misc. Application No. 211 of 2019 is the basis for the present application. The basis of the applicant's challenge is that the above decision in Misc. Application No. 211 of 2019 contradicted the decision of the same DLHT, presided by the same Chairman, **Hon. A. R. Kirumbi** in Land Appeal No. 10 of 2019 where the tribunal stated that the ward tribunal was properly constituted, and the said decision was signed and sealed by the presiding Chairman. The respective part of the tribunal judgment being referred is to be found on page 7 of the typed judgment where it is provided that:

"Also having perused the said judgment and records of the proceeding, it is my considered view that the matter before the Ward Tribunal was heard in the presence of a chairman and other members of the Tribunal and the said decision was signed and sealed by the Chairman presiding over the Tribunal.

This being the case, I do not see any error or anomaly which occasioned injustice with regard to the said judgment and proceeding."

On 16th March, 2020 the Counsel for the respondent prayed that the application be argued by way of written submissions. The prayer was supported by the applicant who was unrepresented. The prayer was granted, and a schedule was issued for filing the submissions. The applicant's submissions were drawn gratis the Legal and Human Rights Center and filed by the applicant and those of the respondent were drawn gratis by **Ms. Yuaja E. Balankiliza**, learned advocate from the Legal Assistance and Social Welfare and filed by the respondent. Submissions in chief and a reply thereof were duly filed, however, the applicant did not

file a rejoinder. Obviously, it is within his right to do so or otherwise.

In support of the application the applicant argued that in Land Appeal No. 10 of 2019 one of the grounds raised by the respondent was that the tribunal was not properly constituted and the DLHT resolved the ward tribunal was properly constituted and its judgment was properly signed and hence valid. He argued that, it was incorrect and illegal for the DLHT presided by the same chairman to change its position in a subsequent ruling in Misc. Application No. 211 of 2019. He said that upon delivering its decision in Land Appeal No. 10 of 2019, the DLHT became *functus officio* as to the constitution of the ward tribunal. Support his view he cited the case of **Zacharia vs. Rwechungura**, PC Civil Appeal No. 73 of 2004. The applicant concluded with a request that this Court revises the decision of the DLHT.

In response the respondent cited section 43 (1) (b) of **the Land Disputes Courts Act** (supra) and argued that, in accordance with the said section this Court, before invoking its revisional powers, must be satisfied that there is there has been an error material to the merits of the case involving injustice. The respondent contended that, through the applicant's affidavit and submissions in support of the application the applicant has failed to identify an error material to the merits of Misc. Application No. 211 of 2019.

It was also submitted that, the Chairman of the DLHT was correct to rule that the judgment of the ward tribunal was not executable as its authenticity was questionable. In support of argument, the respondent argued that, even the applicant's affidavit appended a judgment of the ward tribunal which is not executed by the members of the ward tribunal. Further to that, it was alleged that, since the DLHT, through Misc. Application No. 211 of 2019, was considering an application for execution, it was proper for the Chairman to consider the authenticity of the appended judgment of the ward tribunal. The respondent pleaded to this Court that the application be dismissed with costs for lack of merits.

Having gone through the records from the ward tribunal, the DLHT and the submissions filed by the respective parties the question for my determination is whether the present application is merited.

It is on record that that the decision of the Mkangarawe Ward Tribunal in **Case No. 3 of 2018** was handed over in favour of the applicant. The records also clear that the respondent was aggrieved by that decision and through **Land Appeal No. 10 of 2019**, she appealed to the DLHT. In its decision dated 19th August, 2019 the DLHT affirmed the decision of the ward tribunal and concluded that there was no any ground to convince the tribunal to fault the decision of the ward tribunal. On that account, the appeal was dismissed with costs. That decision was not challenged.

Upon conclusion of Land Appeal No. 10 of 2019, the applicant filed an application for execution. The application was registered as Misc. Application No. 211 of 2019. In its ruling dated 25th October, 2019, the DLHT observed that the judgment of the ward tribunal was non-executable on account of being invalid for lack the signatures of the members who decided the matter, so its authentic is questionable. On that basis, the DLHT invoked its powers under section 36 (1) and 2 of **the Land Disputes Courts Act** (supra) and revised the whole proceedings and judgement for being a nullity.

The applicant argued that after delivering its decision in Land Appeal No. 10 of 2019, the DLHT, and more the same Chairman, became *functus officio* as to the decision of the ward tribunal and more specifically on the question of its composition. The complained that revising the decision of the ward tribunal in application for execution was an illegality that resulted in miscarriage. The respondent maintained that the DLHT had a mandate to revise the decision of the ward tribunal.

The question now is whether the actions of the DLHT in reviewing the decision of the ward tribunal in Case No. 3 of 2018 in the wake of the existence of the DLHT decision in Land Appeal No. 10 of 2019, involved an error material to the merits of the case involving injustice as envisaged under 43 (1) (b) of **the Land Disputes Courts Act** (supra). The said section 43 (1) (b) of **the Land Disputes Courts Act** (supra) reads:

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

*(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."*
[Emphasis mine]

But the question remains, what amount to **"error material to the merits of the case involving injustice"**. The answer to that is unfortunately not to be found in **the Land Disputes Courts Act** (supra) but rather withing the provisions of section 79(2) of **the Civil Procedure Code, Cap. 33 R.E. 2019**. I am aware that, by virtue of section 51 (1) of **the Land Disputes Courts Act** (supra), **the Civil Procedure Code** (supra) is applicable to proceedings emanating from the DLHT. The section reads:

"79.-(1) The High Court may call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies thereto, and if such subordinate court appears:-

(a) to have exercised jurisdiction not vested in it by law;

(b) to have failed to exercise jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit."

The grounds for review were highlighted in **Karim Kiara v. Republic**, Criminal Application No. 4 of 2007, Court of Appeal at Dodoma Registry (unreported), where the Court of Appeal stated:

"... review would be carried out when and where it is apparent that: -

***First**, there is a manifest error on the face of the record which resulted in a miscarriage of justice. The applicant would therefore be required to prove very clearly that there is a manifest error apparent on the face of record. He will have to prove further, that such an error resulted in injustice. (See: **Dr. Aman Walid Kabourou v. The Attorney General and another**- Civil Application No. 70 of 1999- unreported).*

***Second**, the decision was obtained by fraud.*

***Third**, the appellant was wrongly deprived the opportunity to be heard.*

***Fourth**, the court acted without jurisdiction (see **C. J. Patel v. Republic** – Criminal Application No. 80 of 2002)."*

It is apparent that Misc. Application No. 211 of 2019 was an application for execution, and hence the only means for the applicant to challenge the orders therein is through an application for revision. I am also satisfied that there is a manifest error apparent on the face of record in that, having handed its decision on appeal through Land Appeal No. 10 of 2019 the DLHT became **functus officio** to revise the decision of the ward tribunal. It had no jurisdiction to entertain any question on that decision. In as far as the decision of the ward tribunal is concerned, it was affirmed

by the decision of the DLHT. It remained valid until the decision in Land Appeal No. 10 of 2019 was either revised or appealed against. I am also satisfied that, the said irregularity resulted in injustice on the part of the applicant.

In **Chandrakant Joshubhai Patel v. Republic** [2004] T.L.R. 229, **Lugakingira, J.A**

"It is necessary for this purpose to revert to the ingredients of an operative error. First, there ought to be an error, next the error has to be manifest on the face of the record, finally the error must have resulted in miscarriage of justice. The three ingredients have to co-exist in order for the error to be capable of grounding a review."

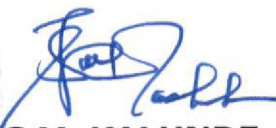
Based on the above exposition of facts, I am content that the three ingredients in the above cited case have been successfully proved to co-exist.

Having said that, I revise and quash the proceedings of the District Land and Housing Tribunal for Temeke District in Misc. Application No. 211 of 2019. Thereby, I set aside the orders made therein. The application is thus allowed. The applicant shall have his costs.

It is so ordered.

DATED at DAR ES SALAAM this 09th day of July, 2021.




S.M. KALUNDE
JUDGE