

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

LAND REVISION NO. 39 OF 2019

*(Arising from Misc. Land Application No. 141/2021, of the District Land
and Housing Tribunal for Kinondoni, before Hon. Lugarabamu-CP)*

YUSUFU S. LUKUTA t/a TIGO PESA.....1ST APPLICANT

BAZIRI TARIMO t/a J.J AUTOSPARES.....2ND APPLICANT

BAZIRI TARIMO t/a J.J AUTOSPARES.....3RD APPLICANT

HAMADI MKUNDE t/a MCHINA USED SPARES.....4TH APPLICANT

ABDULRAHMAN MOHAMED t/a

TRADITIONAL MEDICINE.....5TH APPLICANT

ABDULRAHMAN MOHAMED t/a

TRADITIONAL MEDICINE.....6TH APPLICANT

HAJI SHABANI KIBWANA.....7TH APPLICANT

VERSUS

TABU RAMADHANI MATTAKA.....RESPONDENT

RULING

Date of Last Order: 22. 11. 2021

Date of Ruling: 15. 12. 2021

OPIYO, J.

On the 9th of September, Hon. Lugarabamu CP, learned Chairperson of the Kinondoni District Land and Housing Tribunal, sitting at Mwananyamala, delivered a ruling overruling two preliminary objections

advanced by the Applicants above listed, as against the determination of the Land Application no. 141 of 2019. The said case was filed by the respondent seeking an eviction order against the applicants who are tenants in the suit premises (frames), located at Plot No.11, Block 35L, Mwananyamala Area at Kinondoni District and Dar Es Salaam Region. The objections were to the effect that, the filed case is *res-subjudice* and further that the Kinondoni District Land and Housing Tribunal has no jurisdiction to entertain the matter. Against his decision, the applicants rushed to file the instant application under a certificate of urgency, seeking to revise the said ruling, and declare the case before the tribunal is res-subjudice. The application at hand was brought under section 43(1) (a) and (b) of the Land Disputes Courts Act, Cap 216 and accompanied by the Affidavit of Godfrey Luyanji, Advocate for the applicants.

It is respondent now who is objecting the determination of the application, insisting that the same is untenable for contravening the provisions of section 79(2) of the Civil Procedure Code, Cap 33, R.E 2019 and section 43(1) (b) of the Land Dispute Act, No. 2 of 2002. In his oral submissions, Mr. Ludovick Nickson, learned counsel for the respondent maintained that the above listed provisions, read together with the case of **Augusto Masonda versus Widmel Mushi, Civil Application No. 383/13 of 2018, Court of Appeal of Tanzania, at Iringa (unreported)**, we will find that there is no appeal or revision against an interlocutory decision or order. Since the ruling sought to be revised in this application was on the preliminary objections raised by the applicants, the same is interlocutory in nature, it cannot be revised, therefore this application should be dismissed with costs.

Mr. Luyangi on his part for the applicants maintained that, the application seeks the intervention of this court by calling the records of the lower tribunal and revise the whole proceedings as the same are illegal, therefore they are not challenging any interlocutory order, but on the whole procedure used by the lower tribunal in overruling the preliminary objections.

In rejoinder, Mr. Nickson maintained that, Hon. Lugarabamu only overruled the preliminary objections and no other injustice was done in the case. That decision is an interlocutory decision that cannot affect any rights of parties.

I painstakingly went through the Chamber summons and supporting affidavit filed by the applicants to satisfy myself on the exact relief the applicants are seeking from this court. Paragraph (a) of the chamber summons reads as follows:-

"That this Honourable Court may be pleased to call for records, revise them and set aside the Tribunal orders issued on 09th day of September, 2021 in an Application No. 141 of 2021, for containing serious irregularities and illegalities."

I also went on to peruse the case file containing the records of the Land Application No. 141 of 2021. What I found therein is in line with the arguments of Mr. Nickson, learned counsel for the respondent. To reiterate what I have already noted in the introduction above above, on the mentioned date in the chamber summons, that is on the 9th of September, Hon. Lugarabamu CP, learned Chairperson of the Kinondoni District Land and Housing Tribunal, sitting at Mwananyamala, in his ruling overruled two preliminary objections advanced by the Applicants herein

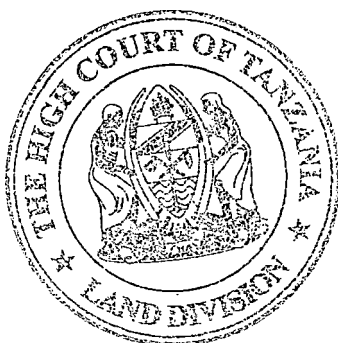
above. The same was aimed at stopping the determination of the Land Application No. 141 of 2019, owing to the reasons that, the filed case is *res-subjudice* and further that the Kinondoni District Land and Housing Tribunal has no jurisdiction to entertain the matter.

That being the root of this application, I agree with the learned counsel for the respondent that the instant application is untenable. This follows the settled rule already in place in number of authorities that an interlocutory order is not appealable or subject to revision unless it has the effect of determining the matter to its finality **see Augusto Masonda's case supra**. The similar position is depicted under section 79(2) of the Civil Procedure Code, Cap 33, R.E 2019. For quick reference, I will reproduce the said provision as follows;-

(2) " 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."

To that end, I find this application to be incompetent before this court and the same is hereby struck out. I further order that the matter before the Kinondoni District Land and Housing Tribunal proceeds from the stage it had reached before the filing of this application. Costs shall follow the event.

Ordered accordingly.



M.P OPIYO

JUDGE

15/12/2021