

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 45 OF 2020

*(Originating from Kinondoni District Land and Housing Tribunal, Application
No. 93 of 2020, Dated 27/08/2020)*

CONSOLATA MAJULA (Administrator of the Estate of the late Preston
Rwehumbiza).....**APPLICANT**

VERSUS

LEOKADIA KOKULENGYA RWEHUMBIZA.....**RESPONDENT**

CORRECTED RULING

Date of Last Order: 15.06.2021

Date of Ruling: 06.07.2021

OPIYO, J.

This application was preferred under section 43 (1) (a) and (b), also section 44, both of the Land Disputes Court Act, No. 2 of 2002. The applicant is seeking to revise the decision of the District Land and Housing Tribunal for Kinondoni entered in respect of Land Application No. 93 of 2020, dated 27/08/2020. The application is supported by her affidavit and the same was heard by way of written submissions. Both parties appeared in person.

In her submissions the applicant submitted that in the impugned decision, the applicant prayed for orders that, the respondent give vacant

possession of the premises, hand over the properties belonging to the applicant's family and stop collecting rent from the estate of the late Preston Vedasto Rwehumbiza. Instead of dealing with the matters prayed as stated herein above, the District Land and Housing tribunal for Kinondoni went off track and proceeded to entertain the respondent's preliminary objection on point of law that the matter was *res judicata* to Land Application No. 57 of 2017. Therefore, the learned Chairperson of the District Tribunal, S.M. Wambili in his ruling misdirected himself as the matter was not a *res judicata*, hence, his ruling need to be revised to bring the parties in the correct position.

In reply, the respondent maintained that, the preliminary objection at the District Land and Housing tribunal for Kinondoni was entertained properly as the same was indeed *res judicata*. Therefore, there is nothing to revise on the said ruling, as revision aims to correct the mistakes if any done by the lower court or tribunal when it failed to exercise its jurisdiction properly. He opined for dismissal of the application.

Having gone through the submissions of the parties, what follows the determination of the merit or otherwise of this application. In this application, the applicant has used sections 43 (1) (a) and (b) and 44 of the Land Disputes Cap 216, R.E 2019 as enabling provisions. However, in my analysis I will reproduce section 43 (1) (a) and (b) and ignore section 44 as the applicant has cited the same generally without specifying as to which part of the said provision exactly, she is relying on. For quick reference section 43 (1) (a) and (b) provides as follows;-

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

(a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;

(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."

Looking plainly at the above provisions of law, one will find that, they provide for the general supervisory powers of the High Court over the District Land and Housing tribunals. The said powers aim at ensuring the tribunals act within their limits during the exercise of their functions as far as the land disputes are concerned, if found to have acted with material irregularities, apparent on the face of the case, then the revision of the said case will follow accordingly. In the case at hand, the applicant prays for the ruling of the learned Chairman of Kinondoni District Land in respect of Land Application No. 93 of 2020 be revised. The decision simply struck out the application for being a *res judicata* after determination of the preliminary objection. The applicant did not show any irregularity on part

of the District tribunal in relation to the impugned decision. I have read the affidavit of the applicant together with her submissions in support of this application and found nothing suggesting that, the trial District tribunal acted out of its jurisdiction or used its powers irregularly in reaching the decision sought to be revised. What I see is her mere dissatisfaction with the decision, the fact that cannot be cured through revision but appeal.

It is well settled that, the powers of the High Court in revision are invoked accordingly when the orders sought to be revised are not appealable and issues such as whether the subordinate Court has exercised jurisdiction not vested on it and if vested, whether it has failed to exercise the same or has acted illegally or with material irregularity (**see Abdal Hassan versus Mohamed Ahmed, (1989) TLR 181**). In the instant case, the ruling and order of Hon. S.M. Wambili in respect of Land Application No. 93 of 2020 is appealable. The applicant was supposed to use that door instead of this application to come to this court.

For the reasons, I find the application to be unattainable and it is hereby dismissed with no order as to costs, given the relationship between the parties. Ordered accordingly.



A handwritten signature in blue ink, appearing to read "M.P. OPIYO", is written over a horizontal line.

M.P. OPIYO,
JUDGE
6/7/2021