IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 27783 OF 2023

(Originating from Application No. 77 of 2023 before the District Land and Housing Tribunal for Kigamboni by Hon. S.Wambili.)

TUMAINI E. MNYONE ..... APPLICANT

VERSUS

RAMAH BAKARI MAGEUZA ..... 1ST RESPONDENT

BAKARI MWAWA MAGEUZA ..... 2ND DEFENDANT

12/03/2024 &17/04/2024

RULING

A.MSAFIRI, J

This is an application for revision in which the applicant was not satisfied with the decision of District Land and Housing Tribunal (the Tribunal) for Kigamboni when determining the preliminary objections raised by the applicant in Application No. 77 of 2023, whereas the objections were overruled and the Tribunal ordered the matter to proceed on merit. The applicant was unhappy with such decision, hence opted to knock the doors of this Court for it to exercise its power for revision.

The Application was made by chamber summons supported with an affidavit deponed by Harry A. Mwakalasya learned Advocate for the

applicant, the 1st respondent also filed his counter affidavit deponed by him in contest of the application. The 2nd respondent did not file his counter affidavit. With the counter affidavit, the 1st respondent raised a preliminary objection to the effect that;

1. *This Application is bad in Law as it emanates from Interlocutory Order which does not affect finality of the Land Application No. 77 of 2023.*

It is the principle of the law that the raised preliminary objection should be disposed of before proceeding with the matter on merit. Hence this Court ordered the same be disposed of orally. The applicant was represented by Mr. Harry Mwakalasya, learned Advocate while the 1st respondent was represented by Mr. Bernard Maguha, learned Advocate.

On his submission Mr. Maguha submitted that the Land Application No. 77 of 2023 is still pending before the Tribunal. That on 15/11/2023 the Tribunal gave ruling on the preliminary objections which were raised by the now applicant who was then the 1st respondent and overruled all the objections and ordered the application to proceed on merit. He argued that, that decision of the Tribunal did not affect the Application No. 77 of 2023 on its finality, hence that this instant application is premature.

To bolster his point, the learned counsel for the applicant was of the view that Section 79(2) of the Civil Procedure Code, Cap 33 R.E, 2019

(herein the CPC) provides that the interlocutory orders and preliminary objections cannot be revised unless, they affect the finality of the suit or application. He cited the case of **Murtaza Ally Mangungu vs The Returning Officer of Kilwa North Constituency & Others**, Civil Application No. 80 of 2016, CAT at DSM at page 9,10 and 11.

He prayed that this application be dismissed with costs.

On response, Mr. Mwakalasya contended that the learned counsel for the 1st respondent has misinterpreted the proviso under Section 79(2) of the CPC and that the proviso provides that "*unless the decision or order has the effect of finally determining the suit*" and that it does not mean that the decision has to finalise the suit.

He further submitted that if the Tribunal could have properly determined the raised preliminary objections raised by the applicant, it could have finalised the case and the case could have been struck out.

He argued that the circumstances in this Application differ from the case of **Ally Mangungu (supra)** in the sense that the Tribunal ruling had the effect of finalising the case as opposed to the case referred.

In rejoinder, the counsel for the 1st respondent reiterated what was submitted in chief and further added that the interpretation of Section 5(2) of the Appellate Jurisdiction Act as cited in the case of **Ally**

Mangungu is the same as Section 79(2) of the CPC. He reiterated that this Application be dismissed with costs.

Having gone through the submission of the parties, I also went through the proceedings of the trial Tribunal. It is undisputed that while filing his written statement of defence, the now applicant who was then the 1st respondent raised two preliminary points of law. The Tribunal then ordered the objections to be heard by way of written submissions. After hearing, the Tribunal held that the preliminary objections needs to be ascertained by evidence hence the application should proceed to be heard on merit so that some of the raised issues in the preliminary objections will be determined by the evidence which shall be adduced at the hearing.

On clarity I feel I should reproduce the part of the finding of the Chairman at page 9 of his ruling, as follows;

> *"Kwa kiasi kikubwa naamua shauri liende hatua ya kusikiliza ndio baadhi ya hoja zitabainishwa huko hususani zinazohitaji ushahidi. Hoja nyingi za mdaiwa wa kwanza zinahitaji ufafanuzi kwa ushahidi wake wakati wa kusikiliza shauri."*

Finally at page 12 of the ruling, the trial Chairman added that;

> *'Imeamuliwa kuwa mapingamizi ya kisheria hayajakubaliwa kwa kuwa yanahitaji Ushahidi. Shauri lisikilizwe katika msingi wake'*

Basing on the above observation, it is crystal clear that the ruling of the Tribunal in Application No. 77 of 2023 dated 15/11/2023 had no effect

of finalising the suit and that is why the said Application is still pending at the Tribunal, waiting to proceed with the hearing on merit.

It is my finding that the applicant still have an opportunity to be heard on merit and if not satisfied with the decision thereto, if so wishes, he may appeal. Therefore, the applicant still has remedies for him to pursue his rights.

I agree with counsel for the 1st respondent in the position referred in the case of **Murtaza Ally Mangungu vs The Returning Officer of Kilwa North Constituency & Others, (supra)** in which the Court of Appeal observed that:-

> *"....a party aggrieved by an interlocutory decision or order has to wait until the final outcome of the case and if dissatisfied, appeal against all the points including the ones made in interlocutory decisions or order"*

The Court of Appeal adopted the *"nature of order test"* which was set in the case of **Bazson vs Attrinchan Urban District Council** (1903, 1KB 948) where it was tested that;

> *"does the judgment or order as made, finally dispose of the rights of the parties? If it does then... it ought to be treated as a final order, but if it does not it is then... an interlocutory order"*

See also the case of **Kezia Violet Mato vs National Bank of Commerce & 3 Others,** Civil Application No. 127 of 2007 at page 8 of the Judgment where the Court of Appeal observed that;-

"It is our considered view that, where a party has no right of appeal but there is an alternative remedy provided by law, he cannot properly move the Court to use its revisional jurisdiction. He must first exhaust all remedies provided by law before invoking the revisional jurisdiction of the Court. The applicant who has not yet exhausted all remedies provided by law cannot invoke the revisional jurisdiction of the Court. This application is incompetent."

In the upshot, and on the above reasons, I find that this Application is incompetent before this Court, and it is hereby struck out with costs. I further order that the case file be remitted to the trial Tribunal to proceed with the hearing of Application No. 77 of 2023 on merit.

It is so ordered.

A. MSAFIRI

JUDGE

17/04/2024