IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MKUYE, J.A., KOROSSO, J.A., And MAIGE, J.A.)

CIVIL APPLICATION NO. 568/17 OF 2020

UBAYA SALEH MNYIMADI ..... APPLICANT

VERSUS

BENJAMIN SENGEREMA CHAYAI ..... 1ST RESPONDENT

REHEMA NASSORO MTURO ..... 2ND RESPONDENT

(Application for revision arising from the decision of the High Court of Tanzania (Land Division) at Dar es Salaam)

(Mango, J.)

dated the 11th day of November 2020
in
Misc. Land Appeal No. 36 of 2020

.....

RULING OF THE COURT

24th August, & 12th September, 2022

KOROSSO, J.A.:

The applicant, Ubaya Salehe Mnyimadi lost a suit filed by the 2nd respondent before Mwandege Ward Land Tribunal (WLT) on claims of land located at Mkokozi Village within Mwandege Ward (suit land). The WLT decision was in favour of the 1st respondent herein who was declared the owner of the suit land. Claims of ownership of the suit land by the 1st respondent were also supported by the 2nd respondent. The WLT awarded the 2nd respondent Tshs. 1,600,000/- (the purchase price) as a refund and general damages of Tshs. 2,800,000/-. Dissatisfied with the decision, the

applicant unsuccessfully appealed to the District Land and Housing Tribunal for Mkuranga (DLHT) in Land Appeal No. 30 of 2018 challenging the judgment and decree of WLT. Undeterred, the applicant appealed to the High Court Land Division, and the appeal was again, unsuccessful.

It is against the High Court decision in Land Appeal No. 36 of 2020 (Mango, J.) dated 11/11/2020, that the applicant has lodged the current application for revision in the Court. The application is by way of notice of motion pursuant to section 4(3) of the Appellate Jurisdiction Act [Cap 141 R.E 2002] (the AJA) and Rule 65 (1), (2), (3), (4), (5) and (7) of the Tanzania Court of Appeal Rules, 2019 (the Rules). The notice of motion is supported by the affidavit deponed by the applicant himself.

The notice of motion and the affidavit supporting it expounds on the grounds for preferring the revision. We wish to note the fact that although the grounds are poorly framed and somewhat incoherent, we have compressed them and they read as follows: **one**, the failure of the High Court to consider the import of various irregularities that contravened the Land Disputes Courts Act during the conduct of the case at the Ward Tribunal, including the composition of the members of WLT thereat. **Two**, failure to determine whether the sale of the suit land was in accordance with the law. **Three**, failure to provide clarity on the functions of the Ward

Tribunal as prescribed by the Land Disputes Courts Act with respect to undertaking mediation and other functions. **Four**, the failure of the High Court Judge to comment and consider the cited decision that adjudicated similar issues as the instant case in Misc. Land Case Appeal No. 21 of 2012 (Shangali, J.). **Five**, concern on lack of valuation of the constructed building. **Six**, whether the lack of a witness who is a government official was detrimental to the case, and **seven**, being denied the right to be heard in contravention of the cardinal principles of natural justice. On their part, each of the respondents filed an affidavit in reply deponed by each of them and lodged on 1/3/2021, resisting the application.

At the hearing of the application on 24/8/2022, the applicant appeared in person, unrepresented. On the part of the 1st and 2nd respondents, each one appeared in person and fended for himself/herself.

At the inception of the hearing, the applicant sought and was granted leave to adopt the notice of motion, the supporting affidavit thereof, the rejoinder to the affidavits in reply from the respondents, and the written submission filed, to form part of his overall submission. On the part of respondents upon being granted leave, each of them adopted the affidavit in reply filed to resist the application and their written submissions respectively.

In the course of the current proceedings, the Court invited the parties to address it on the propriety of the instant application for revision before the Court for determination. The underlying concern is whether the current application for revision is warranted under the circumstances.

In response, the applicant submitted that on his part, the remedy available for him against the decision of the High Court is the application for revision before the Court, the instant application. He adamantly asserted that a revision is what he wants and prefers. He contended that there was no need to appeal.

On the part of the 1st respondent, he stated that being a lay person, he had no clue about the issue. He, however, implored the Court to consider his written submissions and left it to the Court to decide the issue regarding the propriety of the present application. The 2nd respondent expounded a similar position to that of the 1st respondent in response to the query by the Court, contending that as a lay person, she had nothing to submit.

In his rejoinder, the applicant insisted that the application was competent before the Court and had nothing further to add and invited the Court to determine the matter accordingly, upon reflecting on his stance.

Having considered the notice of motion, affidavital evidence, oral and written submissions from the contending parties, and the record of the revision, it is our view that the pertinent issue for determination is the competence of the application before us. We believe the issue is sufficient to dispose of the matter and we thus shall not delve too much into the submissions before us except where they relate to the issue on hand.

It is now well settled that where a party has a right of appeal, he cannot invoke revisional powers of the Court. There are various decisions of this Court elucidating this stance. In the case of **Moses J. Mwakibete v. The Editor-Uhuru, Shirika la Magazeti ya Chama and National Printing Co. Ltd** (1995) TLR 134, the Court stated that the revisional powers of the Court conferred by section 2(3) of the Appellate Jurisdiction Act, 1979 (now section 4(2) of AJA, 2019), are not meant to be used as an alternative to the appellate jurisdiction of the Court of Appeal. Accordingly, unless acting on its own motion, the Court of Appeal cannot be moved to use its revisional powers under the cited provision above in cases where the applicant has the right of appeal with or without leave and has not exercised that right.

In addition, in the case of **Halais Pro-Chemie v. Wella A.G.** [1996] T.L.R. 269, the Court introduced four tests or conditions to

consider for the Court to exercise revisionary powers, that is; one, by the Court *suo moto,* where the Court at any time may invoke its revisional powers in respect of the proceedings in the High Court; two, where there are exceptional circumstances, three, in matters which were not appealable with or without leave; and four, where the appellate process has been blocked by judicial process.

Certainly, what the above-cited holdings inform us is that where a party's right to appeal is there, one cannot resort to seeking redress by way of revision. In the case of **Transport Equipment Ltd v. Devram Valambhia** [1995] TLR 161 the Court held thus:

> *"The appellate jurisdiction and revisional jurisdiction of the Court of Appeal of Tanzania are in most cases mutually exclusive; if there is a right of appeal then that right has to be pursued and except for sufficient reason amounting to exceptional circumstances there cannot be resort to the revisional jurisdiction of the Court of Appeal."*

At this juncture, we are constrained to delve into considering whether in preferring the present application, the four tests expounded in **Halais Pro-Chemie** (supra) have been satisfied by the applicant. We are of the view that in the circumstances, test one is not applicable since the

instant application is not prompted by the Court s*uo moto* by virtue of section 4(2) of the AJA and has been moved under section 4(3) of AJA. Thus, test number one is not applicable.

Regarding test number two, on there being exceptional circumstances, certainly, in the instant application, in paragraph 5 of the affidavit in support of the notice of motion, the applicant vowed that there are exceptional circumstances necessitating the interference of this Court. His argument was that he had discerned irregularities and illegalities in the proceedings at WLT which were not dealt with by the DLHT and the High Court. Having perused through the said affidavit there is nothing to show the special circumstances to warrant invocation of the powers of revision by this Court.

Furthermore, considering the expounded grounds founding the application, they show complaints and grievances related to the decision of the High Court on its failure to consider alleged contravention of the law and procedure at the WLT and DLHT. Complaints included failure to call a government official as a witness to prove an alleged fact related to the dispute and impropriety in the composition of members of WLT. There are also complaints about being denied the right to be heard. In his submissions, the applicant argued that his witnesses were only called once

at the WLT and thereafter declared that they had failed to appear. Clearly, all these are grievances that in essence, are grounds for appeal and means that they are matters which the applicant could have raised in an appeal, a right that he has. We have found nothing in the record of revision before us to show reasons which led the applicant to refrain from appealing to this Court against the decision of the High Court to address all the alleged irregularities and anomalies. Overall, all the issues raised we find, cannot be said to be exceptional circumstances to prompt the Court to exercise its revisional powers. We have thus failed to find that the application passes test number two.

We shall deliberate on test numbers three and four conjointly. To be deliberated and decided is whether the complaints raised by the applicant were not appealable with or without leave and the appellate process has been blocked by the judicial process. It is pertinent to note that, paragraph 2 of the affidavit of the applicant avers that the matter originated from WLT in Land Application No. 33 of 2017. Thereafter proceeded as an appeal to DLHT, in Appeal No. 30 of 2018, and subsequently proceeded to the High Court of Tanzania (Land Division) in Misc. Land Appeal No. 36 of 2020. In terms of section 47(2), (3), and (4) of the Land Disputes Courts Act, Cap 216 R.E 2019 (Land Courts Act), an

aggrieved party of a decision of the High Court in its appellate jurisdiction may appeal to the Court subject to the conditions therein, including being granted leave to appeal and a certificate on a point of law, the matter having originated from the WLT.

Certainly, according to the above-cited legal provisions, an impugned decision of the High Court when exercising its appellate jurisdiction such as the instant application is appealable. However, there is no evidence that the applicant initiated any process to prefer an appeal subsequent to the delivery of the Judgment of the High Court on 11/11/2020. Additionally, there are no averments in the affidavit supporting the application that shows that the applicant was at any time denied or estopped from processing an appeal, which according to the above-cited provisions he had the right to pursue subject to the conditions provided therein.

Indeed, as expounded hereinabove, the revisional jurisdiction of the Court cannot be invoked as an alternative to the appellate jurisdiction of the Court, (see **Hallais Pro - Chemie** (supra) **Augustino Lyatonga Mrema v. Republic and Another** [1996] TLR 267, **Said Aly Yakuti & 4 Others v. Feisal Ahmed Abdul**, Civil Application No. 4 of 2011 and

Felix Lendita v. Michael Longidu, Civil Appeal No. 312/17 of 2017 (both unreported)).

Therefore, as shown above, there is nothing plausible before us to move the Court to invoke its revisional jurisdiction in the instant application. We share the holding of the Court in the case of **Augustino Lyatonga Mrema** (supra) where it was held:

> "*To invoke the Court of Appeal powers of revision there should be no right of appeal on the matter the purpose of this condition is to prevent the power of revision being used as an alternative to appeal.*"

For the foregoing, we are of the view that the applicant has failed to show that he exhausted all the remedies available before resorting to the instant application for revision. We have not garnered any evidence that shows that there was any process of appeal against the impugned decision of the High Court or that the appeal remedy was blocked by the judicial process. We thus find nothing to lead us to find that test numbers three and four have been met.

In the circumstances, having found that the instant application has not passed any of the four tests as alluded above we are constrained to find that the instant application is misconceived without legs to stand on.

We are of the firm view that the applicant still has an appeal as the proper avenue to approach this Court.

In the end, we strike out the application for revision with costs. Order Accordingly.

DATED at **DAR ES SALAAM** this 7th day of September, 2022.

R. K. MKUYE
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

The ruling delivered this 12th day of September, 2022 in the absence of the applicants and respondents who were dully served, is hereby certified as a true copy of the original.

J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL