

TANZANIA / JUDGMENT

# emanuel sadala v joiss hamis

## matalu 2023 tzhc 20420 28 july 2023

COURT  
TZHCDECIDED  
28 July 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (TABORA DISTRICT REGISTRY)  
AT TABORA REVISION NO. 02 OF 2022 (Originating from Land Application No. 96 of 2017, District  
Land and Housing Tribunal for Tabora) EMANUEL  
SADALA..... APPLICANT VERSUS JOISS HAMIS  
MATALU..... RESPONDENT Date of order: 11/07/2023 Date of  
Ruling: 28/07/2023

### RULING

KADILU, J. This is a ruling in respect of application for revision lodged by the above-named applicant under Section 43 (1) (a) and (b) of the Land Disputes Courts Act [CAP 216 R.E 2019]. The applicant has tried to move this court to call for and examine the record of the District Land and Housing Tribunal for Tabora in Land Application No. 96 of 2017 for the purpose of satisfying itself as to the correctness, legality or propriety of the proceedings. He seeks to have an order of the tribunal closing his defence case in Land Application No. 96 of 2017 to be set aside. As usual, the application is supported by an affidavit of the applicant. The respondent resists the application by counter affidavit in which she has raised a preliminary objection on point of law which is the subject of this ruling. Brief background of this matter is that, the applicant was the respondent in Land Application No. 96 of 2017 in Tabora District Land and Housing Tribunal. The said case was continuing in the tribunal for hearing of i respondent's evidence, (now applicant). On 17/11/2022 when the case was fixed for continuing to hear defence evidence, the respondent (the applicant herein) was absent hence, the tribunal closed the case and set the day of 01/12/2022 for receiving opinions of the assessors. The applicant appeared to the tribunal on 25/11/2022 and informed the Chairman of the tribunal that he was taking care of his brother who was sick. The Chairman did not believe the applicant's story so, he refused to receive the applicant's proof about illness of his brother. Aggrieved with the order of the tribunal, the applicant filed the instant application in this court. Based on the above facts, the respondent herein raised a preliminary objection on point of law to the effect that, the application is premature for lack of decision which this court would revise. The PO was argued by way of written submissions whereby the applicant enjoyed legal services of Mr. Ally Yusuph Maganga (Advocate), whereas the respondent was unrepresented. In support of the PO, the respondent submitted that for the court

to be able to exercise revisional power, the applicant should attach a copy of the complained decision. To the contrary, the applicant has not attached the tribunal's order which is sought to be revised. She argued that as the tribunal has not reached to any decision, this application is untimely. She implored the court to uphold the PO and strike out the application with costs. The applicant on his part submitted that the PO is baseless since Section 43 (2) of the Land Disputes Courts Act empowers the High Court to 2 revise proceedings of the DLHT on its own motion or on application by any of the parties. He prayed the court to dismiss the PO with costs for lack of merit. I have examined the records carefully and considered submissions by the parties. The question which I am called upon to determine is whether or not Land Application No. 96 of 2017 pending in the District Land and Housing Tribunal for Tabora is open for revision by this court. For easy of reference, I take liberty to reproduce Section 43 (1) (a) and (b) of the Land Disputes Courts Act under which the application is made. It stipulates: "...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...
- (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." My understanding of Section 43 (1) (a) of the Act is that the High Court may suo moto call for and inspect the records of the District Land and Housing Tribunal at any time and give directions as it considers necessary in the interests of justice. Therefore, the above provision is invoked by the High Court on its own accord, without any request by the parties. A party to the 3 proceedings concluded by the District Land and Housing Tribunal may enjoy revisional jurisdiction of the High Court under Section 43 (1) (b) of the Act. Unlike Section 43 (1) (a), Section 43 (1) (b) of the Act may be utilized by the Court suo moto after being moved by any of the parties. The court's power under Section 43 (1) (b) may be exercised when there are proceedings already determined by the DLHT and it appears to the court or the parties that there is an error material to the merits of the case involving injustice. In that regard, my interpretation of the above-quoted provision is that there is no room for the parties to invoke revisional jurisdiction of the High Court in land disputes under Section 43 (1) (a) of the Land Disputes Courts Act which operates at any time, including before the case is finally determined by the tribunal. The rationale is in my views, to guard against revision applications based on speculations. Allowing the parties to file revision application to the High Court while the case is ongoing in the tribunal would open pandora's box for a party contemplating to lose the case at the tribunal to rush to the court and file an application for revision. Thus, there are other avenues available than applying for revision. For example, a party aggrieved with an order of the tribunal closing the case prematurely as it happened in this case, may not file revision application to the High Court. In such a situation, the matter is still within the powers of the tribunal. The applicant was required to make an application to the tribunal to

set aside its order closing the defence case 4 prematurely. Regulation 11 of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2002 provides as follows:

- (1) On the day the application is fixed for hearing, the tribunal shall:
  - (3) ...
  - (b) ... Cc) Where the respondent is absent and was duly served with notice of hearing or was present when the hearing date was fixed and has not furnished the tribunal with good cause for his absence, proceed to hear and determine the matter ex-parte by oral evidence.
- (2) 71 party to an application may, where he is dissatisfied with the decision of the tribunal under sub-regulation (1), within 30 days apply to have the order set aside and the tribunal may set aside its order if it thinks fit so to do and in case of refusal, appeal to the High Court. In the present application, the applicant has neither indicated that he applied for the tribunal's order to be set aside nor has he attached an order of the tribunal refusing his application to set aside the decision. If the applicant's application to set aside the tribunal's order was properly made but withheld by the tribunal, he could challenge the tribunal's decision by way of appeal to this court, not revision. This being inappropriate procedure, the applicant has raised in his affidavit matters which should have been dealt with by adducing evidence in hearing of the application for setting aside the tribunal's ex-parte order. 5 It is a settled principle that where a party has a right of appeal, he cannot invoke revisional powers of the court. That being the legal position, in order to invoke this court's power of revision, there must be no right to appeal. In the present matter therefore, the right to appeal was available to the applicant hence, no reason has been advanced as to why he did not exhaust that remedy instead of resorting to revision. There are numerous authorities to the effect that revisional powers of the court can only be invoked where there is no right of appeal. Some of them are; *Transport Equipment Ltd v. Devram P. Valambhia* [1995] T.L.R 161, *Moses J. Mwakibete v. The Editor- Uhuru, Shirika La Magazetiya Chama & Another*[V¥¥5\ T.L.R 134 and *Halais Pro-Chemie v. Wella A(7[1996] T.L.R 269*. Others include, *M/S NBC Limited V. Saiima Abdallah & Another*, Civil Application No. 83 of 2001 and *Kezia Violet Mato v. National Bank of Commerce & 3 Others*, Civil Application No. 127 of 2005. Therefore, I have found that Land Application No. 96 of 2017 which is pending in the District Land and Housing Tribunal for Tabora is not open for revision by this court because the applicant has not exhausted the remedy available for him under Regulation 11 (2) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2002. Consequently, I uphold the preliminary objection raised by the respondent. The application is untenable before this court and I proceed to strike it out. If the applicant is still interested, he may revert back to the 6 DLHT for Tabora and explore the remedy shown above after compliance with the law of limitation. Considering that the matter is still pending in the DLHT, I make no order as to the costs. The right of appeal is open to any party dissatisfied with this decision. It is so ordered. Or DILU? MJ. JUDGE 28/07/2023 7 Ruling delivered in Chamber on the 28th Day of July, 2023 in the presence of Mr. Emanuel Sadala, the applicant and Ms. Joiss Hamis Matalu, the respondent. 8

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