

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND REVISION NO. 1 OF 2020

**(Originating from the District Land and Housing Tribunal at Arusha No.
98 of 2019)**

ALLY OMARI SAPA & 12 OTHERS.....APPLICANTS

VERSUS

ABDILAH SHABANI MUNGAI & ANOTHER.....RESPONDENTS

REVISIONAL

14/12/2021 & 02/03/2021

GWAE, J

This is a ruling in respect of a revision initiated by this court on its own suo motto following a complaint letter dated 29/02/2020 addressed to the Deputy Registrar complaining of the irregularities alleged to have been committed by the District Land and Housing Tribunal for Arusha (DLHT) at Arusha in respect of Application No. 98 of 2019 and request for the revision of the same.

The complaint letter was then forwarded to the Judge In-charge who directed for the opening of this revisional file. In short, this is what prompted this court to take this course of action.

In the said letter the applicants herein were the respondents before the DLHT, notwithstanding the fact that the letter addressed to this court shows that the applicants are referred to as the respondents. In fact, after going through the records, the revision is actually in respect of the 6th and 12th applicants.

By the said letter, the applicants allege that the proceedings before the DLHT are tainted with procedural and substantive irregularities as summarized here under;

That sometimes on the 7th August 2019, the 6th and 12th applicants filed their joint written statement of defence together with a notice of preliminary objection on points of law in respect of Application No. 98 of 2019 before the DLHT. On 21st August 2019 when the matter was scheduled for mention the respondents' counsel herein came up with an oral objection on the points that the 6th and 12th applicants' written statement of defence is time barred and the same was filed without payment of prescribed fees, secondly, the notice of the preliminary objection was incompetent for bring filed separately. On the 12th December 2019 the trial tribunal delivered its ruling upholding the respondents' objections. The applicants are now challenging the ruling of the Hon. Chairperson advancing the following grounds;

- i. The trial chairperson proceeded to determine the raised objection by the respondents' counsel despite the fact that no reasonable notice was

issued to the applicant thus the applicants' right to be heard was infringed.

- ii. The trial chairperson proceeded to entertain the objections raised while the said objections required evidence.
- iii. The Hon. Chairperson grossly erred when she decided that the applicant's written statement of defence was time barred without proof of service.
- iv. The Hon. Chairperson grossly erred when she decided that the applicants' notice of preliminary objection was not properly filed as it was filed separately.
- v. The Hon. Chairperson erred when she decided that the written statement of defence was filed without payment of requisite tribunal fees while there was enough evidence that fees were paid.

At the hearing of this revision the respondents never entered appearance despite proof of service which were received and formed part of the proceedings, thus hearing proceeded ex-parte by way of written submission. The applicants were represented by the learned counsel **Mr. Hemed Semith** as it was before the DLHT.

In his written submission the learned counsel argued that the 6th and the 12th applicants herein were not given reasonable notice on what he referred to as oral submissions by the respondents unlike the purportedly term "concerns" as used by the trial tribunal. According to the counsel he ought to have been given enough time in advance to prepare for the hearing.

The counsel went on submitting that it was improper for the trial chairman to hold that the applicants' written statement of defence was time barred without prove to the same. According to him it was the respondents who were to prove that the applicants were served on the alleged date of 17th May 2019, actually the counsel argued that the applicants herein became aware of the Application before the DHLT after being informally informed by the 1st applicant, and it was on the 31st July 2019 when the counsel for the applicants entered appearance for the first time before the DHLT, thus the deadline to file the written statement of defence was on the 20th August 2018.

The counsel went on submitting that it was improper for the trial chairman to hold that the WSD and the notice of the preliminary objection were filed separately while knowing that the applicants' WSD is not guided by the provisions of the Civil Procedure Code R.E 2019. The counsel is further of the view that even if the tribunal assumed that the provisions of Order VIII Rule 2 of the CPC apply under the circumstances the trial chairman could have invoked the principle of overriding objective to cure the said irregularity.

On the objection that the WSD and the notice of the preliminary objection were filed without payment of fees, the learned counsel submitted that these objections did not qualify to be considered as preliminary objections on points of law on the reason that they needed evidence to prove the same. However, for

whatever the trial chairman proceeded to determine it, despite the absence of requisite notice to the applicants to prepare with such evidence.

The counsel went further to submit on other irregularities which were not addressed in the complaint letter, where he stated that it was quite improper for the trial chairman to have proceeded with the matter knowingly that the 1st respondent is dead and no appointed administrator of the estate of the 1st respondent was joined on the reason that the right to sue survive on the 2nd respondent.

More so the counsel pointed out that the 2nd respondent does not have the legal capacity to sue as it is a registered trustee, thus it ought to have sued through its Board of Registered Trustees.

Having considered the applicants' complaint letter and the submission by their counsel, this court wishes to determine the issue as to whether the applicant was availed the right to be heard by the trial tribunal. It is clear from the court's records that the applicants through their advocate was given an opportunity to defend themselves after a concern was raised by the respondents' advocate. If the applicants' counsel got that opportunity this court asks itself aloud, what else was the tribunal supposed to do to the applicants' advocate. This court finds that the applicants' advocate was offered the said right and he also fully exercised it by

responding to the raised concerns. Whether he exercised it wrongly or in a proper way is upon the advocate himself and it is not the tribunal to blame.

The applicants' counsel has also alleged that he was taken by surprise in answering the said concerns which he has termed them as preliminary objection. With all due respect to the learned counsel, this court finds that the said counsel was not taken by surprise because when he was required to answer the concern; he ought to have raised an issue that the said concern was not a point of a preliminary objection and thus the respondents' counsel ought to have brought a notice before arguing the same. Therefore, remaining silent after he was given an opportunity by the trial tribunal does not warrant him a justifiable ground to raise it at this stage.

I have however examined the trial tribunal's records in regard to service of summons to the 6th applicant, **Ahmed Abdallah Ally** and **Mohamed Omari Halfani**, 12th applicant and came up with an observation that both applicants were not served on the 17th May 2019 as opposed to other applicants. Thus, the respondents or their advocate ought to have proved that they duly served the 6th and 12th applicant on a specified date other than 17th May 2019 since it is evident that, the 6th and 12th applicant were not served as they had travelled to Zanzibar (Nimepeleka wito kwa wajibu maombi wamepokea wote kasoro mjiu maombi na 6 na 12....).

In order time to start running against a party to the proceedings in filing either written statement of defence or reply to the WSD in ordinary civil suits or replying affidavit or counter affidavit in labour cases etc, there must be a proof of service.

According to Regulation 7 (1) (a) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 respondent to the proceedings before DLHT must file his or her written statement of defence within twenty-one (21) days from the date of service upon payment of prescribed fees. In our case exchequer receipt is indicative that the 6th and 12th applicant duly paid Tshs. 4,000/= on the 7th day of August 2019 through their counsel for the respondents' Application No. 98 of 2019.

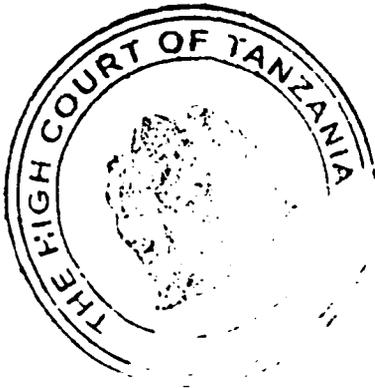
Since there is no proof of service to the 6th and 12th applicant or that the summons was returned unserved. It is not therefore clear when they were formally served as required under Reg. 5 (4) (a) of the Regulations, 2003 and in view of the overriding objective and provision of Regulation 7 (4) of the Regulations, the applicant is not required in preparing his WSD to follow any format and the tribunal shall be guided by contents and not format.

This court has also noted in the submission the applicants' counsel has raised factual issues which cannot be determined without evidence. Such as the issue of the tribunal to proceed while the 1st applicant is said to have passed away or the same must be argued before the tribunal. It should be noted that the matter before

the tribunal is still pending and thus determining the issue of locus in quo at this stage will be pre-empting the pending trial before the tribunal. Nevertheless, I have looked at the trial tribunal record but I did not see any record to the effect that the 1st applicant had passed away

That said and done, by virtue of section 43 of the Land Disputes Courts Act, Cap 2156 Revised, Edition, 2019, I hereby revise and set aside the DLHT's order expunging the 6th and 12 applicant's Written Statement of Defence and the applicants' PO. The dispute be heard by a different Land and Housing Tribunal's Chairperson. Each party shall bear its own costs of this revision suo motto.

It is so ordered.




M.R. GWAE
JUDGE
02/03/2021