

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY AT ARUSHA**

**LAND CASE REVISION NO.7 OF 2021**

*( Originating from Application No. 221 of 2018 at District Land and Housing Tribunal )*

**KELVIN ELIAS MAGANDA.....APPLICANT**

**Vs**

**MARIAM RAMADHAN OMARI ( Administratrix of the estate of**

*The late Elias Nelson Qkaimo@Elias Nelson Maganda).....1<sup>ST</sup> RESPONDENT*

**JEROME LYAKURWA.....2<sup>ND</sup> RESPONDENT**

**FIRST WORLD INVESTMENT COURT BROKER .....3<sup>RD</sup> RESPONDENT**

**STIVIN RAPHAEL MOLELI.....4<sup>TH</sup> RESPONDENT**

**RULING**

*Date of last Order: 7-6-2022*

*Date of Ruling: 29-6-2022*

**B.K.PHILLIP,J**

The applicant herein lodged this application under the provisions of sections 41 and 43 (1) (b) and (2) of the Land Disputes Court Act, Cap 2016, R.E 2019 and section 95 of the Civil Procedure Code Cap 33 R.E 2019 ( "CPC" ) praying for the following orders;

- i) That the Honourable Court be pleased to revise the proceedings , judgment and order so as to nullify the decision of the District Land and Housing Tribunal in application No. 221 of 2018 to the extent that the land in dispute was and is part of the estate of the late Elias Nelson Qkaimo@ Elias Nelson Maganda and is a matrimonial home*

- for the applicant , 1<sup>st</sup> respondent and other four children, hence any kind of alienation without the consent of the beneficiary who are the applicant and other four children together with the 1<sup>st</sup> respondent herein was and is illegal.*
- ii) That the Honourable Court be pleased after nullifying the judgment and order of the Land Tribunal, make an order to evict the current possessor of the said Matrimonial home who is the 4<sup>th</sup> respondent herein so as to give vacant possession to the beneficiaries of the late Elias Nelson Qkaimo@ Elias Nelson Maganda.*
- iii) Any other order (s) that this Honourable Court may deem fit and justice to grant in this circumstance.*
- iv) Costs be borne by the 4<sup>th</sup> respondent.*

The application is supported by an affidavit sworn by the applicant. It is only the 1<sup>st</sup> respondent who filed a Counter Affidavit. The rest of the respondents neither entered appearance in Court nor filed Counter affidavits despite being served with the application. Thus, I ordered the hearing of this application to proceed ex-parte against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents. The applicant was represented by the learned Advocate Alpha Ng'ondya whereas the 1<sup>st</sup> respondent was unrepresented. She appeared in person.

Upon perusing the Court's records and reading the application between the lines I noted that the applicant is the son of the late Elias Nelson Qkaimo and the 1<sup>st</sup> respondent, who is the administratrix of the deceased estate. Thus, he is the beneficiary of the estate of the late Elias Nelson Qkaimo. In the affidavit in support of this application the applicant alleged

that the land in dispute (Hereinafter to be referred to as “the suit property”) forms part of the estate of the late Elias Nelson Qkaimo, ( the deceased). Under the circumstances, I ordered the advocate for the applicant to address me on propriety of this application since the suit property forms part of the deceased estate and the applicant is not the administrator of the deceased estate.

Addressing this Court on the above concern raised by the Court *suo motu*, Mr. Alpha submitted that the applicant is the son of the deceased, hence he is one of the beneficiaries of the deceased estate. He was not a party to the aforementioned application No.221 of 2018 which was between **Mariam Ramadhani Omari** (*suing as the Administratrix of the estate of the late Elias Nelson Qkaimo@ Elias Nelson Maganda.*), (the 1<sup>st</sup> respondent herein) **Vs Jerome Lyakurwa** ( the 2<sup>nd</sup> respondent herein), **First World Investment Court Broker** ( the 3<sup>rd</sup> respondent herein) **and Stivin Raphael Mollel** ( the 4<sup>th</sup> respondent herein). Mr. Alpha went on submitting that the applicant has interests in the deceased estate and filed this application after learning that the 1<sup>st</sup> respondent lost the case at the Land Tribunal and Housing Tribunal since the same was dismissed and did not appeal. Mr. Alpha contended that under the circumstances the only remedy available to the applicant is to file an application for revision as he has done. To cement his arguments he referred me to the case of **Mosses Mwakibete vs the Editor Uhur and 2 others ( 1995) TLR 134** and **Hailas Pro- chemie Vs Wella – Ag, ( 1996 ) TLR 269**. He insisted that if a person was not party to case

in which his/ her interests have been infringed the only remedy available to such a person is to file an application for revision.

In addition, Mr. Alpha, contended that the applicant's right to be heard is protected under Article 107 A (1) (2) of the Constitution of the United Republic of Tanzania. He implored this Court to proceed with the hearing of this application.

I have dispassionately analyzed the submission made by Mr. Alpha. It is not in dispute that the applicant being the son of the 1<sup>st</sup> respondent and the deceased, he is among the beneficiaries of the deceased estate. It is a common knowledge that upon a demise of a person, his/her properties become under the management and care of the administrator of the deceased estate who is normally appointed by the Court upon application being made to the effect. In this matter, the 1<sup>st</sup> respondent is the administratrix of the deceased estate and the one who filed the said Application No.122 of 2018 in which she was challenging the auction of the suit property. She lost the case and did not appeal. No explanations have been given on why the 1<sup>st</sup> respondent opted not to appeal against the decision of the Land and Housing Tribunal.

From the foregoing, the pertinent question that arises is; what should a beneficiary of the deceased estate do if the administrator of the deceased estate does not discharge her/ his duties diligently as it is alleged in this application that the 1<sup>st</sup> respondent after losing the case at the Land Tribunal and Housing Tribunal did not appeal against that decision. First of all, it is noteworthy that a beneficiary of the deceased estate has no

*locus standi* to institute a matter in Court for the properties forming part of the deceased estate before the same are bequeathed to him /her while the administrator of the deceased estate has been appointed. If the Administrator fails to discharge his/ her responsibility the beneficiaries have a right to apply in Court for revocation of the letter of administration granted to the administrator of the deceased estate so that another administrator can be appointed. With due respect to Mr. Alpha, his contention that the applicant herein had no remedy except to apply for revision of the decision of the District Land and Housing Tribunal in a manner he has lodged this application is misconceived. It is my settled opinion that entertaining this application will be tantamount to granting to the applicant powers conferred to the administratrix of the deceased estate in contravention of the law since there is no any revocation of the appointment of the administratrix of the deceased estate( 1<sup>st</sup> respondent).

In addition, in this application the applicant alleged that the suit property is a matrimonial property. For the sake of argument, assuming that it is true that the suit property is a matrimonial property. The pertinent question which arises here is; is the applicant entitled to claim it? . The answer to this question is a big NO. The proper person to claim it is the 1<sup>st</sup> respondent who is the deceased wife and administratrix of the deceased estate.

The above aside, by filing this application, the applicant is purporting to re-open the case that was finally determined by the District Land and Housing Tribunal on the reason that he was not a party to that case and has interests in the suit property. This is not correct. As alluded herein

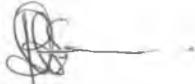
above even if the applicant would have applied to be joined in application No. 122 of 2018 he would not have been allowed because he has no *locus standi* to sue for a property belonging to the deceased estate which has not been bequeathed to him. Thus, the argument made by Mr. Alpha that the applicant was not a party in the said application No.122 of 2018 was raised out of context. Likewise, Article 107 A (1) (2) of the Constitution of the United Republic of Tanzania have been cited out of context since the right to be heard cannot be claimed by a person who has no *locus standi* like the applicant herein.

I have read the case **Mosses Mwakibete** ( supra) and **Hailas Prochemie** ( supra) referred to this Court by Mr. Alpha, the same are not relevant in this application and do not support the arguments raised by him. The Court's holdings in both cases are to the effect that the Court can invoke its revisional powers in matters which are not appealable or the appeal process has been blocked by judicial processes.

From the foregoing, it is the finding of this Court that this application has been improperly filed in this Court . The same is hereby struck out. No order as to costs.

Dated this 29<sup>th</sup> day of June 2022



  
**B.K.PHILLIP**  
**JUDGE**