

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

**[LAND DIVISION]**

**AT ARUSHA**

**LAND REVISION NO. 12 OF 2021**

*(Originating from the District Land and Housing Tribunal for Manyara, Application No. 43 of 2012)*

**JOSEPH MIGHAY BAYNIT ..... APPLICANT**

***Versus***

**BABATI TOWN COUNCIL ..... 1<sup>ST</sup> RESPONDENT**

**WILFRED MUSHI ..... 2<sup>ND</sup> RESPONDENT**

**TANZANIA BUILDING AGENCY ..... 3<sup>RD</sup> RESPONDENT**

**ANNA TEGULO ..... 4<sup>TH</sup> RESPONDENT**

**PAULO DAGNO ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

*17<sup>th</sup> August & 21<sup>st</sup> October 2022*

**Masara, J.**

**Joseph Mighay Baynit**, the Applicant herein, preferred this application under section 43(1)(b) and (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] (hereinafter "the LDCA"), moving the Court to exercise its revisional powers to set aside an order withdrawing Application No. 43 of 2012 erroneously entered by the Manyara District Land and Housing Tribunal (hereinafter "the DLHT") on 19/11/2021. The application is supported by the affidavit deposed by Mr Fredrick Simon Kinabo, learned advocate for the Applicant. The 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents contested the application in two separate counter affidavits deposed by Mr Mkama Musalama, learned State Attorney and the 5<sup>th</sup> Respondent personally.

he declined the offer. The case was heard on the part of the Applicant and his witnesses. The Applicant's evidence was marked closed on 28/10/2019. It was scheduled for defence hearing on 03/12/2019, but due to what I may consider unwarranted reasons, the case went through several adjournments. Finally, it was fixed for hearing on 19/11/2021 but, on that day Mr Kinabo, who was representing the Applicant, was absent. Ms Veronica Kitwali entered appearance informing the tribunal that she was holding brief of Mr Kinabo with instructions to proceed. Ms Kitwali prayed to withdraw the application for what she stated that, after the amendment to the Government Proceedings Act, the DLHT ceased to exercise jurisdiction over cases in which the Government was a party. She prayed for withdrawal of the case so that the same could be filed in the Court with requisite jurisdiction, viz the High Court. The prayer was granted by the DLHT and the application was marked withdrawn.

On learning about what transpired in Court, Mr Kinabo was not amused. He was agitated after noting that the application was withdrawn under his instructions. He contended that he did not know Ms Kitwale and that he had not instructed her to hold his brief as she had intimated. Aggrieved and intending to restore the application so as to proceed on merits, the Applicant has preferred this application.

[R.E 2019] which provides for that mandatory requirement. That as the Respondents did not dispute that fact in their counter affidavit, and as the record shows that the Applicant who was present in person in the tribunal on that date strongly protested against the withdrawal of his application but in vain, it should be taken as proved that the prayer to withdraw was not from him.

Regarding the reasons for withdrawal of the application, Mr Kinabo submitted that the amendments of the Government Proceedings Act, Cap. 5 [R.E 2019] is immaterial because the application was filed in 2012 while the amendments were made in 2020, hence the law cannot operate retrospectively. He concluded by urging the Court to allow the application for the interest of justice and order the application to be determined on merits.

On his part, Mr Musalama urged the Court to dismiss the application. He initiated his submissions by challenging the Applicant's affidavit in support of the application, stating that there are no grounds for revision warranting this Court to grant the orders sought. He pointed out that there is no error material to the merits of the case involving injustice as per section 43(1)(b) of the LDCA. It was Mr Musalama's further contention that the Applicant was obliged to demonstrate how the decision or

his submission, he urged this Court to uphold the decision of the DLHT and dismiss the application with costs.

I have dully considered the affidavits, the record of the trial tribunal and the submissions by Counsel for the parties. The issue for determination is whether the Application has merits.

Before dealing with the substantive part of the application, I find it apt to address the issue raised by Mr Musalama. While Mr Musalama contended that there were no apparent grounds in the Application to warrant this Court to invoke its revisional powers, Mr Kinabo let that assertion to pass as if it was a statement by the way. I will not imitate him, even if that was my desire. To address the matter, one has to dig into the legal provision that supports the Application before me. Section 43(1)b) of the LDCA provides:

*"43.- (1) In addition to any other powers in that behalf conferred upon the High Court, 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, and all such tribunals shall comply with such direction without undue delay;*

*(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional*

trigger, the Court is unable to crawl, let alone walk or run, the lane it has been asked to navigate. I have no other alternative but to nip it in the bud.

Even if, for arguments sake, such grounds were advanced, this application is bound to fail for the following reasons: **One**, Mr Kinabo resolutely submitted that he did not know Ms Veronica Kitwali and did not instruct her to hold his brief. However, despite the gravity of the allegation against her and the adverse consequences of her alleged ineptitude, the Court was not informed whether any legal or disciplinary actions was taken against the said imposter. It was expected that, since the said Veronica is an advocate practicing under the Advocates Act and, since what was done (if it was purposely done to infringe the Applicant's rights) amounts to a professional misconduct, a disciplinary action would have been preferred against her. In the absence of such legal action, there is nothing this Court can rely upon to conclude that the application was withdrawn without Mr Kinabo's instructions.

**Two**, under paragraph 4 of the Applicant's affidavit it is stated that Mr. Kinabo contacted one Paschal Peter, an advocate who is stationed in Babati, to hold his brief. However, we are not informed whether the said person entered appearance or not. Moreover, there is no affidavit of the

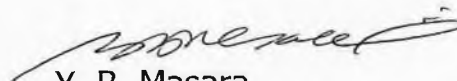
on the other hand, the amendments to the said law deprived the DLHT of jurisdiction to entertain such matters. I, on my part, considers that issue to be irrelevant and will not dwell on deliberating on the tribunal had jurisdiction or not because that is not what is before me. That would best be deliberated by the DLHT. Prayers sought in this application do not include declaration a whether the DLHT had jurisdiction to entertain the matter before it.

In totality, there is no evidence to support the Applicant's contention that the application was withdrawn without his advocate's instructions. As alluded to above, since there was no action taken against Veronica Kitwali, this Court is quite settled that the application was withdrawn on Mr Kinabo's instructions.

Consequently, the application is bound to fail. It stands dismissed in its entirety. Bearing in mind that it is only the 1<sup>st</sup> and 3<sup>rd</sup> Respondents who battled this application, I make no orders as to costs.

Order accordingly.



  
Y. B. Masara

**JUDGE**

21<sup>st</sup> October 2022