

**HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**LAND DIVISION**

**AT DAR ES SALAAM**

**LAND REVISION NO. 21 OF 2023**

(Arising from the decision of District Land and Housing Tribunal for Kinondoni District at Mwananyamala in Application No.273 of 2022 dated 31 March 2023)

**HENRY KATABAZORA KASHANGAKI ..... APPLICANT**

**VERSUS**

**1. ROWLAND R. SHAO ..... 1<sup>ST</sup> RESPONDENT**

**2. JOSEPH PHILIPI TEMU .....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

*Date of last Order: 10 August 2023*

*Date of Ruling: 19 September 2023*

**K. D. MHINA, J.**

In this application, the applicant by way of chamber summons moved this court under the provisions of Section 43(l)(b) of the Land Disputes Courts Act, Cap. 216 R.E 2019. He is seeking *inter alia* for the following orders:

*(a) That the court be pleased to call and revise the proceedings and decision of The District Land and Housing Tribunal (the DLHT) for Kinondoni District at Mwananyamala (J.W.Silas,) in Application No. 273 of 2023 dated 31.3.2023 as there are errors material to the merits of the case involving injustice.*

*(b) That upon hearing the application, the court be pleased to quash and set aside the DLHT proceedings and ruling and accordingly order the case to be tried denovo before another tribunal chairman*

*(c) Costs of the application be provided for by the respondent.*

*(d) Any other relief(s) which the court may deem fit and just to grant.*

The application is supported by the affidavit sworn by Henry Katabazora Kashangaki, the applicant, which expounded the grounds for the application.

In response to the application, the 1<sup>st</sup> respondent countered it through the affidavit in reply, while the 2<sup>nd</sup> respondent was absent despite being duly served on 7 June 2023 as per the affidavit of the process server.

The revision proceeded by way of written submissions. The applicant was represented by Mr. Francis Mgare, learned advocate, while Mr. Francis Pius, Advocate, represented the respondents.

In supporting the revision, Mr. Mgare submitted as follows;

**First**, he stated that on 12 December 2022 at the Land and Housing District Tribunal for Kinondoni, the applicant filed Application No 273 of

2022 against the 1<sup>st</sup> respondent and one Richard Olomy. However, on 8 February 2023, the trial Chairman of the Tribunal (Rugarabamu) ordered the amendment of the application to implead the correct name following the information by the 2<sup>nd</sup> respondent that his name was Joseph Philipi Temu and not Richard Olomy.

After amending the application, on 31 March 2023, Hon. Sillas, another Chairman of the Tribunal, took over the case from his predecessor, Hon. Rugarabamu, without assigning reasons for his taking over contrary to section 51(2) of Cap. 216 R.E 2019 read with the proviso to Order XVIII Rule 15 (1) of the Civil Procedure Code, Cap. 33 R.E 2019 and the decision in **Inter Consult Limited vs. Mrs Nora Kassanga & Another** [2019] TLR 363.

He argued that was an irregularity which caused injustice.

**Second**, Mr. Mgare argued that the trial tribunal, without being satisfied whether the pleadings were complete, the 2<sup>nd</sup> respondent had filed his WSD, it entertained the 1<sup>st</sup> respondent's counsel argument of the necessity of joining Kinondoni Municipal Council and the Attorney General as necessary parties to the case.

He argued that such a fault amounted to the 2<sup>nd</sup> defendant being condemned unheard, contrary to the principles of natural justice. It is also

contrary to the District Land and Housing Tribunal Regulations (GN. NO. 174/2003) and the Civil Procedure Code, Cap 33 RE 2019.

He was of the view that the prayer ought to have been raised in the body of the 1<sup>st</sup> respondent's WSD as a preliminary objection as per section 51(2) of the Land Disputes Courts Act, Cap 216 RE 20'9 read together with Order VII Rule 2 of the CPC.

**Third**, Mr. Mgare submitted that the applicant was condemned unheard on the issue of joining Kinondoni Municipal Council and the Attorney General as necessary parties to the case. Because he was never properly entertained to address that issue, nor were his arguments on the objection he raised considered by the trial tribunal before striking out his case.

To bolster his argument, he cited **Mahona vs. University of Dar Es Salaam** (1981) TLR 55 and **DPP vs. Sabinis Inyasi Tesh and another** (1996) TLR 156] and argued that since the principles of natural justice were violated, then the trial tribunal decision is a nullity.

**Fourth**, Mr Mgare faulted the trial tribunal proceedings by pointing out that the record dated 31 March 2023 shows that the case proceeded and struck out the matter in the absence of assessors contrary to S.23(I) of Cap 216 RE 2019.

Therefore, he argued that since the Tribunal was not duly composed, the decision was a nullity. He cited **Ameir Mbarak and another vs. Edgar Kahwili** [2016]1 TLR 54 to support his submission.

**Fifth**, he submitted that the trial tribunal proceedings dated 31 March 2023 indicated that the 1<sup>st</sup> respondent was absent, but he was recorded arguing at page 2 of the typed ruling. Therefore, he argued that it was irregular and vitiated the whole proceedings.

**Sixth**, Mr. Mgare submitted that the tribunal ruling has material errors because it contravened Regulation 20(1) of the Land Disputes Court (The District Land and Housing Tribunal) Regulations, 2003 GN.NO. 174 of 2003 ("**The Regulations**"). The decision lacks the finding on the issue, a decision and the reason for the decision. Therefore, those errors rendered the tribunal decision a nullity in law.

Opposing the application, Mr. Pius submitted that annexure SHAO 1 in the first respondent's counter-affidavit indicates that the property in dispute was described by Kinondoni Municipal Council as an open space. Therefore, by this fact, the advocate for the first respondent was right to request the DLHT to ascertain the necessity of joining Kinondoni Municipal Council as a necessary party at the earliest stage of the case so that issues in dispute be conclusively determined between the parties as to who

would be the rightful landlord entitled to receive rentals from the first Respondent. Therefore, it was incorrect to say that the Tribunal struck out the case without assigning reasons.

To substantiate his submission, he cited Order I Rule 10 (2) of the Civil Procedure Code Cap 33 R.E 2019, which provides for joinder of necessary parties and the decision of the Court of Appeal in **CRDB Bank Public Company Limited vs. UAP Insurance Company Limited**, Civil Appeal No. 32 of 2020 (Tanzlii) which was elaborated the applicability of that law.

From above, he stated that the law allows the joinder of a party to a suit to be done at any stage of the proceedings. Therefore, the Tribunal's determination to join the Kinondoni Municipal Council was rightly made and in accordance with the law.

On this, Mr. Pius concluded by submitting that there was no objection raised by the advocate for the first respondent as the applicant's advocate wanted to convince this Court rather than it was a prayer. Therefore, the determination to have a necessary party joined was made in line with the law, and neither irregularities nor errors were made in the process.

On the issue of assessors, he submitted that since the matter at the tribunal was yet fixed for hearing, the involvement of assessors was premature.

The applicant did not file the rejoinder.

Having considered the chamber summons, its supporting affidavit, counter affidavit and the written submissions made by the counsel for the applicant and 1<sup>st</sup> respondent, I will start with one issue, quite briefly, before going to the merits and demerits of the application.

That issue is concerning the applicant's submissions. The submission contained some matters which were not pleaded in the affidavit.

On this, I wish to remind the parties regarding the "Rules of the game" that parties are bound by what they pleaded in the pleadings because the Court must decide cases on the issue on the record. There is a plethora of authorities on this issue, the Court of Appeal in **Yusuf Khamis Hamza vs. Juma Ali Abdalla**, Civil Appeal No. 25 of 2020 (Tanzlii),

*"In this case, the issue of time bar was not raised by the parties in their pleadings. In this sense it was quite in order and absolutely perfect for the*

*court below not deal with matters which was not canvassed in pleadings”.*

Flowing from above I will disregard new facts and issues introduced by the bar in the applicant’s written statement. These issues are found in the first and fifth grounds in the submission.

Reverting to the grounds of revision, I will start with ground two regarding the complaint that the Tribunal ordered the joinder without being satisfied whether the pleadings were complete as the 2<sup>nd</sup> respondent had yet to file his WSD.

This should not detain me long because the procedure of joining parties is quite clear. In exercising its powers, the DLHT is governed and regulated by the **Land Disputes Courts (The Land and Housing District Tribunal) Regulations 2003** (“the Regulations”).

Unfortunately, Regulations happen to be silent on the issue of joinder and non-joinder of the parties to the suit. But the law is already settled; if there is a lacuna in the Land Disputes Courts Act, this Court can invoke the provisions of the **Civil Procedure Code** [Cap 33 R: E 2019] (“the CPC”) to fill the gap (s). That “leeway” is provided under Section 51 (2) of the Act, which provides that;



*"51 (2) The District Land and Housing Tribunals shall apply the Regulations made under section 56, and where there is inadequacy in those Regulations it shall apply the Civil Procedure Code.*

On this joinder of parties, as rightly submitted by Mr. Pius, Order I Rule 10 (2) of the CPC provides for the procedure and process of the joinder of necessary parties to the suit. That law read that;

*"(2) The Court may, at any stage of the Proceedings, either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any person who ought to have been joined, whether as a plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added."*

Further, the Court of Appeal, in the cited case of **CRDB Bank Public Company Limited (Supra)**, elaborated on the applicability of the provision of law when it held that;

*"It is incumbent upon the trial court in terms of order 1 rule 10 (2) of the Civil Procedure Code, [Cap. 33 R.E 2019] (the CPC) to scrutinize the pleadings in order to determine a party or parties whose presence before the Court will be necessary to enable the Court effectually, completely adjudicate upon and settle all questions involved in the suit".*

From above, it is quite evident that a necessary party may be ordered to be joined at any stage of the trial, whether upon a request by any party or the court on its own motion to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added.

Therefore, the complaint by the applicant that it was done before the completion of pleadings and, to be specific, when the 2<sup>nd</sup> respondent was yet to file his defence, is devoid of merits. Hence, the Tribunal's determination ordering the joinder of Kinondoni Municipal Council was rightly made, and it was in accordance with the law.

Regarding the second ground that the applicant was condemned unheard on issues of joining Kinondoni Municipal Council and the Attorney General as necessary parties to the case, this also should not detain me long.

On this, the records of the Tribunal are quite clear. The proceedings dated 31 March 2023 indicate that when Mr. Pius prayed for the Kinondoni Municipal Council (KMC) to be joined as the necessary party, Mr. Mgare, for the applicant, was afforded a right to respond.

Mr. Pius's reason was that the applicant, who claimed to be the owner of the land, and KMC, who claimed the same land to be an open

space and owned by them, both demanded rent from the 1<sup>st</sup> respondent. Therefore, he prayed for KMC to be joined as a necessary party. When afforded the right to be heard, Mr. Mgare objected to the prayer for the reason that the prayer did not have merits and was supposed to be raised as a preliminary objection.

After that, the Tribunal decided to order the joinder of parties, struck out the application and ordered the matter to be filed at the High Court.

From above, it is clear that the applicant was afforded the right to be heard contrary to what he had raised in his affidavit and submission.

In that respect, this ground also lacks merit.

Coming to the fourth ground, the basis of the complaint was that the proceedings dated 31 March 2023 show that the Tribunal proceeded with the application and struck out the same in the absence of assessors contrary to S.23(I) of Cap 216 RE 2019.

On this, generally, the composition of the Tribunal has been pegged to be mandatory for a chairman to sit with not less than two assessors as per the mentioned provision of law above. The section reads that;

*"The District Land and Housing Tribunal established under section 22 shall be composed of at least a Chairman and not*

*less than two assessors."*

But as I alluded to earlier, that is a general position. But there are exceptions, and one of the exceptions is found under Regulation 22 of the Regulations. It reads as follows:

*22. The Chairman shall have powers to determine: -*

*(a) preliminary objections based on points of law;*

Therefore, as the records show, on 31 March 2023, what was raised by the 1<sup>st</sup> respondent advocate was the point law regarding the joinder of parties. Then, the Tribunal Chairman had a mandate to hear that point of law and decided it without the aid of assessors.

Since that was a preliminary issue based on a point of law, the ground raised by the applicant lacks merits as what the Tribunal did fall under the exception of section 23 (1) of Cap 216.

On the sixth ground that the decision of the Tribunal lacks a finding, decision and the reasons for the decision contrary to Regulation 20(1) of the Regulations, I have the following;

This ground is a misconception of the applicability of Order 1 Rule 10 (2) of the CPC. The order does not require what were mentioned by Mr. Mgare in his submission. The law simply directs the court to **order** the necessary party to be joined to enable it to effectually and completely

adjudicate and settle all questions involved in the suit. Therefore, what is necessary is simply the order to join the necessary party and not all other issues raised by Mr. Mgare.

On top of that, the decision of the Tribunal elaborated on why it was necessary for KMC to be joined as a necessary party.

To understand better, I think it is necessary to give a glimpse of what happened between the parties prior to the filing of this revision. When I ventured into the records, I found that, previously, the 1<sup>st</sup> respondent was a tenant of the applicant in the land, which the applicant described as plot No 200 Mbezi. It was a land which the 1<sup>st</sup> respondent used for business purposes. Later, KMC informed the 1<sup>st</sup> respondent that plot no. 200 was non-existent, and the land was an open space that belonged to them. Therefore, he was ordered by KMC to pay the rentals to them or vacate the land. Further, he was issued a tax invoice to pay and duly paid to KMC through exchequer receipt no. 992050274659. Therefore, he stopped to pay rent to the applicant.

That controversy triggered the applicant to lodge the application at the DLHT against the respondents. At the Tribunal, the counsel for the 1<sup>st</sup> respondent requested KMC be joined as a necessary party to the suit, the decision which is subject to this review.

Flowing from the facts above, it was necessary for the 1<sup>st</sup> respondent to request for KMC to be joined as a necessary party; otherwise, he would find himself with two landlords. Also, it was proper for the Tribunal to order the joinder of the KMC and the Attorney General as necessary parties for the interest of justice and for the Court to give effectual, complete and executable decree.

Flowing from above, logically and procedurally, the Chairman of the Tribunal was proper to order for joinder of necessary parties, struck out the application and ordered the same to be filed at the High Court. In our jurisdiction, the DLHT has no jurisdiction to determine cases involving the Government. Therefore, by ordering the joinder of the KMC and Attorney General, technically, it ousted the jurisdiction of the Tribunal to entertain that matter.

In the upshot, the application for revision is rejected as there is nothing to revise. Consequently, it is dismissed with costs.

It is so ordered.



  
**K. D. MHINA**

**JUDGE**

**19/09/2023**