

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**(CORAM: KOROSSO, J.A., KITUSI, J.A., And MASHAKA, J.A.)**  
**CIVIL APPLICATION NO. 442/17 OF 2018**

**SAMUELI KOBELU MUHULO ..... APPLICANT**

**VERSUS**

**NATIONAL HOUSING CORPORATION ..... RESPONDENT**

**(Application for revision arising from the decision of the High Court  
of Tanzania (Land Division) at Dar es Salaam)**

**(Mansoor, J.)**

**dated the 10<sup>th</sup> day of December 2012**

**in**

**Land Revision No. 23 of 2012**

.....

**RULING OF THE COURT**

10<sup>th</sup> May, & 14<sup>th</sup> September, 2022

**KOROSSO, J.A.:**

The District Land and Housing Tribunal (DLHT) of Morogoro entertained Land Application No. 125 of 2010 in which Samuel Kobelo Muhulo, the applicant sought to be declared the lawful occupier of a property described as Plot No. 53 Kingo Street within Morogoro Municipality (the suit property). The respondent, a public corporation raised an objection to challenge the Tribunal's jurisdiction but the same was overruled.

The respondent sought administrative intervention of the High Court the details of which are not necessary for the determination of the instant application before us. All in all, the applicant filed Land Revision No. 23 of 2012 at the High Court, Land Division, which was placed before Mansoor, J. That application was struck out with costs.

The order striking out the application is the subject of this application for revision made under rule 65(1), (2), (3), and (4) of the Tanzania Court of Appeal Rules, 2009 (the Rules) as well as section 4(3) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 (the AJA). The notice of motion is supported by the applicant's affidavit.

When the application came for hearing before us on 10/5/2022, Mr. Protace Kato Zake, learned counsel entered appearance for the applicant whereas, the respondent was represented by Mr. Aloyce Sekule, learned Principal State Attorney assisted by Mr. Edwin Joshua Webira, learned Senior State Attorney.

At the outset, we called upon the learned counsel for the parties to address us on whether the matter was properly before the Court knowing that where an appeal lies a party may not resort to revision as an alternative unless it is shown that the appellate process has been blocked by judicial process, as reiterated in various decisions of this Court (See,

**Halais Pro-Chemie v. Wella A. G.** [1996] T.L. R. 269, **Moses J. Mwakibete v. The Editor, Uhuru, Shirika la Magazeti ya Chama and Another** [1995] T.L.R 134, **Kezia Violet Mato v. National Bank of Commerce and 3 Others**, Civil Application No. 127 of 2005 and **Chama cha Walimu Tanzania v. The Attorney General**, Civil Application No. 151 of 2008 (both unreported).

Additionally, we invited the learned counsel for the parties to address us on whether the decision of the learned judge was not an interlocutory one and thus not appealable in terms of section 5(2)(d) of the AJA and settled position in case law. The probing was prompted by the fact that the application before the DLHT is still pending.

Although the learned counsel for the parties initially, had opposing opinions in relation to the two issues the Court raised, upon reflection, they finally agreed on the fact that the proceedings and ruling/order before Hon. Mansoor, J. were tainted with irregularities and confusion that would only be put right by a revision. For instance, the learned Judge proceeded from the premise that the matter at the DLHT was dismissed while in fact, it is still pending. She also mismatched the parties. Both counsel relied on the case of **JUNACO (T) Ltd and Another v. Harel Mallac Tanzania Limited**, Civil Application No. 473/16 of 2016

(unreported) to argue that such confused proceedings and order are open to revision.

In view of the foregoing, we have no doubt holding that an appeal would not have been an available option for either party. We also resolve that as far as the High Court was concerned, the order made was final and purported to finally conclude the matter before it by applying the “nature of the order test” in **Murtaza Ally Mangungu v. The Returning Officer of Kilwa and Two Others**, Civil Application No. 80 of 2016 (unreported). We are thus of the view and conclusion that the order was not interlocutory.

As the proceedings in Land Revision No. 23 of 2012 at the High Court Land Division Dar es Salaam are confusing and not capable of being comprehended, we quash them and set aside the resultant order. What is now for our immediate determination is the way forward.

The learned counsel for the applicant and the learned Principal State Attorney were in tandem in proposing that the way forward was for the Court to direct that the hearing of the pending case at the DLHT proceed accordingly.

We are inclined to agree with the learned counsel on the proposed way forward. It is ordered that the proceedings in the District Land

Housing Tribunal of Morogoro at Morogoro in Land Application No. 125 of 2010 proceed for proper determination of the matter before it. In the circumstances, each party bears its own costs.

Order Accordingly.

**DATED** at **DAR ES SALAAM** this 13<sup>th</sup> day of September, 2022.


W. B. KOROSSO  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

L. L. MASHAKA  
**JUSTICE OF APPEAL**

The ruling delivered this 14<sup>th</sup> day of September, 2022 in the presence of Mr. Protace Kato Zake, learned advocate for the applicant and Mr. Aloyce Sekule, learned Principal State Attorney for the respondent is hereby certified as a true copy of the original.



  
J. E. FOVO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**