

**IN THE HIGH COURT OF ZANZIBA
AT TUNGUU
CIVIL REVISION NO. 02 OF 2023**
(Arising from Civil Case No. 28 of 2021 of the Land Tribunal Zanzibar)

ABEID ZAHOR OTHMAN **APPLICANT**

V

LATIFA KHAMIS MZEE **RESPONDENT**

RULING OF THE COURT

11/07/2023 & 26/09/2023

KAZI, J.:

The applicant, Abeid Zahor Othman, brought this application under sections 90 (c) of **the Civil Procedure Decree**, Cap 8 (the CPD), whereby he seeks the following orders: -

- a) That, this Honourable Court be pleased to do revision on its judgement and decree (*sic*) dated on 4th day of July 2022 in Civil Case No. 28 of 2021 of the Land Tribunal for Zanzibar at Mwanakwerekwe.
- b) That, this Honourable Court be pleased to declare that the said judgement and Decree containing (*sic*) errors apparent on the face of the record.
- c) That, this Honourable Court be pleased to set aside judgement and decree dated on 4th day of July 2022

in Civil Case No. 28 of 2021 of the Land Tribunal for Zanzibar at Mwanakwerekwe.

- d) Any other order (s) which this Honourable Court deems just and reasonable to the applicant.

The application is supported by the affidavit of Mr. Hassan Kijogoo, learned advocate for the applicant.

In this application, Mr. Hassan Kijogoo and Alex Paul, learned advocate, represent the applicant. On the other hand, Victoria Sosthenes Mwiliko, learned advocate, represents the respondent.

The brief background of the matter is that the respondent sued the applicant before the Land Tribunal at Mwanakwerekwe (the tribunal) for trespass. The respondent claimed to legally own a residential house in Kiembesamaki in Urban District 'B' of Unguja. It was contended by the respondent that between 2021 and 2022, the respondent, without a claim of rights, encroached on her house by blocking the windows and stayed therein with other people. The applicant refuted the claim and claimed that the disputed house belonged to his family. He contended that he had been staying in the disputed property since birth and that his parents died at the same place.

After considering the evidence from the parties, the tribunal decided in favour of the respondent. The applicant was aggrieved, hence this application.

In opposing the application, the respondent filed a counter affidavit sworn by Victoria Sosthenes Mwiliko with a notice of preliminary objection that the applicant erred in law in lodging this application for revision.

To expedite the dispensation of justice, I directed the parties to simultaneously argue, through a written submission, both the preliminary objection and the application. In this ruling, I will start resolving the preliminary objection. Therefore, the determination of the application will depend on the result of the preliminary objection.

Arguing for the objection raised, Ms. Mwiliko contended that the applicant misdirected himself to lodging this application while the law barred him from doing so. She argued that section 90 of the CPD gave power to this Court to revise the records of the subordinate courts under the circumstances that no appeal lies against the decision of those courts. She maintained that the instant matter is appealable. Therefore, the applicant misdirected himself in moving this Court to exercise

its power to revise the tribunal's decision. Relied on the case of **Transport Equipment Ltd v Devram P. Valambhia**, Civil Application No 46 of 1994, CAT, Ms. Mwiliko maintained that as the applicant had an automatic right to appeal, he is barred in preferring instant application for revision since revision is not a substitute to appeal.

In his brief reply, Mr. Paul argued that, in this particular case, the revision option was proper. He submitted further that under section 90 (c) of the CPD, this Court has the power to entertain this matter since the record of the case decided by the subordinate court contained material irregularity. He maintained that the parties and case numbers on the plaint are different from those on the judgement and decree. Therefore, he argued that the tribunal's plaint, proceeding, judgement and decree has illegalities and irregularities.

I have considered the submission by the learned advocate, and the only issue that needs my determination is whether this revision application is properly before the Court.

The power of this Court to entertain revision application is derived from the provisions of section 90 of the CPD, which provides: -

*"The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and **in which no appeal lies thereto**, and if such subordinate Court appears –*

(a) to have exercised a jurisdiction not vested in it by law;

(b) to have failed to exercise a jurisdiction so vested;

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit."

[Emphasis added]

From the above-quoted provision, and as correctly argued by Ms. Mwiliko, this Court is vested with powers to revise the records of the subordinate courts on the circumstances stated in the said provision of law, among it is where there is no right of appeal to the impugned decision. Thus, I am subscribed to the authority of **Transport Equipment LTD** (supra) relied upon by Ms. Mwiliko where the Court of Appeal held that:-

"... revisional jurisdiction is exercisable only where there is no right of appeal."

It is also essential to state that it is a settled principle that revision is not an alternative to appeal, save for limited exceptions, for instance, where the judicial process has blocked a right of appeal, See; **Moses J Mwakibete v The Editor, Uhuru & Two Others** [1995] T.L.R 134, and **Said Ali Yakut & Others v Feisal Ahmed Abdul** (Civil Application 4 of 2021) [2011] TZCA 145 (23 February 2011). Emphasizing this principle in the case of **Said Ali Yakut & Others** (supra), the Court of Appeal stated that:

"It is our considered view that, where a party has the right of appeal, he cannot properly move the Court to use its revisional jurisdiction. He must first exhaust all remedies provided by law before invoking the revisional jurisdiction of the Court. As the applicants have not yet exhausted all remedies provided by law, they cannot invoke the revisional jurisdiction of the Court."

Moreover, the Court of Appeal in **Said Yakut & Others** (supra), when reiterating its position regarding the circumstances upon which a party may apply for revision, quoted its excerpt from the authority of **Moses J Mwakibete** (supra), where it observed that:

- "i) The revisional powers conferred by section 4 (3) of the Appellate Jurisdiction Act, 1979, are not meant to be used as an alternative to the appellate jurisdiction of the Court of Appeal; accordingly, unless acting on its own motion, the Court of Appeal cannot be moved to use its revisional powers under Section 4 (3) of the Act in cases where the applicant has the right of appeal with or without leave and has not exercised that right.*
- ii) The Court of Appeal can be moved to use its revisional jurisdiction under section 4 (3) of the Appellate Jurisdiction Act, 1979 only where there is no right of appeal, or where the right of appeal is there but has been blocked by judicial process.*
- iii) Where the right of appeal existed but was not taken, good and sufficient reasons are given for not having lodged an appeal."*

It is instructive, therefore, to accentuate that the above-stated principles apply to this Court when invoking its revisional jurisdiction under section 90 of the CPD.

The applicant in this application has the automatic right to appeal to this Court. This right is stipulated clearly under section 41 of the **Land Tribunal Act**, No. 7 of 1994 (as amended by Act No. 1 of 2008), which provides: -

"Any party who is aggrieved by the decision of the Land Tribunals shall have the right to appeal to the High Court and such appeal shall be heard by a judge of the High Court."

As such, it is apparent that the impugned decision of the tribunal is appealable. Moreover, the applicant has not disclosed in his affidavit any exceptional circumstances that could convince the Court to invoke its revisional powers.

In the event and for the above-stated reasons, I find the preliminary objection has merit, and I uphold it. Consequently, this application is incompetent, and I strike it out with costs.

Dated at Tanguu, Zanzibar, this 26th day of September 2023.



G. J. KAZI
JUDGE
26/09/2023