

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT IRINGA

LAND REVISION NO. 1 OF 2014

(From the Decision of the District Land and Housing Tribunal
of Iringa District at Iringa in Land Case/Appeal
Land Application No. 4 of 2009)

CHARLES MDUDA ----- APPLICANT

VERSUS

ALEX SULEMAN KIFULWIME ----- RESPONDENT

28/09/2015 & 13/10/2015

RULING

KIHWELO, J.

The applicant Charles Mduda has come before this Court armed with an application seeking to move this Honorable Court for the following orders inter alia:-

- 1. That this Honourable Court be pleased to call for and examine the record of the District Land and Housing Tribunal in Land Application No 4 of 2009 with a view to satisfying itself as to the correctness, legality, or otherwise of the regularity (sic)*

proceedings, Judgment and Decree pronounced and given by Hon. Mapunda Chairman on 3rd November, 2009.

- 2. That this Honourable Court be pleased to revise the proceedings of the District Land and Housing Tribunal for being irregular as there is error material to the merits of the application involving for (sic) injustice.*
- 3. That the execution of the Decree be stayed pending the determination of this instant Revision.*

The application was supported by the affidavit of Charles Mduda.

The respondent filed a counter – affidavit which was sworn by himself contesting the application. In addition to the counter – affidavit the respondent filed a separate notice of preliminary objection to the effect that;

- 1. The applicant in this application has improperly moved the Court.*
- 2. The applicant has erred in law in filing this application.*

As the applicant did not concede to the preliminary objection the Court directed the preliminary objection to be disposed by way of written submission and a schedule was adopted to which the parties dully complied with.

Submitting in support of the first preliminary objection, Mr. Mussa Mhagama, learned counsel for the respondent was brief and to the point. He contended that the application has been brought to the honourable Court with an improper citation of the law as the application has been filed under Section 43(1) and 44 of the Land Disputes Courts Act Cap 216 RE 2002 which provides for the general powers of the high court over land case including supervisory powers.

Mr. Mhagama further contended that the applicant ought to have cited the provisions of Section 43(1) (b) and (2) which confers the Court with the requisite jurisdiction to do what it is sought under the present application.

Mr. Mhagama strenuously, argued that since the applicant failed to properly cite the law applicable in the present application then the court is not properly moved to entertain the application.

Arguing in support of the second preliminary objection Mr. Mhagama submitted that the decision subject of this application was delivered on 3rd November, 2009 but the applicant filed the present application on 17th March, 2014 which is beyond the sixty (60) days stipulated by item 21 of Part III of the 1st schedule to the Law of Limitation Act, Cap 89 Revised Edition 2002.

Mr. Mhagama valiantly submitted that the applicant filed the present application as an afterthought following the application for execution which was filed by the respondent seeking to enjoy the fruits of his decree. He therefore contended that the present application is time barred as such it should be dismissed with costs.

Ms. Gladness Funga, learned counsel for the applicant in response was equally brief. She argued that the cited provisions of Section 43(1) and 44 of the Land Disputes Courts Act, Cap 216 RE 2002 in effect are the same as the provisions of Section 43(1) (b) and (2) as such the objection has no merit. She invited the court to adopt what she called "*the fishing rule*" to consider the relevant rules in the citation in granting the sought orders as such she was of the view that the first preliminary objection should be dismissed.

Arguing in response to the second point of preliminary objection Ms. Funga admittedly argued that by virtue of the Law of Limitation Act Cap 89 RE 2002 the application ought to have been filed within 60 days but she went further to argue that given the circumstances of the matter which lead to the present application the preliminary objection has no merit since the application is made to revise an injustice decision made by the Honourable Chairman. She cited the case of **Abdul Hassan V Mohamed Ahmed** [1989] TLR 81 to

buttress further her argument. She finally prayed that the preliminary objections should be overruled with costs.

It appears to me that the issue in controversy is whether the preliminary objections has merit to warrant striking out of the present application.

Starting with the first limb of the preliminary objection both Mr. Mhagama and Ms. Funga seem to agree somehow that the cited provisions are the ones which apply to move the Court in the application of that nature. The point of departure however is that while Mr. Mhagama thinks that the approach adopted by Ms. Funga is a none starter for the reasons he gave Ms. Funga believes that she was on the correct path to have cited the enabling provisions of the law the way she did. I will attempt to consider the main reasons of objection which were advanced by Mr. Mhagama.

It is correct to say this Court hold the view that an applicant has to cite the provisions of the law under which the Court is moved, see **Almas Iddie Mwinyi V National Bank of Commerce and Another**, Civil Application No. 88 of 1998 (unreported). Failure to do so will result in an application being struck out for incompetence. Similar consequences will follow if the specific correct provision of the law is not cited. Thus, if the correct specific enabling sub-section or sub-rule are not cited but only the section

or rule generally are cited, the application can be struck out for incompetence see **The National Bank of Commerce V Sadrudin Mengji**, Civil Application No. 20 of 1997 (unreported).

In the present application the applicant cited Section 43(1) only instead of Section 43(1) (b) and (2) hence by virtue of the position of the law in the cited case of **The National Bank of Commerce V Sadrudin Mengji** (supra) the present application is incompetent.

In the circumstances above I do not find it useful to deliberate on the second limb of the preliminary which is quiet obvious and it will only serve an academic exercise which I am not prepared to endeavour at this juncture.

In the upshot, I uphold the preliminary objection. The application is hereby struck out with costs.

Ordered accordingly.

The seal of the High Court of Zimbabwe is circular. It features a central emblem with a shield and a figure, surrounded by the text 'THE HIGH COURT OF ZIMBABWE'. The name 'P. F. KIHWELO' is written across the seal, and 'JUDGE' is written below it. A handwritten signature is written over the seal and extends to the right.
P. F. KIHWELO
JUDGE
13/10/2015