

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF ARUSHA**  
**AT ARUSHA**  
**MISC. LAND CASE APPLICATION NO. 191 OF 2017**

**AINEA MKOMA..... APPLICANT**

**VERSUS**

**KILWA LABALA.....RESPONDENT**

**RULING**

**DR. OPIYO, J.**

This is a ruling in respect of the preliminary objection raised by the respondent's counsel to the effect that;

1. That this Application is bad and non-maintainable in law for citing wrong provision of the law.

Before me, the applicant appeared in person and unrepresented while the respondent was represented by Pastor Kongo'oke, learned Advocate. This court ordered the hearing of the preliminary objection to be disposed of by way of written submissions and both parties abided with the scheduled order.

Submitting in support of the preliminary objection, the respondent's counsel submitted that the applicant applies for extension of time to file an application for revision of execution. He moves this court by under section 38 (1) of the Land Disputes Courts Act, 2002 while that section does not state anything concerning Revision hence this court cannot be moved by that provision which provides for extension of time to file appeal. He referred this court to the case of **Rashid Abdullah Rashid El-Sinan vs. Mussa Haji Kombo and Ali Mohamed Musa** 1998 TLR 530 and stated that, in that case the Applicant applied for the stay of execution to the High Court citing rule 9 sub rule 2 and rule 44 of the Court of Appeal Rules, 1979 and the application was dismissed. He further stated that the Application for Revision is provided under section 43 (1) (b) of the Land Disputes Courts Act, 2002 and the same provision does not provide for the time limit under which the Applicant has to apply for Revision. He the section provides;

*"In addition to any other power in that behalf conferred upon the High Court, the High Court may in any proceedings determined in the District Land and Housing Tribunal in exercise of its original, appellate or revisional jurisdiction, on Application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit."*

I have considered the submission of both parties. In this application, the applicant seeks for an order for extension of time to file revision against the Execution Order out of time. In order to move this court, the applicant cited section 38 (1) of the Land Disputes Courts Act (supra) which provides that;

*"Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court (Land Division):*

*Provided that the High Court (Land Division) may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days expired."*

It is clear from the provision referred above that, the said provision refers to an application for extension of time where a party is aggrieved by the decision or order of the District Land and Housing Tribunal in the exercise of appellate or revisional jurisdiction. But in this application, the applicant seeks for an order of extension of time in order to file an application for revision against execution order of the District Land and Housing Tribunal. An execution order sought to be challenged by way of revision was not passed by the District Land and Housing Tribunal in the exercise of appellate or revisional jurisdiction rather the same was issued in its original jurisdiction hence section 38 (1) of the Land Disputes Courts Act is not applicable. Although there is a provision in the Land Disputes Courts Act

which gives power to this court to exercise revisionary powers against the decision of the District Land and Housing Tribunal; there is no specific provision in that Act which gives this court powers to extend time in order to file an application for revision against an order of the District Land and Housing Tribunal. Under such circumstances; the proper provision to be cited in order to file an application of this kind, is section 14 (1) of the Law of Limitation Act (supra) which provides that;

*"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*

It is a settled position of the law that, in order for a court to be properly moved to hear the application, the applicant must cite proper and specific provision of the law. See the case of **Hussein Mgonja vs. Trustees of the Tanzania Episcopal Conference**, AR Civil Revision No. 2/2002 (unreported) where the Court stated that;

*"If a party cites the wrong provision of the law the matter becomes incompetent as the court will not have been properly moved."*

See also the case of **China Henan Inter. Co-operation Group vs. Salvand K.A Rwegasira [2006] TLR 220** where it was held that;

*"It is imperative to cite the correct provisions of the Rules.....an error to cite the correct provision is not a technical one but "a fundamental matter which goes to the root of the matter....Once the application is based on wrong legal foundation, it is bound to collapse."*

Since this application is based on wrong provision of the law, it is my considered finding that this court is not properly moved to hear the application. Therefore, this application is struck out with no order as to costs.

Order accordingly.

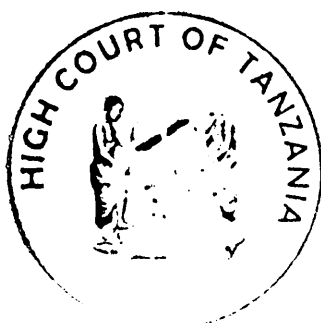
**(SGD)**

**DR. M. OPIYO**

**JUDGE**

**02/07/2018**

I hereby certify this to be a true copy of the original.



  
**DEPUTY REGISTRAR**

**ARUSHA**

03/07/2018