

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

LAND REVISION NO. 06 OF 2019

*(Arising from the Ruling of the District Land and Housing
Tribunal for Tarime at Tarime in Misc. Application No. 188 of 2016)*

**THE REGISTERED TRUSTEES
OF THE DIOCESE OF MUSOMAAPPLICANT**

VERSUS

OCHIENG SARUNGI RESPONDENT

JUDGEMENT

Date of Last Order: 15.05.2020
Date of Judgement: 22.05.2020

KISANYA, J.:

This Court has been moved to be pleased to “call for records of Miscellaneous Application No. 188 of 2016 in the District Land and Housing Tribunal for Tarime at Tarime and revise the whole of the District Land and Housing Tribunal for Tarime at Tarime.” The application is made by way of Chambers Summons under section 43(1)(b) of the Land Disputes Courts Act (Cap. 216, R.E. 2002). It is supported by the affidavit sworn by Aristaric Bahati, Principal Officer of the Applicant; and the supplementary affidavit sworn by Aletus Odero Amuli, Chairman of Mang’ore Village in Rorya District.

The facts giving rise to this application are that: The respondent successfully sued the Mang'ore Village on a claim for the land/farm measuring 1000 paces times 1118 paces located at Manete area within Mang'ore Village in Application No. 23 of 2013 before the Koryo Ward Tribunal. The Ward Tribunal delivered its judgement on **31/12/ 2014**. Thereafter, the respondent filed an application for execution of the said judgement. The application for execution was filed in, and granted by the District Land and Housing Tribunal for Tarime at Tarime (Misc. Application No. 59 of 2015). In its order dated **18/12/2015**, the District Land and Housing Tribunal ordered the Mang'ore Village to vacate on the suitland and not to interfere with the respondent enjoyment on his land.

Following that order, the applicant received letter dated **25/07/2016** from the Mang'ore Village informing her of the order of the District Land and Housing Tribunal. It appears that the execution order affected the applicant's interest on Plot No. 56 Nyanduga, Mang'ore Village, Tarime. Therefore, three week later, on **19/08/2016**, the applicant decided to lodge the investigation proceedings in the District Land and Housing Tribunal (Misc Application No. 188 of 2016). The said application was made under section 51 of the Land Disputes Courts Act, 2002 and Order XXI Rule 57 and 58 of the Civil Procedure Code, Cap. 33 R.E. 2002 (CPC) and the orders sought were as follows:

1. *This Honourable Tribunal be pleased to stop the execution of the decree granted to the Respondent who is the Decree Holder to take possession of the land belonging to the Applicant and not the judgement Debtor.*
2. *That, this Honourable Tribunal be pleased to investigate the owner of the suitland which has been attached to be executed by the Respondent who is a Decree Holder.*
3. *Costs be provided for.*
4. *Ant other orders this Honourable Tribunal may deem fit and just to grant.*

The respondent raised a preliminary objection on the points of law that; (1) the application is legally incompetent for want of citation of the enabling provision of law; (2) the application is incompetent for having been filed hopelessly out of time; and (3) the instant application is an abuse of legal process.

In his submission before the Tribunal, the respondent addressed the first and second objection only. He did not address the third limb of objection. However, after full hearing, the District Land and Housing Tribunal dismissed the application basing on the second point of objection only. The Tribunal held that:

“As the records inside the case file, the order for execution was delivered on 18th December, 2015 and the application was filed on 19th August 2016 which is about 240 days from the date when the order was delivered, hence the

application is out of time.”

The above decision was centered on the provisions of section 3(1) and (2)(c) read together with item 21, Part III of the Schedule to the Law of Limitation Act, Cap. 89, R.E. 2002 that, an application under the CPC for which the time limitation is not provided for under the statute is 60 days. Therefore, this application is based on the above decision.

When this matter was called on for hearing, Mr. Aristaric Bahati, learned advocate, appeared for the applicant while the respondent was represented by Mr. Steven Makwega, learned advocate.

Submitting in support of the application, Mr. Bahati argued that the District Land and Housing Tribunal erred in holding that the application for investigation was time barred. His argument was built on the fact that, the applicant became aware of the execution order on **25/7/2016** and filed the application on **19/8/2016**.

Counsel Bahati argued further that, the Hon. Chairperson erred in determining the question of time limitation in the objection proceedings. He cited the case of **Doris Minja vs Diamond Trust Bank and Others**, Misc. Commercial Application No. 398 of 2017, HCT Commercial Division (unreported) to support his argument. That said, Mr. Bahati urged the Court to grant the application by revising the proceedings of the District Land and

Housing Tribunal for the parties to be heard on merit.

In response, Mr. Makwega did not object the application. He was of the view that the application for investigation was not time barred because it was filed within sixty days from the time when the applicant became aware of the execution order. The learned counsel argued that, the case of **Doris Martin Minja** (*supra*) is distinguishable from the case at hand as the Court held that it had no mandate to look on time limitation. He went on to submit that, the issue of ownership of the disputed land can be cleared if the application for investigation is heard on merit. Therefore, counsel Makwega asked me to allow the present application. He prayed each party to bear its own costs.

Mr. Bahati rejoined by submitting that the case of **Doris Martin Minja** (*supra*) is relevant because it involved a preliminary objection on time limitation in the objection proceedings as in the case at hand. He was in agreement with Mr. Makwega that each party should bear its own costs.

Having heard and carefully considered submissions from the applicant and respondent counsel, I find that the main issue in determining the merit of this application is whether the Hon. Chairman erred in holding that the application for investigation was time barred. Both counsels are in agreement that the application was not time barred. They calculated the time limitation from **25/7/2016** when the applicant became aware of the execution order to

19/08/2016 when the application for investigation was filed in the District Land and Housing Tribunal. However, counsel Bahati went on to argue that, the investigation proceedings have no time limitation.

On my part, I wish to state that, the investigation or objection proceedings are governed by Order XXI, Rule 57 and 58 of the CPC. These provisions empower the Court to investigate claim or objection that the property attached in execution is not liable to attachment. The law does not specify the time within which the application for objection or investigation should be filed. The provisions of Order XXI, Rule 57 (1) of the CPC provides that:

“Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other respects, as if he was a party to the suit:

Provided that, no such investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed.”

(Emphasize supplied].

The word “shall” used in the above provision connotes that the Court is duty bound to investigate the claim or objection that the property is not liable to attachment filed before it. This position was also stated in the case of **Katibu Mkuu Amani Fresh Sports Club vs Dodo Ubwa Mamboya** (2004) TLR 326,

where after considering Order XXIV, rule 50(1) of the Civil Procedure Decree of Zanzibar which is *in parimatiria* to Order XXI, Rule 57(1) of the CPC, the Court of Appeal held that:

As a matter of law, it is necessary for the Court to investigate claims and objections raised. Under the provisions of rule 50(1) of Order XXIV of the Civil Procedure Decree, where a claim is preferred or an objection made to the attachment of any property, the Court shall proceed to investigate the claim or objection.” (Emphasize supplied].

Guided by that decision, this Court (Sehel, J.) in the case of **Doris Martin Minja** (*supra*) cited by Mr. Bahati held that, the Court has no mandate to examine the question of limitation after being moved under Order XXI, Rule 57 of the CPC. However, I wish to clarify further that, pursuant to the provisor to Order XXI, Rule 57 (1) of the CPC, the investigation cannot be conducted if the Court is satisfied that the claim or objection has been delayed deliberately or unreasonably. The issue whether the claim or objection has been delayed is decided basing on the circumstances of each case. It is not founded or based on the time limitation itemized under the Law of Limitation Act, Cap. 89, R.E. 2019. For instance, if the person who claims that the property is not liable to attachment was not party to the suit, the Court may consider whether the claim or objection has been delayed by taking into account the time when the claimant or the objector became aware of the suit

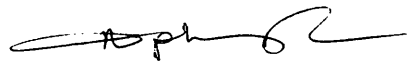
or execution order against the property liable to attachment.

In the case at hand, the District Land and Housing Tribunal dismissed the application for investigation of the attached property basing on section 3(1) and (2) read together with item 21, Part III of the Schedule to the Law Limitation Act, Cap. 89, R.E. 2019. With respect, the learned Chairperson erred in arriving at that conclusion. The time limitation specified in the Law of Limitation Act does not apply to the investigation or objection proceedings under Order XXI, r. 57 of the CPC.

The next issue is whether the application was unreasonably and intentionally delayed. The record shows that the applicant was not party to Application No 23 of 2013 before the Koryo Ward Tribunal and Micl. Application No. 59 of 2015 filed in the District Land and Housing Tribunal. It was not disputed that the applicant became aware of the execution order on **25/7/2016**, and that the application for investigation was filed **25 days** later, on **19/8/2016**. With these findings, I am of the humble opinion that, the claim or the objection in the case at hand was not delayed. Therefore, the District Land and Housing Tribunal was required to investigate the claim or objection preferred by the applicant. This was not done and the applicant was denied of the right to be heard on merit thereby vitiating the decision of the District Land and Housing Tribunal.

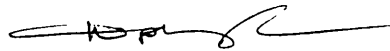
In upshot, I am constrained to invoke the revisional power of this Court to nullify and quash the ruling of the District Land and Housing Tribunal for Tarime which dismissed the Application No. 188 of 2016. The case file should be remitted to the District Land and Housing Tribunal for determination of the investigation claim or objection. Each party to bear its own costs due to the circumstances of this matter.

DATED at MUSOMA this 22nd day of May, 2020.



E.S. Kisanya
JUDGE
22/5/2020

Court: Judgement delivered in open court this 22nd May, 2020 in the presence of Mr. Aristaric Bahati, learned advocate, for the applicant and in the absence of the Respondent.



E.S. Kisanya
JUDGE
22/5/2020