

IN THE HIGH COURT OF TANZANIA

AT TABORA

MISCELLANEOUS LAND CASE APPLICATION NO. 20 OF 2019

(Arising from Land Application No. 42 of 2017
Tabora District Land and Housing Tribunal)

MLELA RAMADHANI APPLICANT

Versus

MAHONA BUTUNGULU RESPONDENT

RULING

26/11/2019 - 07/02/2020

BONGOLE, J.

This is an application by MLELA RAMADHANI herein after referred to as the applicant made under section 38(1) of the Land Dispute Courts Act No. 2 of Cap. 16 and any other enabling provision of the law.

The reliefs sought by the applicant are:-

- 1) Extension of time to file an appeal be granted.
- 2) Costs of the application in the course be provided.
- 3) Any other relief this court may deem fit and just to grant.

The application is supported by an affidavit deposed on by MLELA RAMADHANI. The facts as deposed in the affidavit inter alia run thus:-

That he applied in the District Land and Housing Tribunal for Tabora for recovery of his family land at Kipela suburb, Tumbi Village – Tabora.

That the District Land and Housing Tribunal decided in favour of the Respondent MAHONA BUTUNGULU on the 3rd December, 2018. That he was

aggrieved with that decision hence applied for the copy of judgement immediately on the 4th December, 2018.

That he was not given the said copy of judgement dispute several follow ups where he was told that the District Land and Housing Tribunal for Tabora had no typist and their file was sent to Nzega for typing process so he had to wait.

That eventually he was supplied the copy on 19th March, 2019 vide ERV No. 00014194283.

That he still have claimable rights and overwhelming chances of success.

When the chamber summons was served to the Respondent, it was hammered with two points of Preliminary objection to wit:-

- i) That the court is improperly moved.
- ii) That, the verification clause in support of the application is incurably defective for offending the mandatory Provisions of Order XIX Rule 3(1) of the Civil Procedure Code [Cap. 33 R.E. 2002].

In this application, Mr. T.N.M. Sichilima learned Advocate appeared for the applicant and whereas the Respondent enjoyed the legal services of Mr. Kilingo Hassan learned Counsel.

With this court's permission the parties filled written submissions in disposing this appeal.

Arguing the 1st preliminary objection, Mr. Kilingo had it that the applicant has improperly moved this court under the wrong citation of the

enabling provision of the law which is section 38(1) of the Land Dispute Courts Act (Cap. 216 R.E. 2002) the section which applies to all matters that originates from the Ward Tribunal and not the matter that originate from the District Land and Housing Tribunal which exercise the original jurisdiction like the matter at hand.

Section 38(1) provides:-

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

Mr. Kilingo maintained that as this application emanates from Land Application No. 42 of 2017. Tabora District Land and Housing Tribunal the proper provision to be invoked to move this court could be section 41 of the Land Disputes Courts Act No. 2 Cap. 216 R.E. 2002 as amended by section 41(2) of the written laws Miscellaneous Amendment Act, Cap. 26 and any other enabling provision of the law.

He buttressed that none or wrong citation of the enabling provision of the law render the application totally incompetent before the law as it was stated in the case of ***Marwa Maseke Vs. Republic*** Criminal Application No. 1 of 2015 CAT at Mwanza and the case of ***Thomas David Kinimbugo, Abbass S. Mhanje Vs. Tanzania Telecommunication Company Limited.***

He therefore argued this court to strike out the application.

With regard to the 2nd limb of Preliminary objection; he submitted that the affidavit is defective as there is no verification with regard to sub-paragraph which he said offends the provisions of Order XIX rule 3(1) of the Civil Procedure Code.

Responding to, Mr. Sichilima submitted that he is in recognition of amendments made by section 41(2) of the Written Laws Miscellaneous Amendment Act Cap. 216 but he said the same did not repeal or substitute section 38(1) of Cap. 216. That it is obvious that in application of extension of time for appeal one may use section 38(1) of Cap. 216 or section 41(2) of the Written Law Miscellaneous Amendment Act Cap. 216 or both.

On the 2nd limb of none verification, he argued that the sub-paragraphs listed under para six are not facts which need verification in substance rather, they implicate the overwhelming chances of success in the intend appeal.

He therefore pray that the Preliminary objections be overruled.

Having glanced on section 38(1) of the Land Disputes Courts Act Cap. 216 of R.E. 2002; it presuppose that the section will only be invoked where the District Land and Housing Tribunal exercises its APPELLATE OR REVISIONAL JURISDICTION and not its ORIGINAL JURISDICTION. The matter at hand originates from Land Application No. 42/2017 of Tabora District and Land Housing Tribunal. The land Tribunal exercised its Original jurisdiction. It goes therefore that when any party to the dispute intended to appeal against the said decision, he must invoke section 41(2) of the

Written Laws Miscellaneous Amendment Act Cap. 216 in applying for extension of time.

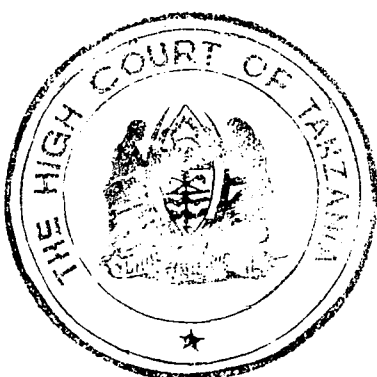
It is out of the observation made herein above that differs with Mr. Sichilima arguments that section 38(1) and section 41(2) may both be used. The 1st could be used when the District Land and Housing Tribunal is exercising its appellate and Revisional jurisdiction and the second when the District Land and Housing Tribunal exercises its Original jurisdiction like in the matter at hand.

It is empirical on the affidavit in support of this application that the sub-paragraphs in paragraph 6 are not verified but there is a general verification clause regarding paragraph 6.

The sub-paragraph ought to be verified separately and not generally. That been observed the affidavit is defective which renders the application incompetent.

With the two vices surrounding this application, it is therefore found defective and incompetent which suffers a striking out order as I hereby do.

The Preliminary objections are upheld and this application is stricked out with no order as to costs.



A handwritten signature in black ink, appearing to be "S.B. BONGOLE", is written over a horizontal line.

S.B. BONGOLE

JUDGE

07/02/2020

Ruling delivered under my hand and seal of the court in chambers, this 07/02/2020 in the presence of Mr. Sichilima learned Advocate for the Applicant and the Respondent in person.



A handwritten signature in black ink, consisting of a stylized 'S' and 'B' followed by a horizontal line.

S.B. BONGOLE

JUDGE

07/02/2020