

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. CRIMINAL REVISION NO. 04 OF 2018

(Arising from ruling of the District Court of Bariadi in Misc. Criminal Application No. 3 of 2018)

1. MWANDU GWEKU }
2. KANYOKA JEREMANI }**APPLICANTS**

VERSUS

THE ATTORNEY GENERAL **RESPONDENT**

RULING

6/7 & 14/8/2020

G. J. Mdemu, J,:

This is an application for revision made under the provisions of section 372 and 392A (2) of the Criminal Procedure Act, Cap.20 as amended by the Written Laws (Miscellaneous Amendment) Act, No.3 of 2011. The application is supported by an affidavit of one Paul Revocatus Kaunda, sworn on 13th day of October, 2018. On being served with the application, the Respondent Attorney General filed a notice of preliminary objection on 31st of October, 2018 raising the following objections:

- 1. The application is bad in law for being hopelessly time barred.*
- 2. The application is untenable as the affidavit in support of the application do not support the prayer sought by the Applicants in their chamber summons.*

3. *The court is improperly moved for wrong citations of enabling provisions of law.*

It was on 6th of July 2020 when parties appeared before me arguing the preliminary objections. The Respondent had the service of Mr. Solomon Lwenge, learned Senior State Attorney whereas the Applicants had the service of Mr. Paul Kaunda, Learned Advocate. Submitting in the first preliminary objection, Mr. Lwenge was of the view that, the application is time barred because it was filed after almost 9 months and 20 days in that, the decision subject for revision was pronounced on 26th of January, 2018 while the instant application got lodged on 15th of October, 2018. In this, he cited the provisions of item 21 of Part III of the Schedule to the Law of Limitation Act, Cap. 89.

He also cited the case of **DPP vs Prosper Mwalukasa (2003) TLR 34** insisting that, where there is no time limitation to file application, then as per the cited above provision, time limit is 60 days. He further concluded in this ground that, much as time limitation is not prescribed in the provisions of section 372 of the Criminal Procedure Act, Cap.20, the Law of Limitation Act carterers for the purpose.

In the 2nd preliminary objection, it was his observation that, the affidavit does not support the application because it is not stated what was not complied in the District Court which this application intends to cure. He added that, there is no even a single paragraph explaining if at all the Applicants had once filed a claim to court relating to auctioning of unclaimed properties. He was also of the view that, the Applicants do not have *locus standi* as they do not state how are they connected to facts subject to this revision. In this, he cited the case of **Venus Kabwebwe vs R, Criminal Appeal No. 228 of 2014**(unreported)

amplifying that, as the Applicants were not a part, they may not move this court by way of revision.

With regard to the 3rd preliminary objection, Mr. Lwenge contradicted the Applicants as the provisions of section 372 of the CPA, Cap.20 confers authority to parties to proceedings to apply for revisions. He thought, the Applicants are not, thus, cannot benefit from the provisions as cited. He thought, the Applicants should have moved the District Court of Bariadi by way of objection proceedings thereby becoming parties. He concluded that, in terms of the provisions of section 3(1) of the Law of Limitation Act, the instant application be dismissed.

In reply, Mr. Kaunda thought the first preliminary objection to be hopeless because, **one**, that, the Law of Limitation Act does not apply in criminal matters and two, that time never run against the crown, the reason why the Legislature has not enacted law prescribing time limit. He thus distinguished the case of **DPP vs Prosper Mwalukasa** (supra) cited by the learned Senior State Attorney. He also referred to the Prevention and Combating of Corruption Act, in which, section 9 prescribes time limit on corruption offences. With that example, he thought, the Law of Limitation Act could have expressly provide for the requirement and not by implication.

With regard to the 2nd preliminary objection, the Learned Counsel was of the view that, the Applicants have a *locus standi*. he thought the same to be misguidance on the part of the Respondent because, the latter made *ex-parte* application to confiscate 158 herds of cattle to the District Court of Bariadi which belonged to the Applicants. He thus added that, the application was in violation of the provisions of section 10 of the Proceeds of Crime Act. He

emphasized that, a person who is not a party to the proceedings may only challenge a suit through revision. With this, he was of no doubt that, the issue of *locus standi* emanates from this point. He thus distinguished the case of **Venance Kabwebwe** (supra) more so because, the case was on appeal while the instant application is for revision.

He added further that, the provisions of section 372 of the Criminal Procedure Act does not bar a person who is not a party to apply for revision as it has not expressly stated so. To his considered opinion, the question should be one of showing interest over the matter on how he/she is connected. He thus thought the application is properly before this court.

In rejoinder, the learned Senior State Attorney submitted that, the case of **Mwalukasa** (supra) was a criminal one and did also set the limitation period to be 60 days as found at page 38. With respect to the affidavit, he was of the firm view that, section 392A of the Criminal Procedure Act require an affidavit to support the application which is not the case here. He added that, what the counsel submitted regarding the Proceeds of Crime Act is not backed by anyfact in the affidavit. He emphatically thought that, the affidavit must have the contents to support the application.

With respect to parties to the proceedings, it was his view that, the case of **Kabwebwe** (supra) require a person to be joined a party for him to seek redress to higher courts. He thus thought the provisions of section 372 of the Criminal Procedure Act should not be read in isolation. He concluded that, the Applicant cannot jump to this court as he had a forum to seek redress to the District Court. He also stated that, the provisions of section 372 of the Criminal Procedure Act is on discretionary powers of the court to call the record *suo*

motto. He thus urged me to dismiss the application. Parties ended their submissions this way.

For clarity, as parties did, I will also determine each ground of objection *seriatim*. In the first ground on time limitation, it is not disputed that the impugned decision was delivered on 26th of January, 2018. It was until the 15th of October, 2018 when the Applicant moved this court to revise the proceedings and orders thereto in terms of the provisions cited in the chamber summons.

Whereas the two counsels are in agreement on the duration, their point of departure lies on one thing according to the learned counsel for the Applicant that, there is no law prescribing time limit because the Law of Limitation Act does not apply in criminal matters. Mr. Lwenge thought that to be a total misconception of the letters of law. I think for better understanding of the legal position, the long title to the Act and the provisions of Item 21 of Part III of the Schedule to the law of Limitation Act, provides that; as to the long title:

"An Act to prescribe the law for the limitation of actions in civil proceedings and for related matters"

With regard to the schedule, it is stated that:

21. Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written lawsixty days

Going by the long title, it is clear that the Law of Limitation Act prescribes limitations of actions in civil proceedings. However, going by what is envisaged in the schedule, the same appears to be widened such that, where any written law has not prescribed limitations of actions, then the provisions applies. The words *or any other written law*, in my considered view, is not limited to laws applicable in civil proceedings.

Another line of argument might be that, the order subject for revision in itself, much as is titled miscellaneous criminal application, has nothing to do with criminality for some reasons. **One** that, there is no accused person to be prosecuted and therefore one would rightly state that, in the order subject to revision, there is no offence committed, the proceedings of which this court is obliged to revise. **Two**, in our legal system, crimes are committed against the State and therefore, the Republic or the Director of Public Prosecutions initiates criminal proceedings and not the Attorney General. This is another evidence indicating that, *ex-parte* application filed in the District Court of Bariadi as Criminal Application No. 3 of 2018, in fact was not criminal in nature.

Three, in the *ex-parte* ruling, the Applicant Attorney General made the following prayers:

1. *158 unclaimed herds of cattle which are kept at Rhino camp within Maswa Game Reserve be forfeited to the Government of United Republic of Tanzania.*
2. *Any other order (s) this honourable court may deem fit and just to grant in favour of the United Republic of Tanzania.*

As seen from the orders sought for by the Respondent Attorney General, there is nothing like criminality determined by the District Court of Bariadi. In that understanding, this being a civil undertaking, the Law of Limitation Act applies. I thus agree with the learned Senior State Attorney that as there is nowhere time limitation has been prescribed, Item 21 of Part III of the Schedule to the Law of Limitation Act thus applies.

That being the case, as the decision was delivered on 26th of January, 2018, an application for revision preferred on 15th of October, 2018 is well beyond the prescribed limit of sixty(60) days. As submitted by the learned Senior State Attorney, in terms of the provisions of section 3 of the Law of Limitation Act, Cap.89, the remedy available for an application instituted out of time is to dismiss it, as I hereby do.

Much as the first limb of preliminary objection has disposed of the matter, I think I should also comment on the 3rd preliminary objection on wrong citation. The premise to begin should be what I just submitted above that, what was before the District court of Bariadi, in miscellaneous criminal application No. 3 of 2018 was not a criminal case or application much as the title stated so. It is to say, it was wrong in the first place to have instituted the application in the title of Miscellaneous Criminal application and therefore, citing the provisions of section 372 of the Criminal Procedure Act, for revisions will not be a futile. Perhaps I should reproduce the section. It reads:

"The High court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order

recorded or passed and as to the regularity of any proceedings of any subordinate court."

In the above quoted provision of the law, as alluded above, there must be a criminal case **first** for the section to apply. **Second**, unlike in section 373 of the Criminal Procedure Act where such proceedings for revision may also be reported, section 372 deployed in the application is specific for the court to call for the record *suo motto*. **Third**, as submitted by Mr. Lwenge, the Applicants were not parties. I understand the concern of Mr. Kaunda that, the application was ex-parte, but they would have sought first remedies legally provided before the forum sought in the instant application.

These two preliminary objections alone disposes of the matter, thus the second remaining preliminary objection that, the affidavit does not supporting the application, is not going to be determined. Accordingly, the application is dismissed. It is so ordered.


Gerson J. Mdemu

JUDGE

14/8/2020

DATED at **SHINYANGA** this 14th day of August, 2020




Gerson J. Mdemu

JUDGE

14/8/2020