

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISC. LAND APPLICATION NO. 87 OF 2019
(From the decision of the Regional Housing Tribunal
in Application No. 16 of 2000 and Misc. Application No. 130 of 2007)**

**RICHARD ASUMILE MWAKOBA (As legal representative
of Elly Mwakoba).....APPLICANT**

VERSUS

RIZE PHILIP MWAKIKOSYA.....1ST RESPONDENT

GIBONS KAJOLEKA (As legal representative of

Syoni Rems Mwakikosya).....2ND RESPONDENT

LISSA JAFARI MGATA.....3RD RESPONDENT

R U L I N G

Date of last order: 02/05/2020

Date of Ruling: 12/08/2020

NDUNGURU, J.

Richard Asumile Mwakoba, the applicant through the service of Mr. Justinian Mushokorwa, learned advocate is seeking for the following orders:

- (a) Extension of time be granted to apply to the Court to call and examine the records of the Regional Housing Tribunal and District Land and Housing Tribunal to satisfy as to their regularity, propriety and correctness and give appropriate directives.

(b) Costs

(c) Any other orders the Court may deem just.

This chamber application is pegged under Section 14 (1) and item 21 of the Schedule of the Limitation Act (Cap 89 R.E. 2002). The application is supported by the affidavit duly sworn by the applicant himself. The second and third respondent opposed the applicant's application through the counter affidavit.

Also, the second and third respondent raised the preliminary points of objection the subject matter of this ruling. The second respondent's preliminary objection raised the preliminary objection to the effect that:

- (a) That, the whole chamber application is bad in law for not citing any provision of the law under which the applicant is going to file his application before this Court.
- (b) That, the whole chamber application is also bad in law as the ex-parte decision/order delivered in the Regional Housing Tribunal Civil Suit No. 16 of 2000 has not been set aside since on 17/01/2001 which is about 20 years for unreasonable delay and it is therefore time barred.
- (c) That, the whole intended revision application by the applicant will be invalid and void abnition as it will contravene Sections 54 and

57 item 5 (b) of the schedule of the Land Disputes Courts Act, 2002 Act No. 2 of 2002 which came into operation on 1st October 2003 by amending the Rent Restriction Act No. 17 of 1984 upon repealing a number of Section as amended under the Act.

On the other side, the third respondent raised the preliminary points of objection to the effect that:

- (a) The whole application is bad in law for being improperly verified.
- (b) The whole application is bad in law for being taken by events after executing the ex-parte order which has not been set aside since 2001 to date.
- (c) The application is un maintainable in law for failure to join the Court broker who executed an ex-parte order.
- (d) The application contravenes Section 54 (3) and item 5 (b) of the Schedule of the Land Disputes Courts Act, No. 2 of 2002 which came into force on 11/10/2003.

Before I go further, it is significant to know the brief historical background of the facts that led to the present application. During his lifetime the late Elly Mwakoba had leased the house of the late Syoni Rems Mwakikosya, house No. 1 Block 23, and when he fell in arrears of rent, thereafter the late Syoni Rems Mwakikosya sued the late Elly Mwakoba at Mbeya Regional Housing Tribunal vide Application No. 16 of

2000 which was heard ex-parte in favour of the said Syoni Rems on 17th day of January 2001.

Also the tribunal having ordered eviction of the late Elly Mwakoba from the demised house and pay arrears of rent to the Syoni Rems Mwakikosya. Thereafter, the late Syoni Rems Mwakikosya proceeded to apply for execution of the judgment by praying for the attachment and sale of the matrimonial house of the late Elly Mwakoba and the house was sold to one, Lissa Jafari Mgata on 20th day of March, 2002.

Again on 23th day of April 2002 the late Elly Mwakoba lodged an application vide Misc. Land Application No. 16 of 2002 seeking extension of time to apply for review of the decision of the Mbeya Regional Housing Tribunal dated 17th day of January 2001 but the application was dismissed on 6th day of April 2004.

Further the late Elly Mwakoba presented for admission at District Land and Housing Tribunal for Mbeya Misc. Land Application No. 16 of 2002 seeking extension of time to set aside the ex-parte judgment of Regional Housing Tribunal but the chairman refused to admit the application on 3rd day of April, 2013.

Furthermore, between 2011 and 2017 the late Elly Mwakoba lodged various unsuccessful applications before this Court seeking extension of time to appeal, set aside and, or to revise the proceedings

of the Regional Housing Tribunal. Subsequently, the present applicant, Richard Asumile Mwakoba acting as the legal representative of the late Elly Mwakoba, applied for extension of time to apply to the Court to call and examine of the record of the Regional Housing Tribunal and District Land and Housing Tribunal to satisfy itself as to their irregularity, propriety and correctness and give appropriate directives.

At the hearing of the objection, Mr. Justinian Mushokorwa, learned advocate appeared for the applicant whereas Mr. Simon Mwakolo, learned advocate appeared for the third respondent, the first and second respondents appeared in person without legal representation.

The parties were allowed to dispose of the same by way of the written submission. The learned counsels for the parties respectively complied with the filing schedule save for the first respondent and second respondent who filed rejoinder written submission only.

In his written submission, Mr. Mwakolo contended that, the whole application is bad in law for being improperly verified. He added that, the paragraph 10 which contains sub-paragraph (a), (b), (c), and (d) has not been verified which is contrary to Order VI Rule 15 (2) of the Civil Procedure Code (Cap 33 R.E. 2019).

He went on to submit that, since the affidavit was improperly verified, the whole application is supported by defective affidavit and the

remedy is to strike out the whole application for being incompetent. He cited the case of **Anatol Peter Rwebangira vs. The principal Secretary, Ministry of Defence and National Service and another**, Civil Application No. 548/04 of 2018, Court of Appeal of Tanzania (unreported) to support his submission.

In regard to the second, third and fourth points of the preliminary objection, Mr. Mwakolo argued that, the whole application is bad in law for being taken by event after executing the ex-parte order which has not been set aside since 2001 to date. He added that, the law governing Regional Housing Tribunal was amended by the law of the Courts (Disputes Settlements) Act, 2002 Act No. 2 of 2002.

He further submitted that, Section 54 (3) of the Act provides for time limit of 2 years to conclude pending matter of which under Section 54 (2) of the Act, includes pending matters originating from the Regional Housing Tribunal which if not executed was allowed to be executed as if there was no amendments. He added that since there is no pending relief in Court arising from Regional Housing Tribunal, there is nothing to be executed and the applicant cannot come to claim what is not in existence.

He also contended that, in accordance of section 54 (3) above all matters pertaining to the Regional Housing Tribunal cannot be claimed

after the expiry of 2 years and if the applicant wanted to pursue matters originated from Regional Housing Tribunal firstly must apply to the minister upon an application by the Registrar to extend time to determine the matter as per section 54 (5) of the Act.

He continued to submit that, the applicant was required to join the Court broker because is one who auctioned the disputed house and the failure to join the Court broker vitiates the whole proceedings. He therefore prayed for the Court to dismiss the application with costs. In other side, the second respondent opted not file the written submission in support his preliminary objection.

In reply, Mr. Mushokorwa stated that the failure of the second respondent to abide to the Court order amounting to failure to prosecute his counter affidavit. He added that the counter affidavit filed by the second respondent was not properly verified. He cited the case of **Salima Vuai Foun vs. Registrar of Cooperative and 3 others (1995) T.L.R 75** to bolster his contention.

With regard to the preliminary points of objection raised by the counsel for the third respondent, Mr. Mushokorwa replied that, the verification clause of the applicant's affidavit does not refer to the belief rather the deponent averred that all facts in all paragraphs were based

upon the knowledge of the applicant himself. He added that, the cited decision is distinguishable from the application at hand.

He went on to submit that, in absence of paragraph 10 the application can still be determined on the basis of the remaining paragraphs. He added that, they looked the supervisory and revisional power of the High Court bestowed to it by virtue of section 43 (1) (a) and (b) and (2) of the Cap 216 which power could be invoked at any time from the commencement of Cap 216.

He further submitted that, the applicant still has chance to petition before this Court to extend time in order to move the Court to exercise its general powers on supervision and revision to examine the records of the said tribunal with a view to arrest illegalities inherent therein. He added that, the Court broker was not a necessary party and also the said Court broker was not registered as firm. In conclusion, he prayed for the Court to overrule all objections with costs.

In his rejoinder, Mr. Mwakolo reiterated his submission in chief and his prayer in chief.

In his part, the second respondent argued that, he did not serve his written submission to the applicant because is not a party in the cited application. He added that, the failure of the counsel for the applicant to reply to the preliminary objection is amount to an admission

to the preliminary objection. In conclusion, he prayed for the Court to struck out the whole application with costs.

Having taken due consideration to the written submissions by all parties, the issue here is whether the preliminary points of objection raised by the second and third respondent have merits or not.

Starting with the preliminary points of objection raised by the second respondent, my determination is that, it is settled principle of the law that an order for filing submission is part of the hearing. Therefore, the failure to lodge written submission in time is tantamount to being absent without notice on the date of hearing. See the case of **Andrea Njumba vs. Trezia Mwigobene**, PC. Civil Appeal No. 1 of 2006, High Court of Tanzania at Mbeya (unreported). On that regard the second respondent fail to defend his preliminary objections hence must fail.

Turning to the preliminary points of objection raised by the counsel for the third respondent, I wish to start with the ground (d) of the point of objection. In his submission, Mr. Mushokorwa agreed that, the Section 54 (3) of the Act provides for time limit of 2 years to conclude pending matters before the Regional Housing Tribunal. Also, Mr. Mushokorwa agreed that the said 2 years was already expired.

Again, Mr. Mushokorwa agreed that, any claim related to the Regional Housing Tribunal beyond 2 years, one had to seek leave from

the minister responsible but he contended that the applicant had choice whether to apply to the minister or to the High Court.

With due respect, I am not in line with argument of Mr. Mushokorwa on the ground that, if this Court grant the order of extension of time for the application to lodge an application for revision before this Court on the non-existence tribunal, what the effect of the said provisional order?

In my opinion, the only remedy available to the applicant is to seek leave from the minister responsible as directed by the law. Therefore, I dismiss this application for being misconceived and directed the applicant to apply leave to the responsible minister. If he so wishes to persue the matter. I make no order as to costs.

It is so ordered.




D. B. NDUNGURU
JUDGE
12/08/2020

Date: 12/08/2020

Coram: D. B. Ndunguru, J

Applicant: Present

For the Applicant:

1st Respondent: Present

2nd Respondent: Present

For the 2nd Respondent:

3rd Respondent:

For the 3rd Respondent: Mr. Mwamakamba advocate holding brief of
Mr. Mwakaolo advocate

B/C: M. Mihayo

Mr. Mwamakamba – Advocate:

The case is for ruling, we are ready.

Appellant:

My lord my advocate is Mr. Mushokorwa who is sick today.

Court: Ruling delivered in the presence of the applicant, 1st and 2nd
respondent and Mr. Mwamakamba advocate holding brief of
Mr. Mwakolo advocate for the 3rd Respondent.




D. B. NDUNGURU
JUDGE

12/08/2020