

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

MISC.LAND APPLICATION NO 61 OF 2020

*(Arising from Land Appeal No. 10 of 2014 of the High Court Tabora
registry and subsequent Misc. Land Application No. 87 in Shinyanga
District Land and Housing Tribunal)*

MALENDEJA MANG'OMBE.....APPLICANT

VERSUS

NYANZOBE LUTEMA..... RESPONDENT

SUZAN LUTEMA..... RESPONDENT

RULING

23rd August & 3rd Sept, 2021

MKWIZU, J.

Parties to this application had a dispute over a land comprised of 30 acres located at Mwamashiku Hamlet, Mahembe Village within Mwakitolyo Ward, Nindo Division in Shinyanga Region. The dispute went through the Ward Tribunal to the High Court of Tanzania, by then - Tabora Registry. At the Ward tribunal, the land was apportioned to both parties. Applicant went ahead to filing another dispute at the District Land and Housing Tribunal through Land Application No 34 of 2012. Applicant was declared owner of the complained 30 acres of land. Unhappy, respondents appealed to the High Court, Tabora. Their appeal was allowed in an ex-parte decision dated 27th February, 2014 .

After a successful appeal, respondents went back to the DLHT for execution process vide Misc. Land application No. 87 of 2015. On 17/5/2019 District Land and Housing Tribunal chairman, Edward Masao, ordered the applicant to vacate the suit land measuring 100 acres, and the same be handled to the respondents (decree holder) within 14 days period. Abajaja Court broker was also appointed to execute the said decree.

Applicant is thinking of challenging that decision through revision. He on 15/10/2020, 18 months after the said decision, filed the present application for extension of time to file the anticipated revision application. The application was made by a chamber summons under section 14 (1) of the Law of Limitation Act (Cap 89 RE 2019) and it is supported by an affidavit deposed to by the applicant.

In response to the application, a joint counter affidavit opposing the application and a point of preliminary objection were filed by the respondents, Nyanzobe Lutema and Suzana Lutema on 30th November, 2020.

At the hearing of this matter, applicant was represented by Mr. Alex James Shimwenye while the respondents had the services of Ms. Neema Mabushi, learned advocate. With the leave of the court, both preliminary objection and the main application were heard together on instruction that the decision on the main application will depend on the outcome of the preliminary objection.

Submitting for the preliminary objection, Ms. Mabushi stated that the remedy sought by the applicant is not available for him. She explained that, the decision in execution proceedings by the DLHT is not revisable but appealable under Reg. 24 of GN No 174 of 2003. Thus, this application, being for extension of time to file revision against the execution order is not maintainable. On the other hand, Mr. Alex was of the view that the decision is revisable.

I have read the cited regulation. Regulation 24 of GN No. 174 of 2003 falls under PART V of the refereed Government Notice dealing with execution of Decree and orders of the Tribunal. The regulation reads:

"Any party who is aggrieved by the decision of the Tribunal shall subject to the provisions of the Act have the right to appeal to the High Court (Land Division)..."

Construed from the above regulation is that all orders and decree in execution proceedings are appealable. I understand that, this is an application for extension of time to file revision. Ms Mabushi urged the court to find that the extension of time to file revision application is not maintainable because, revision is not the available remedy to the applicant. I agree. In the situation where the law is specific on the remedy available to an aggrieved party, the applicant has no option than to follow the dictates of the law. In the case of **Said Ali Yakut And 4 Others V.**

Feisal Ahmed Abdul, Civil Application No. 4 of 2011 (unreported), it was held;

"Where a party has a right of appeal, he cannot properly move the court to use its revisional jurisdiction"

Again, in Civil Application No. 1 Of 2008 (unreported) between **Dickson Rubingwa Vs Paulo Lazaro**, Court of Appeal explained that:

"The general rule is that where there is a right of appeal there is no right of a revision.... if there is right of appeal then that has to be pursued and, except for sufficient reason amounting to exceptional circumstances, there cannot be resort to the revisional jurisdiction of this Court."

In another case of **Transport Equipment Ltd. v. D.P. Valambhia** (1995) TLR 161 it was stressed that: -

*"... the appellate jurisdiction and the revisional jurisdiction of this court are, in most cases, mutually exclusive. If there is a right of appeal then that has to be pursued and, **except for sufficient reason amounting to exceptional circumstances**, there cannot be resort to the revisional jurisdiction of this court. ..."* (Emphasis added)

Applicant in this case has no option but to come by way of an appeal as provided for by the law. In the premises, I find the preliminary objection

sustainable. An application for extension of time to file revision is for the aforesaid reasons struck out with costs to the respondents.

Order accordingly.

Dated at Shinyanga , this 3rd September, 2021


E.Y. MKWIZU

JUDGE

03/9/2021

Delivered this 3rd day of September, 2021 in the presence of Mr. Alex James Shimwenye learned Counsel for the Applicant and Ms Neema Mabushi leaned counsel for the Respondents




E.Y. MKWIZU

JUDGE

03/9/2021