

IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISC. LAND APPLICATION NO. 51 OF 2019

(Arising from Land Application No. 63 of 2015 before the District
Land and Housing Tribunal for Tabora at Tabora)

SALIM KHALID MALIONDOAPPLICANT

VERSUS

1. MUSSA JUMA KAFUNYERESPONDENT

2. SHABANI PANDISHARESPONDENT

RULING

Date of Last Order: 25/6/2021

Date of Delivery: 20/8/2021

AMOUR S. KHAMIS, J.

Before the Court there is an application for extension of time to file appeal against the decision of the District Land and Housing Tribunal for Tabora at Tabora.

Before hearing the Application, the 2nd Respondent filed a preliminary objection on point of law that, *the Application has been brought under the wrong provision of the law.*

Following the objection, the Court is duty bound to determine it first. This position has been stated in a case of **THABIT**

RAMADHAN MAZIKU AND KISIKU SALUM KIPTULA V AMINA HAMIS TYELA AND MRAJIS WA NYARAKA ZANZIBAR, Civil Appeal No. 98 of 2011.

By using the words of Hon. Othman, the Chief Justice (has he then was), at page 4 of the typed judgment, he wrote thus: -

*“The law is well established that a Court seized with a preliminary objection is first required to determine that objection before going into the merits or the substance of the case or application before it. In **BANK OF TANZANIA LTD V DEVRAN P. VALAMBIA**, Civil Application No 15 of 2002 (CAT) (unreported) the Court observed:*

“The aim of a preliminary objection is to save the time of the court and of the parties by not going into the merits of the application because there is a point of law that will dispose of the matter summarily.”

On date fixed for hearing of *limine litis*, the Applicant appeared in person, so do the 1st Applicant. The Second Respondent was represented by Mr. Keneth Nangawe, Learned Advocate.

With the permission of this Court both parties agreed to dispose the preliminary objection by way of written submissions.

Mr. Keneth Nangawe, Learned Counsel for the second Respondent submitted that the applicant brought his application under **Section 14(1) of the Law of Limitation Act, Cap 89 R.E 2002**.

He further submitted that since it was the land matter originating from the District Land and Housing Tribunal the



applicable law is the **Land disputes Court Act**, and the proper provision to move the Court is **Section 41(2) of the Land Dispute Courts Act, Cap 2016** which provide that: -

“The High Court may, for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days.”

To fortify his assertion, the Counsel cited the case of the **CRDB (1996) LTD V BAKARI MOHAMED NAMDALULA MT. CAT**, Civil Application No. 4 of 2004 at Dar Es Salaam (CA) (Unreported).

In this case, the court held thus: -

“Wrong citation of the enabling provision of law led the application incompetent”.

The Counsel further contended that **Section 14(1) of the law of Limitation Act**, deals with any matter which no provision is made by any law.

Mr. Nangawe also submitted that the applicant application was made before 19th February 2020, thus why the proper provision to move the Court was **Section 41(2) of the Land Dispute Court Act, Cap 216** as amended by the **Written Law (Miscellaneous Amendments) Act No. 2 of 2016**.

He also referred the case of **RAMADHANI LUGUSHA V TANZANIA INTERNATIONAL CONTAINER TERMINAL SERVICES LTD**, Revision Application No. 212 Of 2015 High Court At Dar Es Salaam, where Hon. Mipawa J, requested wisdom from a case of **PROJECT MANAGER ES-KO INTERNATIONAL INC KIGOMA V VICENT J. NDUGUMBI CAT** Civil Application No. 22 Of 2009 At Tabora.

In the later case, this court has this to say: -



“... It is now settled law that wrong citation of the law, Section, subsection and or paragraph of the law or on citation will not move the Court to do what is being asked to do and accordingly the application is incompetent...”

Basing on those authorities, the learned counsel prayed for the Court to struck out the Application with costs.

In Response, the Applicant conceded the objection. He argued that the ground raised is genuine, but he was hasty to pray for the Court to allow him to amend the Chamber summon so as to rectify the inadvertent error cropped in the Application.

He further added that the High Court is vested with powers to enable the Applicant cure this defect.

He prayed for the court to do substantial justice by doing away with technicalities. In this regard, the Applicant referred the cases of **YACOBO MAGOIGA GICHERE V PENINAH YUSUPH**, Civil Appeal No. 55 Of 2017 CAT; **COMMISSIONER GENERAL OF TANZANIA REVENUE AUTHORITY V JSC. ATOMREDMETZOLOTO (Armz)**, consolidated, Civil Appeal No. 78 of 2018 CAT and **GASPER PETER V MTWARA URBAN WATER SUPPLY AUTHORITY (MTUWASA)**, Civil Appeal No. 35 Of 2017.

In **YACOBO MAGOIGA GICHERE V PENINAH YUSUPH** (supra) the Court of Appeal held thus: -

“With the advent of the principle of overriding objective brought by the Written Law (Miscellaneous Amendments (No.3) Act, 2018 (ACT No. 8 of 2018) Which now requires the Courts to deal with case justly, and to have regard to substantive justice,



Section 45 of Land Disputes Courts Act, 2002 CAP 216 should be given more prominence to cut back an overreliance on procedural technicalities”.

So, basing on these decisions, the Applicant prayed for the Court to order favourable decision to save justice.

The Applicant concluded his submission for praying to the Court to waive costs.

In rejoinder, Mr. Nangawe adopted the submissions in chief and further to that he referred the case of **MARTIN D. KUMALIJA & 117 OTHERS V IRON AND STEEL LTD**, Civil Applicant No. 70/18 of 2018 (CAT). In this case at page 9 the Court stated that:

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“... While this principle is a vehicle for attainment of substantive justice, it will not help a party to circumvent the mandatory rules of the Court...”

He added that when the law has specifically provided for a mandatory procedure, rule or principle of moving the Court, there is no room of invoking overriding objective.

His assertion based on the case of **MOHAMED CHAMBUSO and 2 OTHERS V SAID MWINYIMKUU**, Misc. Civil Application No. 189 of 2019, HC at Dsm (Unreported). In the case under reference, this Court held this: -

“The overriding principle cannot be used to abrogate the mandatory provisions of the law”

The Counsel concluded his submission by pressed costs.

After going through the records and parties' submissions, the questions that await resolution is whether this Court has been properly moved.

As stated above, it is clear that the prayer made by the applicant in the chamber summons is for extension of time for the applicant to file appeal against the decision of the District Land and Housing Tribunal for Tabora.

Admittedly, **Section 14(1) of the Law of limitation Act, Cap 89 R.E 2002**, gives Court powers to extend time for certain cases which are not specifically provided by specific legislations.

Extension of time in land matter originating from the District Land and Housing Tribunal the applicable law is the **Land Disputes Courts Act, Cap 216**, and the proper provision to move the Court is **Section 41(2)**

The Section in question provide that: -

“The High Court may, for good cause, extend the time for filling an appeal either before or after the expiration of such period of forty-five days”

Basing on law, and submission by both parties, whereby the Applicant conceded the objection, I find that this application has been brough under the wrong provisions of the law.

The remaining ancillary question is whether, the same can be cured by overriding objective principle.

As correct put by Second Respondent counsel, the Overriding Objective principles cannot be of any assistance in this situation because where a written law has specifically provided for a



mandatory procedure, rule or principle of moving the Court; there is no room of invoking overriding objective principle.

Since the Applicant wrongly moved the Court, the Application is incompetent and; consequently, I struck it out with costs.

It is so ordered.



AMOUR S. KHAMIS

JUDGE

20/08/2021

ORDER:

Ruling delivered in chambers in absence of both sides who were duly notified by the Court clerk. Right of Appeal explained.



AMOUR S. KHAMIS

JUDGE

20/8/2021