

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

LAND REVISION NO. 1 OF 2021

(Originating from the District Land and Housing Tribunal for Mbeya,  
at Mbeya in Land Application No. 145 of 2016)

**HENRY JULIUS TSHA..... APPLICANT**

**VERSUS**

**1. RICHARD RAMADHANI KASISI.....1<sup>ST</sup> RESPONDENT**

(Administrator of the Estate of the Late  
Ramadhani Kasisi Mwakasula)

**2. YASINI CHUMA KILAMA.....2<sup>ND</sup> RESPONDENT**

**3. DAVID YUSUPH NYANG'ONDO.....3<sup>RD</sup> RESPONDENT**

**4. JIUNGE NZUO BUKWIMBA.....4<sup>TH</sup> RESPONDENT**

**5. MWAHALE SILALIKA MAKOLO.....5<sup>TH</sup> RESPONDENT**

**6. IBRAHIMU SILAKILO MAKOLO.....6<sup>TH</sup> RESPONDENT**

**RULING**

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*Date of last Order: 05.10.2021*

*Date of Judgment: 17.12.2021*

**Ebrahim, J.**

This court is faced with one issue of *whether or not the instant application is time barred*. The applicant HENRY JULIUS TSHA, filed the application seeking for this court to revise the proceedings in

Land Application No. 145 of 2016 of the District Land and Housing Tribunal for Mbeya at Mbeya (DLHT). It was made under **section 43(1) (b) of the Land Disputes Courts Act, Cap. 216 R.E 2019**. It was supported by an affidavit sworn by the applicant. The 1<sup>st</sup> respondent resisted the application by lodging a counter affidavit sworn by himself. He also raised a Preliminary Objection (PO) through his counsel Mr. Daniel Muya that the application is time barred.

At the hearing of the PO, Mr. Kyando, learned advocate represented the applicant while Mr. Muya, also learned advocate represented the 1<sup>st</sup> respondent. The PO was argued by written submission.

Supporting the PO, Mr. Muya submitted that section 43(1)(b) of Cap. 216 which the application is brought under, does not give for time limitation in which the application of this nature is required to be filed. However, the time limitation is provided by the Law of Limitation Act, Cap. 89 R.E 2019, under Item 21, Part III of its Schedule which provides for 60 days to make the application of this nature. He contended that the decision in the DLHT the applicant seeks to be revised was made on 5/02/2019. The

applicant was not a party to the proceedings/case and he came to know about the decision in September, 2019 but he filled the application on 22/01/2021 after the expiry of two years. Hence the application was hopelessly time barred. He referred to the decisions of this court in the cases of **Devotha Kisika v. Registered Trustees of The Diocese of Musoma**, Land Revision No. 1 of 2021 HC, at Musoma (unreported); and **Deusdedith Pascal Chugga & Others v. Morfam**, Land Revision No. 24 of 2019 HC, at Dar es Salaam (unreported). In those respective cases the court was confronted with the same issue as in the instant case and they were dismissed. Therefore, Mr. Muya prayed for this court to dismiss the application with costs.

In response, Mr Kyando submitted that the applicant firstly lodged the complaint about the decision before the Deputy Registrar soon after becoming aware of the decision. The complaint letter was made following the provision of **section 44 (1) and (2) of Cap. 216**. He contended that when the complaint reached this court, it advised the applicant to lodge his complaint formally for this court to conveniently exercise its revisional powers. He thus, lodged the

application. He urged this court to overrule the objection with costs and proceed hearing the application on merits.

In rejoinder Mr. Muya argued that since **section 43(1)(b)** provides for remedy on a person who was not a party to the proceedings in the DLHT, the applicant's action of lodging the complaint by letter was not proper. He argued that he relied **section 44 (1) and (2) of Cap. 216** only gives the mandate to the Registrar at his own motion to call for record of the proceedings in the DLHT. He insisted that the application is time barred.

Indeed, in terms of **section 43 (1)(b) of Cap. 216**, this court has mandate of revising the proceedings arising from the DLHT upon application by any party or by the court's own motion. The law however, does not provide the time limit within which the application should be filed. It is therefore correct that the applicable provision is **paragraph 21, of Part III of the Schedule to Cap. 89 RE 2019** which provides that the time within which to lodge an application under the written law for which no period of limitation is provided is sixty (60) days. In the case of **Victor Rweyemamu Binamungu v. Geoffrey Kabaka and Another**, Civil Application No. 602/08 of 2017, Court of Appeal of Tanzania at

Mwanza, (unreported), the applicant applied for extension of time to the CAT after his application of this nature being struck out for being filed out of time. This was also the matter in the **Devotha Kisika** and **Deusdedith Pascal Chugga & Others cases** (supra).

In the instant matter, it is not disputed that the applicant made the instant application after the expiry of two years. Mr. Kyando's argument that he and his client filed this application after being advised by this court to make a formal application is not maintainable. This is because, the advice by the court in my view, did not mean that they were dispensed with the requirement to seek condonation of time to file this application. It is my further view that when they were advised to file a formal application, the same was to be filed subject to time limitation. Obviously, they were supposed to firstly apply for extension of time and the whole process of filing complaint by letter and the fact that this court advised them to file a formal application would have been based as reasons for the delay.

Having found as above, I am inclined to uphold the PO that, the instant application is time barred. Consequently, I dismiss it with costs. The costs shall be paid to the 1<sup>st</sup> respondent only since other

respondents neither resisted the application nor entered appearance.

Ordered accordingly.



**Mbeya**

**17.12.2021**

A handwritten signature in black ink, appearing to read "R.A. Ebrahim", written over a horizontal line.

**R.A. Ebrahim**

**JUDGE.**

**Date:** 17.12.2021.

**Coram:** Hon. A.E. Temu - DR.

**Applicant:** Present.

**1<sup>st</sup> Respondent:** Present in person

**2<sup>nd</sup> Respondent:**

**3<sup>rd</sup> Respondent:**

**4<sup>th</sup> Respondent:**

Absent.

**5<sup>th</sup> Respondent:**

**6<sup>th</sup> Respondent:**

**For the Respondents:**

**B/C:** Gaudensia.

**Mary Gatuna:** I am holding brief of Advocate James Kyando for the Applicant. The matter before you is for Ruling and we are ready.

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**Court:** Ruling delivered in the presence of the Applicant and the 1<sup>st</sup> respondent only.



A.E. Temu

Deputy Registrar

17/12/2021