

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB - REGISTRY OF MWANZA
AT MWANZA**

LAND REVISION NO. 08 OF 2021

(Arising from the Land Application No.69/2021 and originating from Application No. 342 of 2015 before Mwanza District Land and Housing Tribunal)

SYLICHERIA MACHERA..... APPLICANT

VERSUS

EDWARD MGOY 1ST RESPONDENT

HARUNA PHILIPO 2ND RESPONDENT

RULING

23rd May & 10th June, 2022

Kahyoza, J.

Sylicheria Machera filed an application for revision seeking this Court to call and examine the correctness and propriety of the decision of the District Land and Housing Tribunal (the DLHT) dismissing her claim. The DLHT dismissed **Sylicheria Machera's** application for want of prosecution after she had testified. The respondents raised a preliminary objection that the application was filed out of time. Mr. Kaijage, the applicant's advocate conceded to the preliminary objection. He prayed the application to be struck out without costs. Mr. Remigius strongly objected to the prayer. He prayed the application to be dismissed with costs. There

is one issue that is whether the application for revision filed out of time should be dismissed or struck out with costs.

A brief background is that **Sylicheria Machera** sued **Edward Mgoy** and **Haruna Philipo**, the respondents before the DLHT. She testified. Later, the chairman recused and another chairman was appointed to take over the conduct of the application. The successor chairman dismissed the application for want of prosecution. **Sylicheria Machera** came to learn the dismissal of the application after time to appeal or file an application for revision had expired. She applied to this Court for extension of time to file an application for revision. The Court granted the prayer and extended time for 14 days within which to file the application for revision. **Sylicheria Machera** instituted the application for revision after expiry of 14 days. The respondents advocate raised the preliminary objection.

The applicant's advocate conceded to the preliminary objection to the effect that the application was filed out of time. He requested this Court to strike out the application and wave costs. To support his prayer for striking out the application instead of dismissing the application, the applicant's advocate cited the decision of the Court of Appeal in **North Mara Gold Mine Ltd v. Gida Nyambuze Ntora**, Civil Appeal No. 457/2010.

The respondents' advocate submitted that the application be dismissed with costs. He contended that the case of **North Mara Gold Mine Ltd v. Gida Nyambuze Ntora** is distinguishable. He added that the instant application was governed by section 93 of the Civil Procedure Act, [Cap. 33. R.E. 2019].

The applicant filed application for revision after this Court granted leave to file to apply for revision out time. As stated above the applicant failed to comply with the order extending time to apply for revision. She delayed to file an application for revision. The **Law of Limitation Act**, [Cap. 89 R.E. 2019] (the LLA) is clear, proceedings instituted after expiry of the limitation period must be dismissed. Section 3 of the LLA provides that:

3.-(1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence. (2) For the purposes of this section.

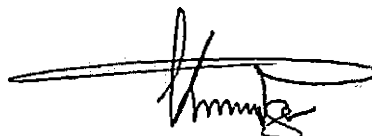
In addition, the Court of Appeal held in **Ali Shabani and 48 Others v. TANROADS and A.G.** Civil Appeal No. 261/2020 (unreported) took a position that as the suit was time barred, the only order was to dismiss it under section 3(1) of the **Law of Limitation Act**, [Cap.89 R.E. 2019]. I

find that since **Sylicheria Machera** instituted the application for revision out of time, the only remedy is to dismiss it. I am aware of the position of the Court of Appeal that where the Court has not heard a matter on merit it should strike out and not dismiss that matter. However, given the position of the law in **Ali Shabani and 48 Others v. TANROADS and A.G.**, (supra), I take the position that application for revision filed out of time like an appeal out time must be dismissed. I am of the firm view that if a person files any matters to which the L.L.A applies out of time; the remedy is to dismiss that matter. Section 3 of the L.L.A is clear as daylight.

In the upshot, I uphold the preliminary objection that the applicant lodged the application for revision out of time. Consequently, I dismiss the application for revision with costs.

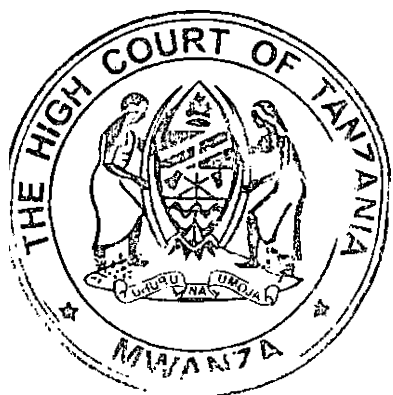
I order accordingly.

DATED at **Mwanza**, this 10th June, 2022

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J. R. Kahyoza
JUDGE

Court: Ruling delivered in the presence of Mr. S. Kaijage, the applicant's advocate and Mr. Remigius Mahinde for the respondents. B/C Ms. Jackline present.



A handwritten signature in black ink, appearing to read "J. R. Kahyoza".

J. R. Kahyoza

JUDGE

10/6/2022