

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

MISC. LAND APPLICATION NO. 103 OF 2017

*(From the Decision of the District Land and Housing Tribunal for
Tabora in Land Case Application No. 49 of 2014)*

**DAVID SAMSON BUTEMBAAPPLICANT
VERSUS
COSTANTINE COSMAS KIHALIYERESPONDENT**

RULING

Date of Submissions: 15/07/2022

Date of Delivery: 15/07/2022

AMOUR S. KHAMIS, J:

David Samson Butemba filed this application for extension of time within which to appeal against the Judgement and Decree of the DLHT for Tabora in Land – Application No. 49/2014.

The application was made by way of Chamber Summons under Section 38 (1) of the Land Disputes Courts Act, No. 2/2002 (now Cap 216, R.E. 2019) and Section 14(1) of the Law of Limitation Act, Cap 89, R.E. 2002 (now R.E. 2019).

Prior to hearing, Constantine Cosmas Kihaliye presented a notice of preliminary objection on two grounds:

- i. *The applicant's application at hand is incompetent for moving the Court improperly.*
- ii. *The applicant's application is incompetent for non – joinder of necessary parties.*

The two objections were orally argued before me. Whereas Mr. Musa Kassim, learned advocate for the respondent submitted in support of the preliminary objections, David Samson Butemba, who was unrepresented, readily conceded and sought for guidance of the Court.

Upon examination of the objection raised and analysis of the parties submissions, I am satisfied that there are merits in the objection on record.

Section 38(1) of the **LAND DISPUTES COURTS ACT, CAP 216 R.E 2019**, empowers this Court to extend time for lodging an appeal if the impugned decision of the District Land and Housing Tribunal was given in its appellate or revisional jurisdiction.

The present matter was originally filed in the District Land and Housing Tribunal for Tabora in its original jurisdiction and therefore Section 38 (1) cited in the Chamber Summons is not relevant.

It is trite law that where a relevant statute provides for limitation of time, the Law of Limitation Act cannot apply. Citing Section 14(1)

of the Law of Limitation Act in the chamber summons was thus superfluous.

With regard to nature of the proceedings, the applicant ought to have cited Section 41 (2) of the **LAND DISPUTES COURTS ACT, CAP 216, R.E 2019** which deals with extension of time for matters that originated in the District Land and Housing Tribunal.

For the stated reasons, the first limb of preliminary objection is sustained.

In the second limb of the objection, it was contended that there was a non joinder of necessary parties allegedly because before the District Land and Housing Tribunal there were three (3) other parties who were not joined in the present proceedings.

Upon perusal of the impugned Judgement, I noticed that original parties were Constantine Cosmas Kihaliye V. the National Microfinance Bank PLC, Tanzania Post Bank BR, David Samson Butemba and Nsoma Auction Mart & Company Ltd.

Whereas three others parties were not joined in this matter the documents on record did not show as to why they were omitted to the intended appeal.

Since a preliminary objection should be self explanatory with no extraneous evidence to support it, I find that the second limb of the objection is without merits and thus rejected.

Consequently, the application is struck out. Since the second limb of the objection did not sail through, I see no reason to order for costs.

It is so ordered.



AMOUR S. KHAMIS

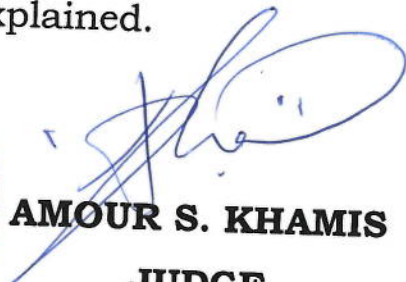
JUDGE

15/7/2022

ORDER.

Ruling delivered in Chamber in presence of the applicant in person and Mr. Musa Kassim, learned advocate for the respondent.

Right of Appeal explained.



AMOUR S. KHAMIS

JUDGE

15/7/2022