

IN THE HIGH COURT OF THE UNITED OF REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

LAND REVISION APPLICATION No. 1 OF 2022

(Arising from Land Application No. 8 of 2018 and Application for Execution No. 37 of 2020 before the District Land and Housing Tribunal for Mbulu Dongobesh.)

GENESI K. URASA..... APPLICANT

Versus

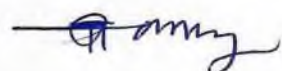
MBULU TOWN COUNCIL.....RESPONDENT

RULING

Date of Last order and Ruling: 26/9/2022

G. N. BARTHY, J.

The chamber summons was brought at the instance of Genisi K. Urasa seeking this court to call for and inspect the record of proceedings and ruling of the District Land and Housing Tribunal for Mbulu Dongobesh on Land Application No. 8 of 2018 and Application for Execution No. 37 of 2020, dated 18th day of November, 2021 to give direction in respect of errors material to the merits of the above mentioned applications and legality in ruling delivered by District Land and Housing Tribunal for Mbulu Dongobesh dated 18th day of November, 2021 that the execution failed. This honourable court make revision on error that contravenes the law and occasioned injustices on the party of the applicant; cost of the application be granted; plus, any other relief(s) this court may deem fit to grant. The application was supported by the affidavit of the applicant.



The application is found under section 43(1)(a) and (b) of the Land Disputes Courts Act, [Cap 216 R.E. 2019]. The respondent opposed the application through a notice of preliminary objection as follows;

That, the applicant's application is hopeless and time barred.

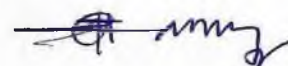
Following the preliminary objection raised, on the date fixed for hearing, the applicant appeared in person and for the respondent appeared Mr. Mkama Msalama the learned state attorney. Both parties made their submissions orally as follows;

Mr. Msalama the learned state attorney in support of the preliminary objection raised he submitted that, on this application for revision order on Land Application No. 8 of 2018 and Application for Execution No. 37 of 2020 of the District Land and Housing Tribunal for Mbulu Dongobesh; they were delivered on 30/4/2020 and 18/11/2021 respectively. He argued therefore, his matter is time barred contrary to the law.

He went on to state that, the provision of section 43(1)(a) and (b) of the Land Disputes Courts Act [Cap 216 R.E. 2019], does not give the time limit for one to file for revision to the High Court. In the circumstances the specific law is silent, then the Law of Limitation Act [Cap 89 R.E. 2019] will be referred.

Mr. Musalama went further to argue that, since there is the lacunae in the said law the recourse shall be on Item 21, Part III of the Schedule to the Law of Limitation Act [Cap 89 R.E. 2019] which provides for time limit to be 60 days.

In computing the time, he submitted that this application for revision has been filed about twenty months and six days or total of 616 days from



the determination of the matters are sought to be revised. That is to say Land Application No. 8 of 2018 and Application for Execution No. 37 of 2020 of the District Land and Housing Tribunal for Mbulu Dongobesh; were delivered on 30/4/2020 and 18/11/2021 respectively.

To buttress his point, he cited the case of **Janeth Joseph and another v. Beatrice Lyinga**, Land Revision No. 26 of 2019, High Court Labour Division at Dar es salaam (unreported) where the court held among other things that, time limit for pursuing an application for revision is 60 days from the date of decision.

He added that, in the matter for Application for Execution No. 37 of 2020, it is also time barred like the Land Application No. 8 of 2018.

Due to the lapse of time, Mr Msalama was of the firm view that, this court lacks jurisdiction to try the matter and the remedy is to dismiss the application with costs.

The applicant on his reply submission he basically contested the preliminary objection raised on the basis that, there were procedures that had delayed this matter. He frantically stated that, the Land Application No. 8 of 2018 was determined on 30/4/2020 and Application for Execution No. 37 of 2020 was delivered on and 18/11/2021 by District Land and Housing Tribunal for Mbulu Dongobesh.

He further contended that, in the process of pursuing the execution of the tribunal award, the respondent brought up another issue that was not raised at any stage of the hearing of those matters. Therefore, the execution process could not be affected because of the claim that the applicant had already been compensated with Land Plot No. 100. Therefore, the applicant sought to file revision on those matters.

The learned state attorney Mr. Msalama on his rejoinder he maintained his arguments that the application is time barred as the appellant himself has conceded that Land Application No. 8 of 2018 was determined on 30/4/2020 and Application for Execution No. 37 of 2020 was delivered on 18/11/2021. He therefore maintained his prayers.

Having heard the opposing submissions, going through the application and the supporting affidavit all were critically examined. This court will therefore dwell in a single issue;

Whether this application is hopelessly time barred.

As it was made clear that the application was found under section 43(1)(a) and (b) of the Land Disputes Courts Act, [Cap 216 R.E. 2019] which provides;

43. Supervisory and revisional powers

(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-

(a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;

(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the



proceedings and make such decision or order therein as it may think fit.

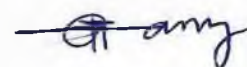
I entirely agree with the learned state attorney Mr. Msalama that the provision of section 43(1) (a) and (b) of the Land Disputes Courts Act, [Cap 216 R.E. 2019] do not provide for limitation period for application for revision to the High Court. Therefore, the time limit is guided with Item 21 of the First Schedule to the Law of Limitation Act [Cap 216 R. E. 2019] which provides;

Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law, the limitation of time is sixty days.

The law is very clear that the application has to be brought within 60 days. See the case of **Halais Pro-Cheme v Wella A.G** [1996] TLR 269.

It is not in dispute on this matter as submitted by both sides that, Land Application No. 8 of 2018 was determined on 30/4/2020 and Application for Execution No. 37 of 2020 was delivered on and 18/11/2021.

Before one wish to institute the matter before the court, he has to be certain that he is within the given time of the law. Should one be out of time, he should seek to the court for the extension of time before the court. The same position was well addressed in the case of **Dr. Muzzammil Mussa Kalokola v the Minister of Justice and Constitutional Affairs & others**, Civil Application No. 183 of 2014, CAT where among other things held at page 6 that;



...Nonetheless, in the instance case, the court cannot ignore the trashing of the mandatory time limitation prescribed by the Rules... the applicant ought to have preceded his present pursuit by applying for extension of time.

It is worth to note that, the requirement of time needs to be dully observed by the parties. Going through the records of the tribunal it is also clear that, Land Application No. 8 of 2018 which was determined on 30/4/2020 has more than 500 days lapsed and Application for Execution No. 37 of 2020 which was delivered on 18/11/2021 had only 58 days since its determination. As this application was filed before this court on 14th January 2022.


Drawing strength on the fact that the application for revision was to be made on two matters of Land Application No. 8 of 2018 and Application for Execution No. 37 of 2020. Considering there was no nothing on record to show that the applicant had applied and was granted the extension of time on the former application that had lapsed more than 500 days. In this respect therefore, I find that the application is hopelessly time barred.

That said and done, I am inclined to uphold the preliminary objection raised and find this application is struck out for being incompetent. Costs to be in the due course.

It is so ruled.

DATED at Arusha this 26th September, 2022.




G.N. BARTHY
JUDGE
26/9/2022