

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

LAND REVISION NO. 6 OF 2021

*(C/f The District Land and Housing Tribunal of Arusha at Arusha in Application for
Execution No. 75 of 2007 and Appeal No. 61 of 2012 originating from Application
No.44 of 2007 at Mateves Ward Tribunal)*

**LONGUTUTI METISHOOKIAPPLICANT
VERSUS
GODFREY MELAMI RESPONDENT**

RULING

29/11/2021 & 15/02/2022

KAMUZORA, J

This ruling is in respect of a preliminary objection on point of law raised by the Respondent that, the Applicant's application for revision is hopelessly time barred for being filed more than sixty days after the decision and order in Application for execution No. 75 of 2007 at the District Land and Housing Tribunal of Arusha, also judgment, Ruling and Order in Appeal No. 61 of 2021 in Arusha District Land and Housing Tribunal at Arusha.

Briefly, the Applicant filed before this court an application for revision of the decision and orders of the District Land and Housing

Tribunal of Arusha in Application for Execution No. 75/2007 and the ruling and order on Appeal No. 61/2021 of the same Tribunal. The application was brought by way of chamber summons supported by an affidavit sworn by Frida Magesa, advocate for the Applicant praying for the orders: -

- 1) *That, this Honourable Court be pleased to revise the decision and orders of the District Land and Housing Tribunal of Arusha on Application for Execution No 75 of 2007 arising from Application No 44 of 2007 at Mateves Ward Tribunal and the other judgment, Ruling and Order on Appeal No. 61 of 2021 at The District Land and Housing Tribunal of Arusha and make such order that the said Ruling and order on Appeal No. 61 of 2021 issued on 27/08/2013 by Hon. Makombe Chairperson are illegal and give supplementary order to remove the Respondent from the disputed land as the Chairperson of the District Land and Housing Tribunal failed to do so.*
- 2) *That this Honourable Court be pleased to revise the order on Miscellaneous Application No. 75 of 2007 issued on 15/7/2021 by Honourable F. MDACHI, the Chairperson of the Tribunal and set aside the said order as it is too contradictory and led to injustice on part of the Applicant as the Chairperson failed to perform his duty of going through the Tribunal record and give his directives and also is against the decision made by Hon. S. C. Moshij, Judge on Land Case No. 52 of 2014 filed at the High Court of The United Republic of Tanzania at Arusha.*

- 3) *Cost of this revision be borne by the Respondent.*
- 4) *Any other relief(s) this Honourable Court may deem fit and just to grant.*

The application was strongly opposed by the Respondent through a counter affidavit deposed by the Applicant himself. The Respondent also raised a preliminary objection on point of law as depicted above. Hearing of the preliminary objection was by way of written submission whereas the Applicant enjoyed the service of Ms. Frida Magesa, advocate from Fritom & Company Advocates while the Respondent engaged Advocate Aziza A. Shakale from Shakale Chambers for drafting purpose only.

Arguing in support of the preliminary objection the Respondent submitted that, the Applicant's application before this court is centred on moving this court to revise the decision of the District Land and Housing Tribunal (the Tribunal) in two decisions; decision and Order in Application for Execution No 75 of 2007, ruling and order on Appeal No. 61 of 2012.

For the first order in Application for Execution No. 75 of 2007 the Respondent pointed out that, the order was issued on 7/01/2008 and 15/04/2009 and the order was executed on 30/4/2009 as per annexure

L2, L3 and L4 in the Applicant's affidavit. That, for Appeal No. 61 of 2012, the Respondent pointed out that, the decision was issued on 27/08/2013 and was executed on 06/06/2014 as per annexure L6 to the Applicant's affidavit.

The Respondent submitted that, the revisional power of this court are governed by Section 43(2) of the Land Disputes Courts Act, 2002 and in matters originating from Ward Tribunal the governing provision is section 38(1) of the Land Disputes Courts Act, 2002 which provides the time limit for the aggrieved part to lodge the revision within sixty days after the date of the decision or order. The Respondent submitted that, the present application was filed before this court on 13/08/2021, several years after the order and judgment was issued thus out of time.

Replying to the Respondent's preliminary objection, Ms. Frida Magesa, counsel for the Applicant submitted that, the revision application was filed by the Applicant after the Applicant was dissatisfied with the decision of the trial Tribunal when it failed to rectify the error addressed to it regarding the two contradictory execution order issued by it.

Ms. Frida explained that, the current application was filled on 13/09/2021 which is only 29 days after the ruling in Revision Application

that was delivered on 15/07/2021. She was of the view that the application was not filed out of time. The counsel added that, the time to file revision is not provided for under the Land Dispute Courts Act thus the applicable law is the Law of limitation Act part III item 21 of the schedule which provides the time limit to be 60 days. The Applicant's counsel prayed for the preliminary objection to be overruled with costs and the court to proceed with the hearing and determination of the application on merit.

Upon a brief rejoinder by the Respondent is in agreement with the Applicant prayer under item ii which indicate that the trial tribunal gave a contradictory order in respect of execution No. 75/2007 and Appeal No. 61 of 2012. The Respondent however reiterated the submission in chief and added that, the application for an order under item I of the chamber application is time barred. The Respondent added that, the impugned order of the District Land and Housing Tribunal of Arusha dated 15/07/2021 is pegged on the Applicants entrenched letter to update revisional remedies in the High Court of Tanzania at Arusha in Civil Case No 52/2014 which had not been utilised.

Having considered the arguments made by the parties for and against the preliminary objection, the issue calling for the consideration by this court is whether the revision application is time barred or not.

The law governing revision application by this court is section 43(1)(b) of The Land Disputes Courts Act Cap 216 R.E 2019 which provides that,

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

(a) N/A

(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."

While the above provision provides for power of this court in revision application, it does not give time limit for the same to be filed in court. In the submission in support of the objection the Respondent cited section 38(1) of the Land Disputes Courts Act Cap 216 R.E 2019 as the provision which the application provides time limit for revision application. The said section reads: -

*"Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, **may within sixty days after the date of the decision or order, appeal to the High Court:***

Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired."

Going through the said provision, I discovered that it provides time limit for filling appeal to this court and not revision application as suggested by the Respondent. Upon reading the Land Disputes Courts Act I did not find any provision which specify the time limit for filing of revision application to the high court hence, resort was made to the Law of Limitation Act Cap 89 R.E 2019. Part III item 21 of the Schedule to the Law of Limitation Act provides the time limit of 60 days for revision.

The records show that, originally the suit was instituted before Mateves Ward Tribunal by the Applicant in this application sometimes in 2007 and the decision was in his favour. An appeal was preferred but it is unfortunate that the record to that appeal was not attached to this application. However, I was only able to grasp from the record that an appeal that was preferred therefrom resulted into the DLHT giving

directive for the Respondent to apply for revision as it was observed that the Ward Tribunal entertained a case which the real party Melushoki Ngooya was the deceased and the part Longututi Metishooki who appeared in person was not appointed as the administrator of the estate of the deceased Melushoki Ngooya. That directive was not pursued by either of the part and instead the Applicant instituted application for execution No. 75 of 2007 intending to execute the decision of the Ward Tribunal and the execution order was issued on 7/01/2008 (annexure L2) to allow the execution in favour of the Applicant. The prayer for stay for execution by the Respondent was overruled by the DLHT in its ruling dated 15/04/2009(annexure L3) and the Tribunal appointed Tanzania Auction Mart Court Brokers & Debt collectors Limited to execute the order. The Appointed Court Broker filed the report showing that the execution was effected and the decree holder was handed with the land in dispute on 30/4/2009 (annexure L4).

The records also show that, the Applicant was appointed administrator of the estate of the deceased and granted letter of administration on 22/07/2014. There is no record showing that the Applicant after being appointed initiated the proceedings in his capacity as administrator as so directed by the DLHT. The record shows that he

instituted a fresh suit before High court praying for an order for recovery of the disputed property. It was discovered that, the DLHT while it nullified the decision of the Ward tribunal it also allowed execution of the same decision to proceed vide its order dated 7/01/2008. The High Court made it clear that the remedy available for the parties was not to institute a fresh suit rather to file an application for revision in order to rectify the error encountered for the same DLHT issued two conflicting decisions.

Surprisingly while the record shows that the court broker reported on the completeness of the execution process, the same Tribunal the same Applicant initiated another move requesting for the Tribunal to issue a fresh order for execution. The records also shows that there is another execution that was passed in favour of the Respondent as per attachment in the Respondent's counter affidavit.

Later, the records show that, the Applicant decided to move the tribunal to proceed with the execution through a letter. That prompted the tribunal ruling dated 17/07/2021 which dismissed the prayer by the Applicant. Thus, the present application is prompted on that ruling requesting this court to go through the decision and orders of the lower

Tribunal in all case files and satisfy itself to the correctness and propriety of the same.

With the above narration of the story, it is obvious that this revision is prompted on the order dated 17/07/2021 which in fact is on time. But the essence is that, the DLHT was moved while referring those other decision passed before. It became obvious that while determining the legality of the order dated 17/07/2021 the effect goes to the other orders and rulings that were passed before. In that regard I find this application still within the time to be dealt with by this court.

I therefore overrule the preliminary objection and the main application should proceed for hearing on merit. Each part to bear his own costs.

Order accordingly.

DATED at ARUSHA this 15th Day of February 2022




D.C. KAMUZORA,

JUDGE