

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

LAND REFERENCE NO. 4 OF 2020

(C/F Land Case No. 5 of 2014)

ARDHI PLAN LTD APPLICANT

VERSUS

REDDING FARM & ENTERPRISES LTD RESPONDENT

JUDGMENT

15/11/2021 & 18/3/2022

ROBERT, J:-

The applicant, Ardhi Plan Ltd, moved this Court under section 77 and 95 of the Civil Procedure Code, Cap. 33 (R.E.2019) for orders that:-

- (a) The Ruling and Order of the Deputy Registrar in Miscellaneous Land Application No. 24 of 2018 be set aside with costs.*
- (b) Any other orders as this Honourable Court may deem just and equitable to grant.*

The application is supported with a sworn affidavit of one Upendo Joas Msuya, learned counsel for the applicant and resisted by the respondent through a counter-affidavit sworn by one Peter Redding, the shareholder and Managing Director of the Respondent Company.

Prior to the hearing of this application, the respondent filed a Notice of preliminary objection on points of law to the effect that:-

- (i) *The application for reference is incompetent for being filed out of time.*
- (ii) *The application is incompetent and bad in law for being preferred under wrong provisions of the law.*

As a matter of practice, I invited parties to address the Court on the points of preliminary objection before embarking on the merits of this application in case it is spared after the determination of the raised points of objection.

At the hearing of the preliminary objection, the applicant was represented by Upendo Msuya, learned Counsel whereas the respondent was represented by Ipanga Kimaay, learned Counsel.

When it was the time for Mr. Kimaay to address the Court on the points of objection, he decided to abandon the second point of preliminary objection and submitted on the first point only.

Highlighting on the first point of preliminary objection, he submitted that the current application originates from Misc. Application No. 24/2018 which was decided on 4th December, 2019. The applicant filed this

application for reference against the impugned decision on 24th March, 2020 which is out of the 60 days' period prescribed under item 21 of part 3 of the schedule to the Law of Limitation Act, Cap. 89 (R.E.2019). He argued that, according to section 4 of the Act, the period of limitation started to run on 4/12/2019.

He made reference to the case of **Denis T. Mkasa vs. Farida Hamza (Administratrix of Estate of the late Hamza) and Another, Civil Application No. 46/08 of 2018** where the CAT at page 11 stated that *"since the decision sought to be revised was made on 14th June, 2017 the application for revision should have been filed by 15th August, 2017"*.

He maintained that, using the same reasoning, the present application was filed 21 days out of time. The applicant ought to have filed an application for extension of time

He also made reference to the High Court decision in the case of **Daniel Jeremiah Mngale vs Njake Enterprises & Oil Transport Limited and 5 others, Revision Application No. 17 of 2019 (unreported)** in support of his argument.

On the basis of the foregoing, he submitted that, the current application is incompetent and ought to be dismissed in terms of section 3(1) of the Law of Limitation Act, Cap. 89 (R.E.2019).

In response to the raised point of preliminary objection, Ms. Msuya submitted that, this application falls under part 2, Item 1 of the Law of Limitation Act which provides for a prescribed period of 90 days and not part 3 item 21 which provides for a prescribed period of 60 days as alleged by the learned counsel for the respondent. She argued that, part 2, item 1 of the Law of Limitation Act prescribes the time limit of 90 days for appeals where the period of limitation is not prescribed by any written law and the current reference is like an appeal, thus the prescribed time is 90 days.

She maintained that, the cases cited by the learned counsel for the respondent are distinguishable because they are related to applications for revisions. Based on that, she prayed for the preliminary objection to be dismissed and the case be heard on merit.

In a brief rejoinder, counsel for the respondent reiterated his submissions in chief and maintained that, the present matter (reference) was lodged by way of chamber summons supported by affidavit which is a format provided for applications under Order XLIII, Rule 2 of the Civil Procedure Code. Thus, it is an application and not "like an appeal" as submitted by the learned counsel for the applicant. He clarified that, the

format for lodging appeals is provided for under Order XXXIX Rule 1 and 2 of the Civil Procedure Code.

On the basis of the foregoing, he prayed for the preliminary objection to be sustained and this application to be dismissed for being filed out of time.

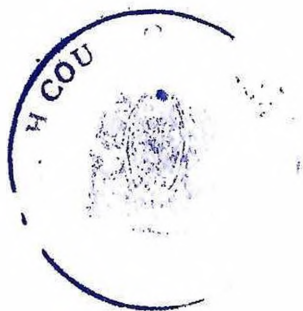
From the submissions of both parties, the central question for determination is whether or not the present matter was filed within the prescribed time.

Records indicate that, this matter was signed and sealed by the Deputy Registrar on 25/3/2020 which is one day after being presented for filing. For reasons rightly stated by the learned counsel for the respondent, this Court agrees that the applicant's reference to this Court is an application and not "like an appeal" as submitted by the learned counsel for the applicant. Therefore, since no period of limitation is for provided under the CPC or any written law for one to file an application for reference, the period of limitation in this application is 60 days under part 3, item No. 21 of the Law of Limitation Act.

Therefore, since the impugned decision sought to be challenged by this application was delivered on 4th December, 2019 and the Deputy Registrar had indicated that copies were ready to be collected, it is obvious, by simple computation, that by 24th March, 2020 when the applicant lodged this application 109 days had already lapsed from the date of delivery of the impugned decision. Thus, I find this application to be incompetent for having been filed outside the prescribed time without leave of the Court.

Consequently, I dismiss this application with costs.

It is so ordered,



K.N.ROBERT
JUDGE
18/3/2022