

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA**

LAND APPEAL NO. 07 OF 2018

(Originating from Application No. 40 of 2015 in the District Land and Housing Tribunal at Bukoba)

VICTORIA PAULO----- APPELLANT

VERSUS

APOLINARY MUSHUMALI-----1ST RESPONDENT

SHUKURU GASPARY KAPERA-----2ND RESPONDENT

JUDGMENT

Date of the last Order: 23/03/2022

Date of Ruling: 01/04/2022

A.E. Mwipopo, J.

Victoria Paulo, the appellant herein, filed Application No. 40 of 2015 in the Bukoba District Land and Housing Tribunal for extension of time to file application to set aside dismissal order of the Tribunal dated 24th October, 2016. The respondent raised preliminary objection on two points of law on 1st March, 2017 that the Tribunal was not properly moved by citing wrong provision and the Chamber Summons seeking for restoration of the suit was attached with affidavit the affidavit of incompetent person not party to the suit. The objection was

Tribunal in the proceedings does not cover application for extension of time which is the application brought by the appellant to the tribunal.

I have read the typed proceedings of the trial Tribunal on 19th June, 2017 when the counsel for the respondent submitted on the preliminary objection. He said that the appellant cited section 52 (2) of Cap. 216, R.E. 2002 and section 14 (1) of the Law of Limitation Act, Cap. 89, R.E. 2002. He said that section 14 of the Law of Limitation is applicable but section 52 (2) of Cap. 216 is not applicable in the application before the Tribunal. That the appellant was supposed to cite regulation 11 (2) of G.N. No. 174 of 2003. He also cited the case of **Almas Idd Mwinyi v. NBC and Another [2001] TLR 83** in support of his argument.

The Tribunal in its ruling which was delivered on 04th January, 2018 dismissed the application for wrong citation as there is no lacuna in the land laws for the appellant to resort to other laws. The Tribunal stated further that the proper citation was section 11 (2) of Cap. 216 R.E. 2002. The decision by the Tribunal was not correct for the reason that there is no section 11 (2) of Cap. 216, R.E. 2002. Maybe the Tribunal was referring to regulation 11 (2) of G.N. No. 174 of 2003 as it was submitted by the counsel for the respondent. However, since the appellant was praying for extension of time to file application for restoration then the regulation 11 (2) of G.N. No. 174 of 2003 is not applicable.

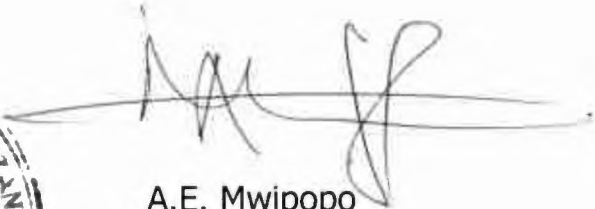
Section 52 (2) of the Land Disputes Courts Act, Cap. 216, R.E. 2002 which was cited by the appellant in her application provides for applicability of law of limitation in proceedings before the District Land and Housing Tribunal. The said section reads as follows:-

"52 (2) The Law of Limitation Act shall apply to proceedings in the District Land and Housing Tribunal and the High Court in the exercise of their respective original jurisdiction."

The above cited section is very clear and needs no interpolation on the applicability of the Law of Limitation Act to proceedings in the District Land and Housing Tribunal. As the appellant was filing application for extension of time to file application for restoration of Application No. 40 of 2015 which was dismissed on 24th October, 2016 for non-appearance, there is nothing wrong for the appellant to cite section 52 (2) of Cap. 216 in her application for extension of time.

Therefore, I find that the appeal has merits and I allow it. The decision of the Bukoba District Land and Housing Tribunal delivered on 04th January, 2018 in the Misc. Application No. 40 of 2015 is revised and I order for the said application to proceed with hearing and the District Land and Housing Tribunal has to determine it on merits. Under the circumstances of this case, each party has to take care of its own cost. It is so ordered accordingly.




A.E. Mwipopo

Judge

01.04.2022

The Judgment was delivered today, this 01.04.2022 in chamber under the seal of this court in the presence of the appellant, respondent and counsel for the appellant.




A. E. Mwipopo

Judge

01.04.2022