

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND REVISION NO. 12 OF 2021

*(From the decision of the District Land and Housing Tribunal Land of Karatu District
at Karatu in Application No 05/2020 and Application for Execution No 46/2020)*

RABEVMO EYASI FARMERS CO.LTDAPPLICANT

VERSUS

DOROTEA AWE KWAANG'W1ST RESPONDENT

RAMADHANI HAMISI 2ND RESPONDENT

RULING

06/12/2021 & 17/01/2022

KAMUZORA, J.

The applicant Rabevmo Eyas Farmers Co Ltd preferred this revision application under the provision of section 43(1)(a) and (b) of The Land Disputes Courts Act, Cap 216 R.E 2019 praying for the orders that: -

- 1) This Honourable court be pleased to call for and inspect the record, proceedings, judgment and ruling of the District Land and Housing Tribunal for Karatu at Karatu in Land Application No 5/2020 and Execution No 46/2020 to give direction in respect of errors material to the merit of the above-mentioned Applications*

on error that contravene the Law and occasioned injustice on part of the Applicant.

2) The cost of the application be granted.

3) Any other relief this Honourable court deem fit and equitable to grant.

Each respondent filed counter affidavit opposing the application and a notice of preliminary objection on point of law that:

1) The Application is hopelessly time barred.

2) The Application is hopelessly defective for not indicating at which date it was filled in the district registry, signed by deputy registrar or even authorized officer of the court.

3) The application is incurably defective for containing prayers and conclusion.

Hearing of the preliminary objection was by way of written submissions whereas the applicant was represented by Ms. Anna Ombay who despite being aware of the existence of the preliminary objection decided not to file any submission hence the decision of the Preliminary objection will be based on the records and submission by the respondents who enjoyed the service of Patrick Maligana, learned advocate.

Submitting for the 1st point of preliminary objection Mr. Maligana argued that, according to the records, the decisions in respect of Land Application No 5/2020 and Execution Application No. 46/2020 were made on 14/08/2020 and 20/09/2020 respectively. That, the current application was filed on 11/02/2021 almost 5 months a minimum period of not less than 4 months after the decisions were made. That, section 43 (1)(b) of the Land Disputes Courts Act, Cap 89 R.E 2019 provides for no time limitation for filling a revision application but item 21 part III of the Schedule to the Law of Limitation Act Cap 89 R.E 2019 provides for the time limit to be 60 days. To cement his submission, he cited the case of **Israel Solomon Kivuyo Vs. Wayan Langoi and Naishoki Wayani** [1989] TLR 140. Mr. Maligana was of the view that the present application was filled out of the statutory time therefore incompetent before the court. He prayed for the same to be struck out with costs.

Mr. Maligana also submitted that, the application for revision preferred by the applicant is against the law as both the order, ruling and judgment in Land Application No. 5/2020 and Execution No. 46/2020 are all appealable hence revision application cannot be granted for orders which are appealable. To buttress his submission, he cited

section 79(1)(a)(b)(c) of the Civil Procedure Code Cap. 33 R.E 2019 and the case of **Abdul Hassan vs. Mohamed Ahmed** [1989] TLR 181.

Submitting for the 2nd point of preliminary objection, Mr. Maligana argued that, it is the common practise of the courts of law that every document admitted in court be endorsed by the court registry or any authorising officer of the court. He pointed out that, the applicant's application was neither signed by the registrar nor the registry officer evidencing that it was received by the court to assist the respondent to know whether the application was filled on time or not. He supported his submission with the case **SGS Societe General De Surveillance SA and another Vs VIP Engineering & Market Ltd and another**, Civil Appeal No 124/2017 CAT (Unreported).

For the 3rd point of preliminary objection Mr. Maligana submitted that the application is incurably defective for containing prayers and conclusion. He faulted paragraph 18 of the applicant's affidavit for containing prayers and conclusion thus contravening Order XIX Rule 3(1) and (2) of The Civil Procedure Code Cap 33 R.E 2019. Mr. Maligana sought wisdom from the book of **Wagha's law of Pleadings 14th Edition Calcutta Eastern Law House** and the case of **Uganda vs Commissioner of Prison Ex parte Matovu** (1966) E.A 514 page 520.

He also pointed out that, what is stated under paragraph 13 of the affidavit is a legal argument and objections.

Having considered the submission by the counsel for the respondents as well as the record of the court with regard to the preliminary objection raised, I have the following observations: -

With regard to the first point of preliminary objection on time limitation, it is not disputed that the law governing the revision application is section 43(1)(a) and (b) as well as section 41 (1) of the Land Disputes Courts Act Cap 216 R.E 2019 but again the same does not provide for the time limit hence resort is to be made to the Law of Limitation Act Cap 89 RE 2019. Item 21 part III of the Schedule to the Law of Limitation Act provides for 60 days where no time limit is provided under any written law.

The applicant's application portrays that the judgment in Application No. 5 of 2020 was delivered on 14/8/2020 while ruling in Application for Execution No. 46 of 2020 was delivered on 28/9/2020. The revision application was filed by the applicant on 05/02/2021 as per exchequer receipts number EC100819379563IP attached to the applicant's application. If counted, the time limitation for Application No. 5/2020 runs up to 13/10//2020 and for Execution No. 46/2020 to

27/11/2020 respectively. Since the current application by the applicant was preferred on 05/02/2021, I join hands with the submission by the counsel for the respondents that the applicant's application was filled out of time hence the first preliminary objection is sustained.

Since the first preliminary objection is answered in affirmative it would in itself be enough to dispose off the whole application but for interest of justice, I will also discuss the other preliminary points as raised by the counsel for the 1st respondent.

On the second point of preliminary objection that the date to which the application was signed is not indicated, I agree that the application was neither signed by the court registrar nor the registry officer. I however find this irregularity not worth a point of law and is curable. The same did not meet the requirement for a preliminary objection as what is required as per the case of **Mukisa Biscuit Manufacturing Co Ltd vs. West End Distributors Ltd** [1969] EA 696 is that, a preliminary objection must consist of a point of law which has been pleaded, or which arises by clear implication, and which if argued as a preliminary point, may dispose of the suit. The court stated that: -

"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the

*assumption that all the facts pleaded by the other side are correct
It cannot be raised if any fact has to be ascertained on if what is
sought is the exercise of judicial discretion".*

Being guided by the above authority it is clear from the 1st respondent submission that there was no any law cited that was violated by the applicant. In itself it was not the applicant's fault if the document was not signed by the court official who received the same for registration. I therefore find the second preliminary objection baseless hence overruled.

It was contended by the counsel for the respondents that the revision application is against section 79(1) of the Civil Procedure Code Cap 33 R.E 2019 as the orders, ruling and judgment issued are all appealable and a revision is not an alternative to an appeal. I will not labour much to discuss this issue due to the fact that it was not among the three points to which a notice of preliminary objection was issued.

On the last point of preliminary objection, it was contended that the applicant's affidavit contained prayers and or conclusion. The 1st respondent submitted that paragraph 18 of the applicant's affidavit contains prayers or conclusion while paragraph 13 of the affidavit

contains legal argument and objections thus contravening Order IX Rule 3(1) and (2) of The Civil Procedure code cap 33 R.E.

For easy reference I have reproduced Order IX Rule 3(1) and (2) as here under: -

- "3. -(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications on which statements of his belief may be admitted: Provided that, the grounds thereof are stated.*
- (2) The costs of every affidavit which unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents shall (unless the court otherwise directs) be paid by the party filing the same."*

In considering the above provision, I have also revisited the referred paragraphs 13 and 18 of the affidavits in support of application. For easy reference the same are reproduced hereunder: -

"13. That the said two land applications being maliciously instituted and prosecuted by the one with no locus stand, both the impugned decisions emanated from are to the best of my knowledge incorrect, irregular and not maintainable as it will injure the integrity of the tribunal."

"18. That, the records of the proceedings and ruling of the impugned judgement and ruling in Land Application No. 5/2020 and Application for Execution No. 46 of 2020 be called and examined by this Honourable court for interest of justice."

From the wordings of paragraphs 13 of the applicant's affidavit, I agree that what is contained therein suggests legal arguments and not facts deposed by a witness. The effect of the same is to expunge that paragraph from the affidavit. Regarding paragraph 18 of the applicant's affidavit, I did not encounter any prayers or conclusion as seem to be suggested by the counsel for the respondents. What was extracted there does not form any relief as it is a general statement requesting the court to go through the records and make a decision for interest of justice. It is the requirement of the law that when the court examines the lower court records it makes a decision which in itself can be referred to as a conclusion. There is no prayer for any award or dismissal of the suit for the counsel to conclude that there was prayers or conclusion made under paragraph 18 of the affidavit. The third point of preliminary objection partly fails.

In the upshot, I find that the first preliminary objection is of merit.
I therefore uphold the same and struck out this revision application
with costs.

DATED at **ARUSHA** this 17th Day of January 2022.




D.C. KAMUZORA

JUDGE