

IN THE HIGH COURT OF TANZANIA
MWANZA DISTRICT REGISTRY
AT MWANZA

HC. LAND REVISION NO. 168 OF 2021

*(Originating from the District Land and Housing Tribunal of
Ukerewe District at Ukerewe in Land Application No. 70 of 2006)*

TILUHUMULA PIMA-----APPLICANT

VERSUS

MALOGOI MUHOYI-----RESPONDENT

RULING

Last Order: 03.03.2022

Ruling date: 25.03.2022

M.MNYUKWA, J.

By the way of chamber application, this Revision was brought under section 14(1) of the Law of Limitation Act Cap 89 R.E 2019, item 21 of part iii of the Law of Limitation Act, Cap. 89 R.E 2019 and section 14(3)(1) of the Land Dispute Courts Act, Cap 216 RE: 2019. The chamber summons was supported with an affidavit deposed by the applicant Tiluhumula Pima. At the hearing, the applicant was represented by Mr. Majid Kangile,



learned advocate and the respondent did not show appearance as for all the dates fixed, he was absent.

The genesis of this application as per the court records stands that, the original land dispute was filed on 11 July 2006 before Kakerege Ward Tribunal in Ukerewe and was decided in favour of the applicant. The appeal was preferred before the District Land and Housing Tribunal of Ukerewe vide appeal No. 70 of 2006 which based on technicalities, the decision was revised by the High Court and ordered the matter to start afresh within 30 days. It goes that when parties were issued with a letter to request them to show appearance and defend the appeal on 05.09.2008, the applicant could not show appearance and the matter was set to proceed on 11.08.2016 when the applicant received a summons to defend the appeal. The appeal was determined and judgment was delivered on 14.12.2018 in favour of the respondent.

The applicant filed his appeal on 04.04.2019 appealing against the decision of the DLHT before this court which was dismissed for being filed out of the statutory period required which is prescribed to be within 60 days. The applicant did not rest and on 11.12.2019, he filed an application for extension of time to this court vide Misc. Application No. 211 of 2019 which was dismissed. Again, the applicant appeared before this court with



the current application for revision serviced by the learned counsel Majid Kangile seeking for the following orders: -

- 1. That this honourable court to be pleased to order extension of time for the applicant to apply for revision of the decision of the District Land and Housing Tribunal for Ukerewe at Nansio in Appeal No. 70 of 2006.*
- 2. That the court be pleased to call for records of the district Land and Housing Tribunal for Ukerewe at Nansio in Appeal No. 70 of 2006 and revise the tribunal proceedings and Judgment dated 14 December 2018 for it being tainted with material irregularity on the face of it.*
- 3. That the cost of this application to be provided for.*
- 4. And any other relief this court shall deem fit and just to grant.*

The matter proceeded ex-parte since the respondent was absent. From the court records and what transpired that resulted in this application, the court noted that the appeal before this court was dismissed for being time bared, and therefore, the applicant was asked to address this court if the revision application was competent before this court.

Mr. Majid Kangile by the way of oral submission submitted that the revision before this court was competent for the reason that the appeal was not heard on merit. He insisted that this court has powers to entertain the Revision Application under section 43(1)(b) of the Land Dispute Courts Act, Cap. 216 RE. 2019 and the same section does not bar this court to



entertain revision even though there is an alternative to appeal. He insisted that, it is the position of the Court of Appeal. He retires praying that the application be granted.

After the applicant learned counsel had addressed the court, I proceed to consult the law to find out whether this application is properly before this court. As referred by the applicant, the provision of section 43(1)(b) of the Land Dispute Courts Act, Cap. 216 RE. 2019 gives this court power to revise the lower court's proceedings and give orders accordingly. However, the question remains what are the circumstances that call for the revision by this court. In this regard, I did not agree with the applicant learned counsel that the power of this court to revise the lower court's proceedings is absolute even when the right of appeal is preferred and/or when the appeal was properly filed and determined before this court.

Based on the circumstance of this application at hand, as I had previously hinted, this is an application that has been preferred after the applicant had lodged an appeal which was dismissed by this court for being time barred. The main question is now whether it was right for the applicant to come back again to this court to file the application for revision.



The law is settled that, any person aggrieved by the decision of the lower court has a right to appeal to the upper court in the hierarchy in the exercise of his constitutional rights as it is provided for under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, Cap 2 R.E 2019. What is in records is clear that the applicant had already exhaust his constitutional rights before this court after the applicant was dissatisfied by the decision of DLHT, and decided to appeal before this court on 04.04.2019. The appeal which was dismissed for being filed out of the statutory required period of 60 days limit. Following the decision of this court, the remedy available to the applicant was to appeal to the Court of Appeal against the decision of this court and not to file revision before this court as he did.

This application could only be properly filed before this court where the applicant could not be in position to file an appeal for the general rule is that where there is a right of appeal, there is no right of a revision. In the case of **Dickson Rubingwa vs Paulo Lazaro**, Civil Application No. 1 of 2008 CAT (Unreported) it was stated that: -

... if there is a right of appeal then that has to be pursued and, except for sufficient reason amounting to exceptional circumstances, there cannot be a resort to the revisional jurisdiction of this Court.




(See **Transport Equipment Ltd v. Devram Valambhia**, Civil Application No. of 1994, **Stanbic Bank Tanzania Limited v. Kagera Sugar Limited**, Civil Application No. 33 of 2012 (unreported)).

In this instant application, the applicant had already exercised his right of appeal before this court which bars this court to entertain the application for revision before it for the applicant had a room to still exercised his constitutional rights of appeal to the upper court in the hierarchy which is the Court of Appeal. It is in this regard; I find that this application was improperly placed before this court for determination and I proceed to struck it out.


Based on the circumstance that the respondent was absent and the applicant alone attended the court, I make no orders as to costs.

It is so ordered.




M.MNYUKWA
JUDGE
25/03/2021

Judgement delivered on 25th day of March, 2022 in the presence of the applicant advocate and in the absence of the respondent


M.MNYUKWA
JUDGE
25/03/2021