

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

LAND REVISION NO. 11 OF 2022

*(C/F Land Appeal No. 45 of 2018 District Land and Housing Tribunal of Arusha, Original Land
Application No. 1 of 2017 Mbuguni Ward Tribunal)*

ISACK LAZARO SIKAWA 1ST APPLICANT

EKOBETH NDOKI (As the Administrator of the
Estate of the late Lazaro Isack) **2ND APPLICANT**

EKOBETH NDOKI 3RD APPLICANT

MILKI LAZARO 4TH APPLICANT

VERSUS

SARAH MIKAEL RESPONDENT

RULING

22nd November, 2022 & 10th February, 2023

TIGANGA, J.

The applicant has brought this application under **section 43 (1) (a) and (b) of the Land Disputes Court's Act**, [Cap 216, R.E. 2019]. He prays that, this court be pleased to call records and proceedings in Appeal No. 45 of 2018 from District Land and Housing Tribunal of Arusha (District Tribunal) which originated from Mbuguni Ward Tribunal in Land Application

No. 1 of 2016 (Ward Tribunal) so as to satisfy itself as to the correctness, legality, propriety and revise the same.

The brief history as ascertained from the records shows that, the respondent successfully sued the 1st applicant herein, in the Ward Tribunal for trespassing into her area measuring 105 feet width and 210 feet length located at Mbuguni Ward within Arumeru District in Arusha Region (suit land). According to the 1st applicant, the actual person who was given the suit land by the Village authority back in the 1970s was his father thus, the respondent ought to have sued the father and not him even though he was the one using the suit land at the time. As the Ward Tribunal decided against the applicant, he appealed against such decision before the District Tribunal which upheld the Ward Tribunal's decision in its judgment delivered on 12/07/2019. The applicant's affidavit does not show if he further appealed against the decision of the District Tribunal, however, he filed this application for revision on 28/07/2022 on the following grounds;

1. That, the trial tribunal and the appellate tribunal erred in law in entertaining a suit between the applicant and the respondent while the 1st applicant had no *locus standi* since his father was still alive at the time of filling the case.

2. That, the trial tribunal and the appellate tribunal erred in law and in fact in declaring the respondent as the rightful owner of the suit land without any documentary evidence.
3. That, appellate tribunal erred in law and in fact in relying on mere words to prove ownership of the suit land and disregard errors raised by the 1st applicant.
4. That, the trial tribunal erred in law and in fact in not availing the 2nd, 3rd and 4th applicants right to be heard or caused to be called as key witnesses as a result an erroneous decision was entered.

During hearing, parties submitted by way of written submissions. The applicants were jointly represented by Ms. Fransisca A. Lengeju whereas the respondent was dully represented by Ms. Happiness Mfinanga all learned advocates.

Supporting the revision, Ms. Lengeju submitted jointly on the 1st and the 4th grounds that, despite a number of objections raised by the 1st applicant at the Ward Tribunal in respect of joining his father as a necessary party, the tribunal rejected and ignored such prayer. In the circumstances, since the 1st applicant's father was still alive at the time, he was denied right to be heard as enshrined under **Article 13 (6) (a) of the Constitution of**

the United Republic of Tanzania, 1977. She also cited the case of **Kabula d/o Luhende vs. The Republic**, Criminal Appeal No. 281 of 2014 CAT at Tabora (unreported) where the Court of Appeal insisted on the right to fair hearing as the cornerstone of any just society.

On the 2nd and 3rd grounds Ms. Lengeju submitted them jointly that, there was no any documentary evidence that both tribunals relied to prove ownership of the suit land to the respondent. According to her, the only evidence relied was mere words which did not prove ownership. She prayed for this court to revise and quash the decision of both tribunals.

In reply, Ms. Mfinanga started her submission by pointing out that this application is time barred since the decision of the District Tribunal was delivered on 12/07/2019 and this application was filed on 28/07/2022 which is three years later, the period which is manifestly out of time. According to her, that is contrary to section 38 (1), 43 (1) of the **Land Disputes Court's Act** [Cap 216 R.E. 2022] and **item 21 of Part III of the Schedule to Law of Limitation Act**, [Cap 89 R.E. 2019] which gives 60 days-time limitation to file revision on matters of this nature. She prays the same to be dismissed for being time barred.

Regarding the 1st and the 4th grounds of revision, she submitted that, there is a close connection between *locus standi* and the cause of action. That, the 1st applicant has *locus standi* to be sued at the Ward Tribunal and in District Tribunal because it was him, not his father, who trespassed in the respondent's land and cut trees therein. She referred this court to the case of **Dalmas Jonyo vs. Grace Charles**, Misc. Land Appeal No. 144 of 2020 and **Godbless Jonathan Lema vs. Musa Hamis & 2 Others**, Civil Appeal No. 47 of 2012 CAT at Arusha where *Locus standi* was defined as the right or capacity of a party to bring an action or appear to prosecute or defend before the court of law.

The learned counsel went on arguing that, the 2nd, 3rd and 4th applicants had no *locus standi* in respect of the suit land since the same does not form part and parcel of the late Lazaro Isack's estate. She also argued that, it was not the duty of the Ward Tribunal to call of the 1st applicant's witnesses but the 1st applicant ought to have discharged his duty and exercised his right to call all the necessary witnesses so as to prove his ownership of the suit land. In that Regard, since the 1st applicant's evidence was thoroughly evaluated by both tribunals, there was no infringement of his right to be heard.

As to the 2nd and the 3rd grounds of revision, it was Ms. Mfinanga's submission that, it is the duty of the parties or their witnesses if any to prove certain facts as required under section 110 of **the Law of Evidence Act**, [Cap 6 R.E 2019]. In the current matter, the applicants had no strong evidence to prove how they acquired the suit land whereas the respondent herein thoroughly managed to prove the same. She prayed that this revision be dismissed with cost and the District Tribunal's decision be upheld.

In their brief rejoinder, the applicants through their counsel reiterated their earlier submission and insisted that 1st applicant had no *locus standi* to be sued. Regarding the issue of time limitation, the applicant claimed the same to be misconceived as it is a new fact which this court should not entertain.

Having gone through both parties' submissions and both tribunal's records, this court is now tasked to determine whether this application has merit. However, the cardinal principle requires that, where an issue of law is raised, it must be dealt with first before going to the merits of the matter or factual issue. Guided by that principle, before going to the merit of the application, I would like to address the issue of time limitation as raised by the respondent's counsel in her reply submission. The applicant argued that

the same is a new fact which this court should ignore, however, it is settled position that, time limitation is a pure point of law which goes to the jurisdiction of the court and that, it can be raised at any time, even at the appellate stage by any party or the court provided that, if raised by court then parties have to be given sufficient opportunity to be heard on the raised point. This position has been maintained in a number of Court of Appeal decisions including that of **Yussuf Khamis Hamza vs. Juma Ali Abdalla**, Civil Appeal No. 25 of 2020 CAT at Zanzibar (unreported).

In the application at hand, the record clearly shows that, this application was filed under section 43 (1) (a) and (b) of the Land Disputes Courts Act (supra) three years after the District Tribunal had delivered its judgment. The provision of section 43 (1) (a) and (b) reads;

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

(a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;
(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.”

The section does not provide for time limitation to file such revision thus, this court resorts to Item 21 of Part III of the Schedule to the Law of Limitation Act (supra) which provides for 60 days time limitation to;

"all Applications under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law.”

Although the Land Dispute Courts Act has not been mentioned in the provision hereinabove, it falls under the category of “any other written law”. Now, putting it in that category, it goes without saying that, as the provision of the law does not specify time limitation, then its limitation can be determined under Item 21 of Part III of the Schedule to the Law of Limitation Act. In that regard, this application is grossly time barred because the time limitation lapsed on 11/09/2019. Without leave to file the application out of time, as rightly argued by the respondent’s counsel, this court cannot entertain it.

Another factor that caught my attention is the fact that, having in mind that powers of revision conferred upon this Court are very wide and purely discretionary in nature, they have to be exercised in exception and cannot be used as alternative of appeal, In the case in **Moses J. Mwakibete Vs. The Editor – Uhuru, Shirika La Magazeti ya Chama and National Printing Co. Ltd** [1995] TLR 134 it was stipulated that;

*"Before proceeding to hear such an application on merits, this court must satisfy itself whether it is being properly moved to exercise its revisional jurisdiction. The revisional powers conferred by accordingly to laws were not meant to be used as an alternative to the appellate jurisdiction of this court. In the circumstances, this court, unless it is acting on its own motion, **cannot properly be moved to use its revisional powers in cases where the applicant has the right of appeal with or without leave and has not exercised that option.**" (emphasis added)*

Guided and applying the above position in the application at hand, after the District Tribunal had delivered its judgment, it is not clear why the applicants did not file their appeal under section 38 (1) of the Land Disputes Courts Act (supra) which also gives room for extension of time. The section provides as follows;

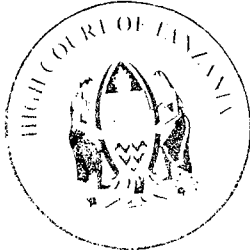
38.-(1) *Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:*

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.

Be as it may, considering the importance of time limitations in respect of instituting matters in court or taking of certain legal actions which must as a matter of law be taken within the fixed time, it would certainly be a serious misdirection for this court to over look this issue based on applicants' argument that, the same is a new fact and should be ignored. It is not a new fact because it was raised in the reply submission and the applicants had time to respond in their rejoinder but did not do so instead, they lamented that, it was a new fact and the court should ignore it. Accordingly, I uphold the objection and pronounce this application to be incompetent as it is time barred. Having upheld this point, I will not proceed to discuss the merit of application as the issue of time limitation sufficiently disposes of the application. The application is hereby dismissed with cost under section 3(1) of the **Law of Limitations Act**, [Cap 89 R.E 2019].

It is so ordered.

DATED and delivered at **ARUSHA** this 10th day of February, 2023




J.C. TIGANGA
JUDGE