IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISCELLANEOUS LAND APPLICATION CASE NO. 27 OF 2023

(Arising from Land Appeal No. 13 of 2020 before District Land and Housing Tribunal for Babati at Babati, originating from Land Case No. 1 of 2019 in the Mutuka Ward Tribunal)

AMSI TLUWAY..... APPLICANT

VERSUS

NYERERE LAGWEN..... RESPONDENT

RULING

12th & 16th June, 2023

Kahyoza, J.:

Amsi Tluway lost a legal squabble to **Nyerere Lagwen** before the ward tribunal. As lucky was not on his side, **Amsi Tluway** appealed unsuccessfully to the district land and housing tribunal (DLHT). Dissatisfied still, **Amsi Tluway** defaulted to appeal to this Court on time. He instituted an application for extension of time to appeal out of time.

Before the application was heard on merit, **Nyerere Lagwen,** the respondent, raised three points of preliminary objection as follows-

1) *That, this application is an abuse of Court process for being overtaken by events i.e the judgment of Mutuka Ward Tribunal Application No. 1 of 2019 has already being executed vide Application No. 154 of 2021 of District Land and Housing Tribunal of Babati delivered on 4th April, 2023.*

2) *That, the affidavit in support the application is accruable defective for containing a verification clause not disclosing source of information.*
3) *That the present Application is incompetent before the tribunal for citing wrong law of limitation which is not applicable for the matter originated in the Ward Tribunal.*

The preliminary objection was heard by way of written submissions. Both, **Amsi Tluway** and **Nyerere Lagwen** filed their submissions as ordered. In his submission in chief in support of the preliminary objection, **Nyerere Lagwen** abandoned two points of preliminary objection. He argued only one point of preliminary objection that "*the present application is incompetent ... for citing wrong law of limitation, which is not applicable for the matter originating in the ward tribunal*". Thus, I shall consider only one issue whether the application is incompetent for citing wrong provision of the law.

Is the application incompetent for citing wrong provision of the law?

The respondent complained that the application was incompetent as the Court was moved under wrong provisions of the law. To support his contention, the respondent argued that the applicant premised the application for extension of time under section 14(1) of the **Law of Limitation Act**, [Cap. 89 R.E. 2019] (the **LLA**) which did not apply to the

proceedings under review. He cited section 43 of the **LLA**, which states that "*this Act does not apply to any proceedings for which a period of limitation is prescribed by any other written law.* He added that section 52 of the **Land Disputes Court Act**, [Cap. 214 R.E. 2019], (the **LDCA**) provides that "*The Customary Law (Law of Limitation of Proceedings) Rules 1964 shall apply to proceedings in the Ward Tribunals in exercise of its compulsive jurisdiction*".

To further support his contention, **Nyerere Lagwen** cited the case of **Julius Simango Vs Marco Mbutwai** Misc. Land Appeal No. 54 of 2009 (HC at Arusha), where it was observed that-

> *"I noted that this appeal originated from proceedings of the Ward Tribunal of Sepeko, which means that in terms of section 52(1) of Cap 216 (supra) the provision of the Magistrate Court (Limitation of Proceedings under Customary Law) Rules G. N.311 of 1964 are applicable on any arising limitation matters rather than the provision of the Law of Limitation Act, [Cap. 89 R. E. 2022]."*

Nyerere Lagwen concluded that the consequences of a party improperly moving a court by citing wrong provision of the law is striking out the application with costs. He anchored his argument on the holding in **China Henan International Co-Operation Group V. Salvand Rwegasira** [2006] TLR 220. He strongly submitted that the applicant did not move the Court properly to exercise its discretion due to the fact the matter under consideration originates from the ward tribunal, hence, the

LDCA applies. He argued that there was no need for the applicant to apply the provision of the LLA, which did not cover the matter under consideration. He prayed the Court to dismiss the application citing decision in the case of **Fabian Akonaay v. Mathia Dawite**, Civ. Application no. 11 of 2003 (CAT-unreported), where the Court of Appeal held that-

> *"This Court has struck out a number of decisions for wrong provision or for not citing any provision at all..., so, we uphold the respondent objection and we, therefore, strike this application with costs."*

Amsi Tluway, the applicant partly conceded to the respondent's submission that it was wrong for him to cite section 14(1) of the **LLA**, as it does not apply to matters originating from the ward tribunal. He was quick to react that section 38(1) of the LDCA was the enabling provision. He argued that the respondent spent time to argue that section 14(1) of the **LLA**, was not applicable and skipped to consider section 38(1) of the LDCA. He concluded that section 38(1) of the LDCA was sufficient to ground that the application, for that reason the preliminary objection has no merit.

In his rejoinder, the respondent's advocate, Mr. John Shirima argued that the application for extension of time filed after one year and ten months was an abuse of the court process. He cited the case of **Masoud Kiwala v Wilhelmina Fundi** Misc. Land application No. 172 of 2019 (HC Mwanza Sub-registry-unreported).

Having heard rival submissions, I wish to state at the outset that the position that wrong citation of the provision of law or rule under, which the application is grounds, renders the application incompetent, has since changed in the advent of the principle of overriding objective. In addition, following the amendments of the **Tanzania Court of Appeal Rules,** GN. No. 368/2009 (the Rules), the decisions cited to me are no longer good law. The new rule 48 of the Rules reads-

> *48.-(l) Subject to the provisions of sub-rule (3) and to any other rule allowing informal application, every application to the Court shall be by notice of motion supported by affidavit and shall cite the specific rule under which it is brought and state the ground for the relief sought:*
>
> *Provided that* ***where an application omits to cite any specific provision of the law or cites a wrong provision, but the jurisdiction to grant the order sought exists, the irregularity or omission can be ignored*** *and the Court may order that the correct law be inserted. (Emphasis added)*

From the above cited rule, non-citation, or wrong citation of the enabling provision of the law is no longer fatal, provided the Court of Appeal, has jurisdiction to entertain the matter. I pray to borrow a leaf from rule 48 of the Rules, which do not apply to this Court. The applicant was duty bound to specify the provision(s) of the law or rule under which he grounded the

application but citing a wrong provision is not fatal if the Court has jurisdiction to entertain the matter.

Indisputably, the applicant grounded the application for extension of time under section 14(1) of the **LLA** and section 38(1) of the **LDCA**. Section 14(1) of the **LLA,** as the applicant's advocate conceded, does not apply to matters originating from the ward tribunal. However, the cited section 38(1) of the LDCA is relevant and I find that, it was proper for the applicant to cite it. Section 38(1) of the **LDCA** stipulates that-

> *"**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.**"*

It is my firm view, citing the provisions of 14(1) of the **LLA,** was uncalled for. Section 14(1) of the **LLA** was superfluous but its citation did not make the application incompetent, for two reasons; **one**, the Court had jurisdiction to entertain the application for extension of time; and **two**, the applicant did cite the appropriate provision of the law, so the Court was properly moved.

In the end, I find the preliminary objection without merit. I overrule it with costs.

It is ordered accordingly.

Dated at **Babati** this 16th day of June, 2023.

John R. Kahyoza,
Judge

Court: The Judgment delivered in the presence the appellant and his advocate, Mr. Asante and the respondent and Mr. Philipo adv. who held the respondent's advocate's brief. B/C Ms. Fatina present. Right to appeal explained.

John R. Kahyoza,
Judge