

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISC. LAND APPLICATION NO. 9 OF 2023

(Arising from the decision of District Land and Housing Tribunal for Mbulu in Land Application No. 6 of 2019)

VALERIAN FIITA.....APPLICANT

VERSUS

AMINA SALUM.....RESPONDENT

RULING

Date: 6/7 & 6/7/2023

BARTHY, J.

The applicant in this matter preferred the present application under Section 43 (1) and (2) of the Land Disputes Courts Act of the Appellate Jurisdiction Act, [CAP 141 R.E 2019], (hereinafter referred as the Act), seeking for the following relief;

That the Court may call for and inspect the records of the District Land and Housing Tribunal for Mbulu at Dongobesh Misc. Application No. 6 of 2019 and give directions as it considers necessary in the interests of justice.

The application is being supported by an affidavit sworn by the applicant himself. On the other hand, the respondent lodged a counter affidavit to contest the application.

At the hearing of the application both parties appeared in person. The application was disposed of orally. In the course of composing the ruling, it came into my attention that the application was lodged beyond the prescribed time. Hence, this necessitated the opening up of the proceedings of this court in order to determine the issue.

I invited the parties to address the court on the competence of the application at hand as to whether it was lodged with time.

Addressing to the issue raised by the court the applicant argued that, he was in prison for some time and he had to attend his sick parent. He further contended that, because of those predicaments he could not lodge his application within time. He therefore prayed to the court to consider his application.

On her party, the respondent contended that it has been a while since the matter had started. She further contended that, the application was not filed within time, as the matter which has been pending for long

time. She thus prayed for justice to be done.

Having heard the parties' arguments on the competence of the application at hand, the issue for my determination is whether the application at hand has been lodged within time.

With respect to the records available on this matter, it is not in dispute that the order of the trial tribunal which the applicant seeks to be revised was passed on 23/4/2020. Whereas, the instant application was lodged before this court on 17/2/2023. It follows therefore that the application at hand was lodged about 2 years and 10 months after the order was made.

This application has been preferred under Section 43(1) and (2) of the Act. Since the Act is silent on the time frame for filing the application for revision, the recourse has to be on Item 21 of Part III to the Schedule of the Law of Limitation Act [CAP 89 RE 2019], (the LLA), which prescribes the period of 60 days. Being the limitation period to lodge an application on a matter not prescribed by any relevant law.

Hence, the instant application for revision should have been lodged within 60 days from the date of the order. That means the application

should have been filed on or before 22/6/2020.

The emphasis on observing time in determining matters was made by the Court of Appeal in the case of **Yusuf Khamis Hamza v. Juma Ali Abdallah**, Civil Appeal No. 25 of 2020 (unreported) where it was held that;

"We are alive with the settled position of the law that time limitation goes to the Jurisdiction issue of the Court, and it can be raised at any time."

The applicant contended that he was imprisoned also he has to attend his sick mother. I am of the settled mind that those factors would have been argued when seeking for extension of time. On the other hand, the respondent argued that the matter is really out of time.

The present application was lodged over two years and there was no extension of time been sought by the applicant prior to have lodged his revision out of time. It is therefore clear that this application is hopelessly time barred.

Having found that the application was lodged beyond the prescribed time, the only remedy is to struck out the application. Considering that

the point was raised by the court *suo motu* I will not make an order as to costs.

It is so ordered.

Dated at Babati this 6th date of July, 2023

A handwritten signature in black ink, appearing to read 'G. N. Barthy', written over a horizontal line.

G. N. BARTHY,

JUDGE

Delivered virtually by the trial judge in the presence of the applicant in person and the respondent in person before the court.