IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB- REGISTRY OF MWANZA

AT MWANZA

LAND REVISION NO.12 OF 2022

(From Application No. 171 of 2015 of Mwanza District Land and Housing Tribunal)

ALLY ABDALLAH----------APPLICANT

VERSUS

KUGIS TRANSPORTER LTD----------1ST RESPONDENT

MASUMINI TOURS----------2ND RESPONDENT

CITY DIRECTOR MWANZA CITY COUNCIL----------3RD RESPONDENT

RULING

Aug. 31st & Sep. 15th 2023

Morris, J

Mr. Ally Abdallah was not a party to Application No. 171 of 2015 at the District Land and Housing Tribunal for Mwanza (DLHT). The subject application was between the three respondents above. Nevertheless, the outcome in the said application allegedly trickled down to his interest. He became aggrieved. The present application is a manifestation of his disgruntlement.

He applies for revision of the DLHT's proceedings, judgement and decree under section 43 (1) (b) of ***the Land Courts Disputes Act***, Cap 216 R.E. 2019 (elsewhere '***the Act***'); section 95 of ***the Civil Procedure***

Code, Cap 33 R.E 2019 (***CPC***); and item 21 of Part III of the schedule to ***the Law of Limitation Act***, Cap 89 R.E.2019 (hereinafter, '***the LLA***').

However, luck was not on his side, yet. His application was not fortunate enough to sail through to the hearing stage straightaway. Two preliminary hurdles awaited him. One point of objection (PO) was raised by the Court, *suo motu*. Hereof, the parties were required to clear the Court's concern of whether the application was competent in the absence of the Attorney General as a necessary party. The other objection was raised by the 2nd respondent who contended that the application was preferred out of time.

Before embarking on the gist of the PO, I will give a brief account of the matter. The litigation race commenced by the 1st respondent suing the 3rd respondents before the DLHT over Plot No. 18A Block 'CC' Mabatini Area Mwanza City (the suit property). It was alleged that the 1st respondent, the owner of the suit property, was not issued the Certificate of Tittle thereof. At the early stages of proceedings, the 1st and 3rd respondents exchanged concessions for amicable settlement of the dispute between them.

Pending finalization and filing of the deed of settlement, the 1st respondent discovered that the 2nd respondent herein claimed interest over the suit property. He sought and obtained the Tribunal's leave to amend the application by including him (2nd Respondent above). The triad-parties later on settled their dispute amicably. The deed of settlement was accordingly lodged at and adopted by the DLHT on 23/09/2020.

Record reveals further that later the 1st respondent initiated execution proceedings vide Misc. Application No. 166/2022 in the DLHT. Such proceedings factually awoke the applicant who immediately filed the objection proceedings before the DLHT (Misc. Application No. 226 of 2022) but withdrew it after filing the present application in this Court on 1/9/2022.

I ordered both the application and two-limb PO to be argued simultaneously. Advocates Stephen Kaswahili, Alex Bantulaki and Costantine Mutalemwa represented the applicant, 1st respondent and 2nd respondent respectively. However, the 3rd respondent enjoyed services of Messrs. Joseph Vungwa and Allen Mbuya, learned State Attorneys. For the reasons given later in this ruling, I will firstly determine the PO of the

2nd respondent (the time-bar); then court-raised objection (non-joinder of AG) before determining the application, if circumstances hereof will so dictate.

Nevertheless, in the interest of coherence and correspondence with the Court's proceedings; submissions of parties are summarized in the chronology adopted during the hearing. Regarding the court raised concern/objection; Mr. Kaswahili submitted that the application is proper in the absence of the Attorney General. To him, the amendment to ***the Government Proceedings Act***, Cap 5 R.E. 2019 (***'the GPA'***) which made joining Attorney General compulsory under Section 6 (3) pursuant to section 25 (a) of ***the Written Law Miscellaneous Amendment Act***, No. 1/2020 became effectual in 2020. However, the proceedings subject of this application were instituted at the DLHT in 2015 well before the amendment of the law.

Further, it was his argument that the said amendment did not provide it categorically that the law would apply retrospectively. Also, he presented that he could not change the parties (against the way they appeared in the original application) because doing so would have rendered this application incompetent.

I was referred to the cases of ***Salim Amour Diwani v VC Mandela African Institute of Science and Technology and Another***, Civil Appel No. 116/01 of 2021; and ***Mohamed Said Seif v Abdul Aziz Hageb***, Civil Appeal No. 10/2010 (both unreported). In the latter case, it was the Court's holding the applicant who was not a party to the original proceedings has only one remedy: revision.

Mr. Bantulaki resisted. He submitted that with the cited amendment to ***the GPA***, proceedings involving the local government authorities, must have the Attorney General joined. It was his further argument that, as the application at hand was filed in 2022, it cannot be spared. That is, the same falls squarely in the precepts of the said amendment.

Nonetheless, Mr. Mutalemwa was at one with Mr. Bantulaki's line of argument regarding joining Attorney General. He however added that, according to law, any application brought by a stranger to the previous proceedings equates to suit. He cited the definition of what a suit is in ***Burafex Ltd v Registrar of Cities***, Civil Appeal No. 235/2019 (unreported). Analogically applied, therefore, such meaning translates to him that the Attorney General was but a necessary party subject to serving him the 90-day notice pursuant section 6 (2) of ***the GPA***.

Furthermore, Mr. Vungwa aligned himself with the two previous counsel's arguments and stated that non joinder of the Attorney General made this application incompetent. Buttressing his point, he submitted that procedural laws apply retrospectively.

Regarding the PO on time limitation, Mr. Mutalemwa submitted that the application at hand is time-barred. To him, the main relief/cause of action in the chamber summons is for this Court to revise the appropriateness and legality of the Deed of Settlement and compromise of suit dated 22/6/2020 and its resultant DLHT Order of 23/9/2020. He argued further that application for revision, under section 43(1) (b) of ***the Act*** and item 21 part III to the schedule of ***the LLA***; must be filed within 60 days. His conclusion was that the present application is way too tardy.

In reply to the 2nd respondent's PO, Mr. Kaswahili submitted that The Applicant was not a party to the original application (No. 171/2015) which was determined on 23/9/2020. And that, he became aware of its existence in May, 2022 after execution proceedings were commenced at DLHT on 11/5/2022. It was his further submissions that, as he was to be evicted, the applicant filed objection proceedings at DLHT (Misc.

application No. 226/2022) on 15/6/2022. He added that, that application remained pending at the DLHT until it was withdrawn later.

Moreover, Mr. Kaswahili was swift to admit that the present application was lodged in this Court on 1/9/2022 while objection proceedings were still subsisting at DLHT. Hence, the objection proceedings stayed in the Tribunal for 78 days before the current proceedings were filed at this Court. He contended that, according to section 21(2) of ***the LLA***, the time which the applicant spends prosecuting other proceedings over the same parties in a different forum is excluded in computation of time.

He relied on ***GGM Ltd v Anthony Karangwa,*** Civil Appeal No. 42/2020 (unreported) to argue that, parties are not required to seek extension of time thereof. Thus, it was his stance that the period from 15/6/2022 to 1/9/2022 is excluded. Consequently, from 28/5/2022 when the applicant became aware to 15/6/2022 when he filed the objection proceedings in DLHT, constitute 17 days only. He insisted that time began to run against the applicant when he became aware of existence of the impugned consent judgment (on 28/5/2022) not when it was entered.

The applicant also referred to the case of ***Abdulkadir Elimanzi Rashid and 136 others v Attorney general and Others*** HC Land Case No. 118/2022 (unreported); at page 10 where the case of ***Ramadhani Mkongera v Kasau Paul*** [1988] TLR 56 was cited with approval to the effect that time for cause of action begins to run when one becomes aware of the transaction complained of.

In rejoinder, Advocate Mutalemwa reiterated that the application hereof is time-barred. According to him, for one to rely on section 21 (2) ***of LLA***, the previous proceedings should have been terminated. In the present matter, the two proceedings (revision and objection proceedings) were co-existing. He argued further that, if the applicant wished to benefit from such exclusion, he was required to withdraw the application at DHLT first before filing these proceedings.

I have intensely considered the submissions of the parties as summarized above. However, as I have pointed out earlier, the Court will first determine the second limb of PO. Justifiably, the subject limb is plexus to the jurisdiction of this Court. That is, I am mindful of the steady principle of law that any matter filed in court out of time raises a jurisdictional concern. In consequence, the objection thereof takes

precedence. Hasty reference is made to ***Denis T. Mkasa v Farida Hamza (administratrix of the estate of Hamza Adam) & Another***, Civil Application No. 407 of 2020; ***John Barnabas v Hadija Shomari***, Civil Appeal No. 195 of 2018; and ***Muse Zongori Kisere v Richard Kisika Mugendi and 2 Others***, Civil Application No. 244/01 of 2019 (all unreported).

To the 2nd respondent, the application is time barred as it seeks to revise the Order of the DLHT that resulted from recording the Deed of Settlement dated 23/9/2020. The applicant is the view that the same is not time barred as he merely became aware of the same on 28/5/2022. He also argued that the objection proceedings before the DLHT - which lasted for 78 days (from 15/6/2022 to 1/9/2022); acted as a stopper to the time stop watch. That is, when he filled this application, the applicant was condoned by the law to exclude the time he spent pursuing the objection proceedings at the Tribunal herein.

It is undisputed that the Order of the DLHT is dated 23/9/2020. It is also undisputed that the applicant was not a party to the previous proceedings resulting to the subject Order. It is however alleged by the applicant that the said Order is affecting his interest over the suit property.

Under sections 4 and 5 of ***the LLA***, the right of action accrues when the cause of action arises. Obviously, the applicant cannot be held as having known the dispute between the respondents herein; or DLHT Order thereof prior to subsequent execution proceedings.

Consequently, I am at all fours with Mr. Kaswahili that the applicant's cause of action against the respondents arose when existence of the DLHT Order became known to him. In the case of ***Ramadhani Nkongela v Kasau Paul*** (*supra*) it was reaffirmed that for him to determine "whether the period of limitation has run out, one has to determine when the cause of action arose."

The foregoing congruence of the interpretation of law between the applicant and the Court notwithstanding, there remains a very critical aspect to address hereof. That is, ascertainment of the date when the applicant really became cognizant of the DLHT Order impugned herein. I have taken it a careful read-through of the applicant's affidavital depositions. The entire affidavit evidences nothing as to the exact date when the deponent-applicant became aware of the Order of the DLHT.

In law; and precisely so, according to ***Aonali Chandoo v Ethiopia Airlines*** [2008] TLR 55, "whether the application for revision is timely or

time-barred is actually an issue of fact." The applicant was thus enjoined to supply such fact in the form of deposition. Such step would have accorded the opponent parties an opportunity to controvert it, as necessary. The applicant's omission thereof, is not from legal consequences. I will demonstrate this point further a little later below.

Therefore, the submissions by the applicant's counsel regarding the date his client became aware is featherweight-tale from the bar. Submissions are not evidence. That is the law. I accordingly seek reliance to ***The Registered trustees of Archdiocese of Dar es Salaam v The Chairman, Bunju village Government***, Civil Appeal No.147 of 2006; and ***Ison BPO Tanzania Limited v Mohamed Aslant***, Civil Application No. 367/18 of 2021 (both unreported).

As I veer towards concluding this ruling, it is probably not a misplacement if I state the rationales of excluding submissions in determining the rights of parties in lieu of affidavital depositions or sworn testimonials. **One**, submissions from the bar are oftentimes hearsay assertions. Hence, not admissible at law. **Two**, submissions are not given on oath. Thus, they lack the reasonably expected sanctity otherwise found

in sworn evidence. **Three**, veracity of the submissions is not capable of being established because they are not susceptible to cross examination.

Four, submissions carry with them afterthought manifestations of the parties' wish. That is, as a party submits, he steers the arguments his way after analysis of his weaknesses and the strength of the opposite party's case. Vice versa is the case too. **Five**, submissions may come in a form of a pack of surprises to the opposite party. As such, the latter will have no adequate room to contest them at the spur of the moment. Consequently, if such approach is nurtured to fruition, it would undermine the parties' right of being heard fully.

From what I have endeavored to demonstrate, interrogate and reason hereinabove, therefore, I find that the Court is not advantaged to know the precise date of the applicant's knowledge about the DLHT Order hereof. Such absence snatches the start-bar away from the Court. I, thus, remain without a particular day on which to peg a just-countdown point.

Consequently, the preliminary objection regarding time limitation is merited. As this matter seizes the Court of its jurisdiction, I will not determine the remaining limb of objection (the court-raised concern). The same fate befalls the application itself. Indeed, delving into the spared

aspects without requisite mandate would amount to skidding the Court into both illegality and illegitimacy. I am not ready to take such route.

This application, henceforward, stands dismissed for being filed out of time. Each party will bear own costs. It is so ordered and parties' right of appeal is fully explained to them.

C.K.K. Morris
Judge
September 15th, 2023

The ruling is delivered this 15th day of September 2023 in the presence of Advocate Constantine Mutalemwa for the 2nd Respondent. He is also holding the briefs of Advocate Stephen Kaswahili for the Applicant; Advocate Alex Bantulaki for the 1st Respondent; and Mr. Joseph Vungwa, learned State Attorney for the 3rd Respondent.

C.K.K. Morris
Judge
September 15th, 2023