

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 479 OF 2023

(Arising from Application No. 416 of 2018 in the District Land and Housing Tribunal for Kinondoni at Mwananyamala)

STANLEY JOSIAH MARIKI.....APPLICANT

VERSUS

DOROTH ISAACK MWASOMOLA.....1ST RESPONDENT

JANEROSE STANLEY MARIKI.....2ND RESPONDENT

NATIONAL MICROFINACE BANK PLC.....3RD RESPONDENT

RULING

Date of last order: 21st December 2023

Date of Ruling: 23rd January 2024

MTEMBWA, J.:

Under ***section 14 (1) of the Law of Limitation Act, Cap 89 RE 2019*** and ***sections 68(e) and 95 of the Civil Procedure Code, RE 2019***, the Applicant is seeking for an order of extension of time within which to file Application for Revision out of time against the Decree arising out of the Deed of Settlement dated 23rd December 2019 in Application No. 416 of 2018 in the District Land and Housing

Tribunal for Kinondoni at Mwananyamala. The same was brought under a certificate of urgency and is supported by an affidavit of Mr. Yohana Michael Kibindu, the learned counsel for the Applicant.

From the facts as revealed by the records, way back in 2011, the 1st Respondent instituted a Suit (Civil Case No. 127 of 2011) in this Honourable Court against the Applicant and three others which was finalized by a Deed of settlement. While execution of the said Deed was underway, the 1st Respondent filed **Land Application No. 416 of 2018** in the District Land and Housing Tribunal for Kinondoni at Mwananyamala which also ended up by a Decree arising out of the Deed of Settlement. However, the Applicant herein denies to have participated in the execution of the said Deed that finalized the matter at the land Tribunal hence this Application for extension of time within which to file a Revision.

While the matter remained pending, the 3rd Respondent raised two preliminary objections to the effect that, **one**, being a party to Land Application No. 416 of 2018, the Applicant has no right to file the intended Revision and that, **two**, the Jurat of attestation is defective.

Initially, this matter was presided over by Hon. E. Kakolaki, J who has been reportedly to have been transferred to another duty station. As such therefore, it was reassigned to me for final determination. Before reassignment however, parties agreed to argue the preliminary objections by way of Written Submissions. I have gone through the records and noted that the 3rd Respondent and the Applicant correctly filed their Written Submissions as ordered to which I personally subscribe.

In the conduct of the preliminary objections, the Applicant was represented by **Mr. Yohana Michael Kibindu**, the learned Counsel while the 3rd Respondent enjoyed the good service of **Mr. David Shadrack Pongolela**, the learned counsel. As said before, hearing proceeded by way of written submissions.

Kickstarting, Mr. Pongolela submitted that the Applicant was a party to Land Application No. 416 of 2018 (which is sought to be revised). That as noted by the Applicant, he never took part in the execution of the alleged Deed of Settlement giving raise to the alleged Decree. He observed, in the circumstances, the Applicant has only two options, **one**, to apply to set aside exparte Decree and **two**, appeal against it. He added further that the right to file a revision, even if

time is enlarged, cannot be exercised by the Applicant as the right to appeal still subsists and has not been blocked by any judicial process.

To support his proposition, Mr. Pongolela cited ***Section 41 of the Land Disputes Courts Cap 216 RE 2019*** if read together with ***Regulations 24 and 11(2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003***. To buttress further, he cited the case of ***Transport Equipment Ltd vs. Dervam Varambhia (1995) TLR 161*** and ***that of Israel Mwakalabeya Vs Ibrahim Mwaijamba, Misc. Civil Application No. 21 of 1991, High Court of Tanzania at Mbeya (unreported)*** where it was held that the right to invoke the court's powers of revision is not an alternative to appealing.

Mr. Pongolela noted further that in entertaining the Application for extension of time the court is not only limited to the Application but also the implication or the end result should the same be granted. He added that this Application, even if granted, will save no purposes because the right to apply for revision is not on the Applicant's side even if time is enlarged. He cited the case of ***Reuben Lubanga Vs. Moza Gilbert and 2 Others, Civil Application No. 533 of 2021 (Unreported)*** where it was held that an order will not be granted

where will serve no purposes or where it is a mere abuse of Court process.

On the second preliminary objection, Mr. Pongolela submitted that the jurat of attestation is defective for offending ***section 8 of the Notaries Public and Commissioners for Oaths, Cap 12 RE 2019***. He added further that the said jurat does not state when the oath was taken or whether the attesting officer knows the deponent or not. He cited the case of ***Godfrey Kimbe Vs. Peter Ngonyani, Civil Appeal No. 41 of 2014 (Unreported)*** where it was held that it is mandatory that the jurat of attestation must indicate the date when the oath was taken.

In reply, Mr. Kibindu submitted that the arguments or submissions and cited cases by the 3rd Respondent are misconceived. He added that, at this stage, the Applicant is only seeking for an order of extension of time within which to file a Revision out of time and as such, it is not a revision itself. He submitted further that the preliminary objection therefore regarding the competency of the Application has been raised prematurely.

In the cause of arguments, Mr. Kibindu gave reasons for filing this application. He submitted that, he opted to file it due to the fact

that this Honourable Court happened to issue a Decree arising out of the Deed of settlement in Civil Case No. 127 of 2011. But before the same was executed, the 1st Respondent filed a land matter (Land Application No. 416 of 2018) on the same subject matter in the District Land and Housing Tribunal for Kinondoni which also was finalized by a Decree arising out of the settlement. He opined that the remedies awarded by the two Courts are not the same let away the fact that the Applicant was not involved in the execution of the said Deed of Settlement at the trial Tribunal. He blamed the counsel for the 3rd Respondent for not being candid in as far as what the intended Revision will cure in the circumstances. He cited the case of ***Veri Oscar Vs. Issa Chambo (unreported)***.

As to whether the jurat of attestation was defective or not, Mr. Kibindu had little to submit. He submitted that the Application was perfectly filed and in accordance with the law. He said, the errors, if any, might have been caused by a slip of the pen on the 3rd Respondent's copy. He lastly implored this Court to dismiss the preliminary objections with costs. Mr. Pongolela did not opt to rejoin.

Having painstakingly gone through the arguments by the leaned counsels for the 3rd Respondent and the Applicant, the first crucial

issue noted here is whether the Applicant gains the right to file an Application for Revision, even if time is extended. While the 3rd Respondent maintains that Revisional Jurisdiction cannot be exercised as a substitute to appellate jurisdiction, the Applicant maintains that such an objection is premature as the Revision itself has not been filed in Court. In addition, the 3rd Respondent maintains that an order of extension of time cannot be granted in the circumstances where it will serve no purposes or will abuse the court process.

Indeed, for proper determination of the objection, let me first determine whether the right to appeal is exercisable given the facts as revealed by the records.

From the records, it is not in dispute that the Applicant was a party to Civil Case No. 127 of 2011 in this Court that ended by a Deed of Settlement and Land Application No. 416 of 2018 (sought to be revised) in the District Land and Housing Tribunal for Kinondoni which also ended by a Decree arising out of the Settlement Deed. The Applicant's main complaint is that, when the execution of the Deed of settlement of this Court remained pending, the 1st Respondent rushed to the Tribunal and filed another dispute which, as said before, ended by a Deed of settlement. The Applicant denies to have participated in

the execution of the said Deed at the Trial Tribunal. It is for this reason that he intends to challenge the said Decree by way of Revision, if time is extended. The 3rd Respondent challenges this Application on the ground that it will serve no purposes because, after all, the right to apply for revision is not exercisable in the circumstances where the right to appeal exists.

As alluded, it has been principally established that the right to invoke the court's power of revision cannot be exercised as an alternative to appealing. It goes without saying therefore that whoever wants this Court to exercise its revisional powers, he or she must make sure that the right to appeal is not exercisable or the appellate process has been blocked by judicial process unless there are sufficient reasons amounting to exceptional circumstances. However, this Court in its own motion may invoke its revisional powers in respect of any proceeding of the subordinate Courts.

In the case of ***Barozi Abubakari Ibrahimu & Another Vs. Ms Benandys Limited and 2 Others, Civil Revision No. 6 of 2015, CA at Dar es Salaam***, the Court cited with approval the case of ***HALAIS PRO —CHEMIE V. WELLA A.G. [1996] TLR 269*** at page 272 and noted that;

*We think that **MWAKIBETE's case** read together with the case of **Transport Equipment Ltd** are authority for the following legal propositions concerning the revisional jurisdiction of the Court under s (3) o f s. 4 of the Appellate Jurisdiction Act, 1979:*

(i)N/A

(ii) Except under exceptional circumstances a party to proceedings in the High Court cannot invoke the revisional jurisdiction of the Court as an alternative to the appellate jurisdiction of the Court;

(iii) A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court in matters which are not appealable with or without leave;

(iv) A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court where the appellate process has been blocked by judicial process."

As said before, the Applicant, if time is extended, intends to file a Revision to revise the Decree arising out of the Settlement Deed in Land Application No. 416 of 2018 (sought to be revised) in the District Land and Housing Tribunal for Kinondoni. With respect that right is not exercisable by the Applicant even if time is enlarged. The reason is not far to fetch, because the right to appeal against the said Decree has not been blocked by any judicial process and there has been no cogent reasons amounting to exceptional circumstance offered warranting the exercise of this Court's powers of Revision.

Looking at the Application, the Applicant intends to challenge the Decree of the trial Tribunal by way of Revision for reason among others, that he was not involved in the execution of the Deed of

settlement. That alone suffices, if he so wishes, to initiate appeal proceedings. It is when the appeal processes are blocked the Applicant can opt to come to this Court by way of revision.

In the premises, I agree with the learned counsel for the 3rd Respondent that in determining the propriety of the Application for extension of time, this Court should not detain or limit itself to the reasons for the delay. The Court must go further and determine the implications or the end results of the main Application if time is extended. In this matter, even if time is extended, the Applicant will go nowhere by way of Revision for reasons advanced above. It will therefore be a wastage of resources and too academic to grant an application that will serve no purposes or abuse the court process. Having so resolved, I see no reason to determine the second preliminary objection.

In the result, this Application is struck out. The Applicant, if he so wishes, may initiate appeal procedures subject to the law of limitation. Considering the circumstances, there will be no order as to costs.

I order accordingly.

Right of appeal explained.

DATED at DAR ES SALAAM this 23rd January 2024.



A stylized, handwritten signature in black ink, consisting of a large 'H' and a cursive 'S' followed by 'Mtembwa'.

H.S. MTEMBWA

JUDGE