

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI SUB REGISTRY

AT MOSHI

MISC. CIVIL LAND APPLICATION NO. 25 OF 2023

*(C/F Miscellaneous Application No. 282 of 2020, Originating from
Application No. 04 of 2015 of the District Land and Housing Tribunal for
Moshi at Moshi)*

IDRISA YUSUF MSANGI APPLICANT

VERSUS

ZENA BAKARI MBWAMBO 1ST RESPONDENT

MWAJUMA TWALIB RAMADHANI 2ND RESPONDENT

RULING

16/01/2024 & 07/02/2024

SIMFUKWE, J.

This application has been filed by way of chamber summons under

section 93 and 95 of the Civil Procedure Code, Cap 33 R.E 2019

and any other enabling provision of the law seeking the following orders:

1. That, this honourable Court be pleased to enlarge time for the applicant to file appeal out time.
2. Costs of this application.
3. Any other relief(s) as the Court deems just to grant.

The application was taken at the instance of the affidavit of the applicant Idrisa Yusuf Msangi.

Together with her counter affidavit, the second respondent filed notice of preliminary objection on point of law that:

1. *This application is moved with improper provision of law.*

The second respondent prayed this court to strike out the application with costs.

The preliminary objection was ordered to be argued by way of written submissions. The second respondent had no representation while Mr. Modestus Njau learned counsel argued the preliminary objection for the applicant.

In her submission in chief in support of the raised preliminary objection, the second respondent submitted inter alia that the nature of this matter is a land case hence the procedures of appeal and or extension of time is governed by the **Land Disputes Courts Act, Cap 216 R.E 2019**. That, where there is no provision of the law depending on the application which is made, you can resort to the **Civil procedure Code, Cap 33 R.E 2019**. It was explained that, the applicant ought to have used **section 41 (2) of the Land Disputes Courts Act**, (supra) in moving this court and not the cited section 93 and 95 of the CPC (supra). The respondent quoted the provision of **section 41 (2) of Cap 216** (supra) which reads:

"41(2). An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:

Provided that the High Court may for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."

In the circumstances, the second respondent prayed this application to be strike out for using improper enabling provision.

In his reply submission, Mr. Njau for the applicant stated among other things that **section 93 of the CPC** provides for enlargement of time, that:

"Where any period is fixed or granted by the court for doing any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time enlarge such period, even though the period originally fixed or granted have expired."

He asserted that, **section 93 of the CPC** confers jurisdiction on the High Court to grant enlargement of time to file appeal out of time on its discretion. The learned counsel quoted **section 95 of the CPC** which provides that:

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of process of the court."

Mr. Njau continued to explain that, any other enabling provision of the law means and includes any similar proceedings from or in respect of any proceeding in the District Land and Housing Tribunal in the exercise of its original jurisdiction which shall be heard by the High Court. He submitted that, in this application, the Court is properly moved with proper provisions of the law. He was of the view that, the second respondent has misdirected herself to understand the words "*and any other enabling provisions of the law*"

It was concluded that the raised preliminary objection has no merit. Mr. Njau prayed that the objection be overruled and dismissed with costs.

Having considered the submissions of both parties, the issue for determination is ***whether the raised preliminary objection has merit.***

In the case of **Chama Cha Walimu Tanzania v. The Attorney General**, Civil Application No. 151 of 2008 (CAT) (unreported) it was held that:

".... non citation and/or wrong citation of an enabling provision renders the proceedings incompetent. Decisions by this Court in which this principle of law has been enunciated are now legendary."

In another case of **Godfrey Kimbe v. Peter Ngonyani [2017] T.L.R 157** CA, the Court insisted that:

*"It is trite law that **wrong citation of the provisions under which an application is made makes that application incompetent** and must be struck out."*Emphasis mine

In a more recent decision after the introduction of the overriding objective principle which encourages courts to have regard to substantive justice rather than technicalities; while discussing whether the overriding

objective principle should be applied to cure non-citation of the enabling provision, in the case of **Mathew T. Kitambala v. Rabson Grayson and Another, Criminal Appeal No. 330 of 2018 [2022] TZCA**, 572 at page 14 and 15, the Court of Appeal observed that:

*"As rightly put by Mr. Alfredy the Court has pronounced itself more often than not, **that the overriding objective principle should not be applied blindly to the extent of rendering the mandatory rules of procedure redundant.** That is the standpoint of the law we have taken in a number of our decisions, one of them being **Bernard Gindo** (supra) cited to us by Mr. Alfred."*Emphasis mine

In the case at hand, the learned counsel for the applicant submitted that the court is properly moved as the cited section 93 and 95 of the CPC and any other enabling provisions are proper provisions conferring jurisdiction on the High Court to grant extension of time to file appeal out of time on its discretion. Admittedly, as rightly submitted by the 2nd respondent, the enabling provision for applications for extension of time to file land appeals originating from the District Land and Housing Tribunal is **section 41 (2) of the Land Disputes Courts Act** (supra). It is under that provision that this court is conferred with powers to determine the instant application.

According to the wording of **section 93 of the CPC** (supra), it concerns acts prescribed or allowed under the CPC. **Section 95 of the CPC** is in respect of general inherent powers of the High Court. Time limit to appeal in land matters originating for DLHTs is specifically provided under **section 41 (2) of Cap 216** (supra).

Guided by the cited case laws herein above, I firmly believe that failure to cite a specific enabling provision is like groping or forum shopping. I am of the view that the words “**any other enabling provision of the law**” are not sufficient where one omits to cite the relevant provision. I have tried to think out of the box that, is it possible for one to file a suit and seek “**any other reliefs**” without specifically stating the reliefs sought? I think the answer is no. You must state the reliefs specifically sought together with any other reliefs as the court may deem fit to grant. The same applies to enabling provisions, where there is a specific relevant enabling provision, it must be cited together with the general provisions if any. See the case of **Joseph Shumbusho v. Mary Grace Tigerwa and 2 Others**, Civil Appeal No. 183 of 2016 [2020] TZCA.

In the upshot, I uphold the raised preliminary objection and strike out this application with costs.

It is so ordered.

Dated and delivered at Moshi this 07th day of February 2024.



X

S. H. SIMFUKWE

JUDGE

Signed by: S. H. SIMFUKWE

07/02/2024