

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA SUB – REGISTRY)

AT ARUSHA

CIVIL APPEAL NO 57 OF 2023

(C/F Misc. Land Application No 120 of 2012, District Land and Housing Tribunal for Arusha at Arusha, originating from Application No 120 of 2012 in the District Land and Housing Tribunal for Arusha at Arusha)

ELISARIA ERNEST NASSARI APPELLANT

VERSUS

SENYAELI SOLOMON NANYARO RESPONDENT

RULING

16th April & 24th May 2024

KIWONDE, J.

The appellant above named, being dissatisfied with the decision issued by the District Land and Housing Tribunal for Arusha at Arusha in application for execution preferred an appeal to this court armed with the following grounds: -

- 1) That, the honourable chairman of the District Land and Housing Tribunal erred in law and fact by granting reliefs which were not even prayed by the respondent herein via his execution form.



- 2) That, the honourable chairman of the District Land and Housing Tribunal erred in law and fact by delivering the ruling which differs from the orders issued on the main case (Application No. 120 of 2012) the fact which makes the whole decision null and void.
- 3) That, the decision issued by the Trial Tribunal is null and void for failure to appreciate the fact that the appellant herein has in fact, already paid compensation/ refunded the respondent herein the purchase price since 2017 through the order of Maji ya Chai Primary Court in Civil Case No 51 of 2017.

In contesting the appeal, the respondent filed a notice of preliminary objection based on three (3) points of law below:

- 1) That, this appeal is hopelessly time barred for being filed out of prescribed time hence it deserves to be dismissed.
- 2) That, this appeal is hopeless incompetent and bad in law for being in contravention of the High Court Ruling in Misc. Land Application No. 39 of 2023 delivered on 15/09/2023 by honourable Judge J. C. Tiganga, hence the appellant ought to file application for revision and not an appeal.
- 3) That, this appeal is hopelessly incompetent, ambiguous and bad in law for being annexed with irrelevant documents which is contrary to the law.

The counsel for the respondent prayed this court to dismiss the appeal with cost.

On 27th February 2024, it was agreed by the counsel for the respondent and the appellant and ordered by the court that the preliminary objection be argued by way of filing of written submissions. The counsel for the respondent filed them but the appellant on 4th April 2024 said his counsel filed the submissions but they were not found. He was availed with time to trace them for further orders. On 16th April 2024, the appellant informed the court that his counsel did not appear in court, the act which the counsel for the respondent said it was negligence, thus, the matter proceeded *ex parte* against the appellant who defaulted to file reply to the submissions in-chief as ordered by the court.

Submitting in respect of the 1st limb of preliminary objection, Mr. Salehe was of the view that, the appeal is time barred for being filed out of the 14 days stated in the Ruling dated 15th day of September 2023. He argued that the said ruling was issued by this court, so, court orders must be obeyed and in case of any disobedience then, one has to incur legal consequences. To cement on his submission, he referred to the cases of **The Concern for Development Initiatives in Africa (For DIA) and another Versus Ambrero Consulting (Gessellschaft mbH) and another**, Civil Application No 8 of 2021 [2023] TZCA 113 TanzLii, **Barclays Bank Tanzania Limited Versus Phylisiah**

Hussein Mcheni, Civil Appeal No. 19 of 2016 [2021] TZCA 202 Tanzlii and **Muse Zongori Kisere vs. Richard Kisiki Mugendi and another**, Civil Application No 244 of 2019 [2022] TZCA 640 TanzLii.

Arguing the second point of the objection, Mr. Salehe submitted that, the appeal is incompetent for contravening the High Court Ruling in Miscellaneous Land Application No 39 of 2023 which clearly stated that, the impugned order is not appealable as the same emanates from an execution application hence a proper way was to filed application for revision and not an appeal.

The counsel added that if the appellant was aggrieved by that order, he ought to have filed an appeal before the Court of Appeal and not filing the current appeal, referring to the decision in the case of **The Concern for Development initiative In Africa** (supra).

As for the third limb of preliminary objection, it is the submission from Mr. Salehe that, the appeal is hopelessly incompetent and ambiguous for being annexed with irrelevant documents. The said documents were such as judgment in Civil case No 51 of 2021 where he stated that parties are different from the parties to the current appeal, and the judgment of the District Land and Housing Tribunal in Application No 120 of 2012. The act of annexing irrelevant documents was labelled by

Mr. Salehe as high degree of negligence which cannot be condoned by this court. He prayed the appeal be dismissed with costs.

From the submissions and records, the main issue for the determination by this court is whether the preliminary objection is sustainable in law.

I opt to start with the third point of preliminary objection to the effect that the suit is hopelessly incompetent, ambiguous and bad in law for being annexed with irrelevant documents contrary to the law. The counsel for the respondent gave a detailed submission on the list of documents attached to the petition of appeal and termed them as irrelevant and contrary to the law. However, no any law was cited by the counsel for the respondent that has been violated by the appellant. It is not a point of law.

It is settled legal principle that preliminary objections have to base on pure points of law as in the famous case of **Mukisa Biscuits Manufacturing Company Limited Vs. West Ends Distributors Limited** [1969] EA 696 and I quote part of the decision:

"A Preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained...."

The third point of objection does not qualify to be a point of law. In the event, it is overruled and dismissed.

Now reverting to the first point of preliminary objection, it is clear that this court in its ruling dated 15th September 2023 in Miscellaneous Civil Application No 39 of 2023 gave the appellant 14 days within which to refile the application for revision before this court. Instead, the appellant has decided to appeal to this court and said pursuant to the court order dated 15th September 2023.

In the present appeal as per the court seal affixed on top of the petition of appeal, was filed before this court on 5th October 2023 over and above 14 days from the date of the ruling of the court. At the same time, the appeal is shown to have been filed online on 31st October 2023 and this is regarded as the filing date. If the appellant acted on the court order of 15/09/2023, he did so out of time because he was availed with 14 days of taking action and there is no any other order extending such time.

I find merit in the first point of the preliminary objection that the matter is time barred.

Concerning the second point of objection, it is apparent that this court had decided that matters related to execution by the District Land and

Housing Tribunal can be challenged by way of revisional proceedings for such order is not appealable. At the end, the appellant was allowed to refile proper application for revision which he did not. So, he did not obey the court order. Therefore, the second point of objection finds merits too.

The way forward for the time barred proceedings is to dismiss the same under section 3 (1) of the Law of Limitations Act, Cap 89 (R. E 2019).

In the end, the first and second points of preliminary objection are sustained. The appeal is dismissed with cost for being time barred.

DATED at **ARUSHA** this 24th day of May, 2024.


F. H. KIWONDE

JUDGE

24/05/2024

Court: Ruling is delivered in the court room in the presence of the appellant in person, Mr. Salehe, counsel for the respondent and Maryciana (RMA) this 24th May 2024 and the right of appeal is explained.




F. H. KIWONDE

JUDGE

24/05/2024