

IN THE HIGH COURT OF TANZANIA
[LAND DIVISION]
AT IRINGA

MISCELLANEOUS CIVIL APPLICATION NO.20 OF 2010

(Originating from Application No.2 of 2008 Njombe
District Land and Housing Tribunal)

MITAWA YOHANIS CHAULA APPLICANT
VERSUS

1. FLORA NGAILO
2. DANFORD MBILINYI } RESPONDENTS

14/03/2014

R U L I N G

MADAM SHANGALI, J.

Mitawa Yohanis Chaula (the applicant) under services of Mkumbe and Company Advocate filed an application for leave to appeal out of time against the Judgment and decree of Application No.2 of 2008 of the Njombe District Land and Housing Tribunal. In his chamber summons supported with affidavit he cited sections 38(1) of the Land Disputes Courts Act, Chapter 216 of the Laws Revised Edition, 2002 and section 14(1) of the Law of Limitation Act, Chapter 89 of the Laws Revised Edition, 2002. On the other

side, the respondents under services of Frank Ngafumika, learned counsel entered a counter affidavit. The respondents further filed a Preliminary Point of Objections to the effect that the application is brought under a wrong provision of the law and that, it is hopelessly time barred.

The Court ordered parties to argue the Preliminary Objection by way of written submissions.

In his brief submission, counsel for the respondents argued that the provisions of the law under which this application is brought is wrong. That, section 38(1) of the Land Disputes Courts Act in the Chamber summons is wrongly cited as it is not applicable in the case at hand. That, this provision of the law deals with application for extension of time in land matters originating from wards tribunals. That, the case at hand has originated from the District Land and Housing Tribunal hence it has never been adjudicated in the Ward Tribunal. That the only provision that ought to have been cited is section 14(1) of the Law of Limitation Act. That, since there is mixed citation, the application becomes incompetent and ought to be struck out.

Arguing on the second point of objection, Mr. Ngafumika submitted that the application is time barred. That, the ruling in respect of which an appeal is purported to be intended, was delivered on 18th December, 2008 and the instant application was

filed on 8th November, 2010 being 22 months and some few days. Turning to the relevant law, such applications ought to have been filed within sixty days as per item 21 of part III of the schedule to the Law of Limitation Act hence the application is time barred. He submitted further that the effect of any matter being time barred is set out in section 3 of the Law of Limitation that is dismissal of the same. He therefore prayed the application to be dismissed with costs.

In response, Mr. Mkumbe for the applicant submitted to the effect that he was relieved that the Counsel for the respondent has readily conceded that the only relevant and proper cited is Section 14 (1) of the Law of Limitation Act. Mr. Mkumbe further attempted to convince this court that even Section 38 (1) of the Land Dispute Courts Act is also relevant because there is no other specific section in the said Act that deals with the Appeals originating from District Land and Housing Tribunal.

It should be noted that, Counsel for the applicant did not submit on the second point of preliminary objection. I was not surprised. Infact I expected the Counsel for the respondent to substantiate his second point of preliminary objection with evidence on how the application for extension of time is time barred. Instead he jumped the gun and started to argue the main application for extension of time to appeal out of time against the judgement and decree of Land Application No. 2 of 2008. It is obvious that the

second point of preliminary objection constitutes misconception on the part of the counsel for the respondent because the issues of limitation of time is the main subject in the main application.

At this juncture, the prime issue to be determined is whether this court has been properly moved to entertain the application.

As rightly contended by counsel for the respondent, section 38(1) of the Land Disputes Courts Act deals with appeals to the High Court on matter originated from Ward Tribunal. It is improper to use this section on matters originated from the District Tribunal. However, the applicant apart from citing section 38(1) of the Land Disputes Courts Act, he has also cited section 14(1) of the Law of Limitation Act to move this court. That is the correct law to be applicable.

Based on the above analysis I am of full considered views that the citation of Section 38(1) of the Land Disputes Courts Act is indeed irrelevant and super flous to this application. Nevertheless I am pretty convinced that the mischief cannot vitiate the competency of the application because section 14(1) of the Law of Limitation Act which was duly cited in the chamber summons redeems the whole application.(see the case of **ABDALLAH HASSAN versus JUMA HAMIS SEKIBOKO**, Civil Appeal No. 22 of 2007, CAT-Tanga (unreported).

In the upshot, the application is proper before this Court and

therefore, the points of Preliminary Objection are dismissed with costs.

M. S. SHANGALI

JUDGE

14/3/2014

Ruling delivered todate 14/3/2014 in the presence of the applicant in person and in absence of his advocate Mr. Mkumbe and in absence of the respondents and their advocate Mr. Ngafumika. Respondents and their advocates to be notified.

M. S. SHANGALI

JUDGE

14/3/2014