IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

LAND REVISION NO.25 OF 2016

BONIFACE KUBOJA MATTO.....APPLICANT

Versus

SHANI SEIF MWAMBO.....RESPONDENT

Date of Last Order: 02/02/2018
Date of Ruling: 23/03/2018

RULING

S.A.N.WAMBURA, J

The applicant **BONIFACE KUBOJA MATTO** made this application under Section 43 (1) (a) (b) (2) of the Land Disputes Courts Act Cap. 216 for the following orders;

1. *This Honourable Court be pleased to call upon the records of the Kinondoni District Land and Housing Tribunal in Land Application No.386 of 2014, the case which is before Honourable Mlyambina Chairman in which, the applicant herein in his written statement of defence raised the point of preliminary objection which touches of the jurisdiction of the said tribunal. But for reasons only known to the tribunal and which was not disclosed to the Applicant to the preliminary objection raised by the Applicant herein was not heard instead to proceed hearing the matter. That the call fo the record is applied to done so that this Honourable Court to satisfy itself as*

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to the legality, propriety and regularity in all of the tribunal's proceedings thereto.

2. *Any other Order(s) that the Honourable Court deem fit.*
3. *Costs of this Application to be granted.*

The application was supported by the affidavit sworn by Boniface Kuboja Matto the applicant.

The applicant appeared in person unrepresented whereas the respondent **Shani Seif Mwambo** had the services of Mr. Kuboja the learned counsel. She filed a counter affidavit challenging the application.

Before the hearing of the application, Mr Kuboja raised a preliminary objection on a point of law to the effect that;

i. *The application is misconceived in law for not complying with section 79(2) of the Civil Procedure Code Cap. 33 R.E. 2002 as amended by (The Written laws miscellaneous Amendment) Act No. 25 of 2002.*
ii. *The application is incompetent for being time barred.*

With leave of the court, the preliminary objections were argued by way of written submissions. Both parties filed their written submissions as scheduled. I am thankful to them as the submissions have been helpful in the writing of this ruling. Needful

Submitting on the first ground of objection, Mr. Kuboja contended that the application is misconceived before this Court because the matter at the Land and Housing Tribunal is yet to be finally determined. That the applicant had never prosecuted the said preliminary objection raised in respect of Application No.386 of 2014 which led the Tribunal to dismiss it for want of prosecution.

On the second ground of objection, Mr. Kuboja averred that the application was filed out of time as prescribed by the law under item 21 Part III of the Schedule of the Law of Limitation Act Cap. 89 R.E 2002. He was of the view that the applicant was supposed to file his application before the expiry of sixty (60) days as mandatorily required by the law. This is because the decision subject to this revision was delivered on 27th July 2015. He therefore prayed to this court to dismiss the application with costs basing on the ground of limitation.

In response the respondent did not respond much on the grounds of objection raised but rather narrated the history of the application at the District Land and Housing Tribunal.

Having carefully gone through the preliminary objection raised by the learned counsel for the respondent and the submissions, I have observed that the main issue for determination by this court is whether the application was filed within time as prescribed by the law.

The record shows that the instant application was filed in this Court on the 01/11/2016 whereas the decision sought to be revised was issued on the 27th July 2015, where by the Tribunal dismissed the preliminary objection for want of the prosecution.

Mr. Kuboja argued that the Law of Limitation Act Cap 89 R.E 2002 has fixed sixty (60) days as the period within which to file an application for revision.

I entirely agree with Mr. Kuboja that the time limit for filing an application for revision is sixty (60) days from the date when the decision was delivered as provided under item 21 of the First Schedule of the Law of Limitation Act.

In the case of **Halais Pro-Chemie** v **Wella A.G.** (1996) TLR 269, the Court of Appeal of Tanzania stated at page 273 as follows:-

> *"As already mentioned, this application for revision was made about 10 months after delivery of the judgment sought to be revised. In our considered opinion, this application is hopelessly time-barred. Under the Provisions of section 53 read together with the First Schedule to the Law of Limitation Act, 1971 (Act 10 of 1971), specifically para 21 of the First Schedule, the period within which an application like this one ought to have been instituted is 60 days. By any standard, a 10 months delay is too late."*

This decision was followed in Civil Application No. 42 of 2000, **NBC Holding Corporation and Another** v **Agricultural & Industrial Lubricants Supplies Ltd. And two others** (unreported) by prescribing a time-limit of sixty (60) days within which an application for revision has to be instituted.

Again in the case of **Dominic Nkya & Another Vs Cecilia Mvungi & Others Civil Application No. 3 "A" of 2006** (unreported) Justice Nsekela J.A (as he then was) held as follows, I quote;

"This application was brought about five months after the delivery of the decision sought to be revised, and the first applicant did not seek for and obtain an enlargement of time before instituting the application, it is clearly time-barred....."

For the foregoing reasons, the first ground of objection could have been sustained and would dispose of the whole application. I would have no reason to labour much on other ground of objection.

However the application is not based on a judgment but on an Interlocutory Order which is not subject to appeal nor revision. It is thus struck out with costs for being pre maturely filed.

It is so ordered.

S.A.N WAMBURA
JUDGE
23.3.2018