

**HIGH THE COURT OF THE
UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND REVISION NO. 24 OF 2019

(Bill of Costs No.132 of 2019 arising from Misc. Land Application No. 106 of 2018 and
Land Application No. 37 of 2011)

DEUSDEDITH PASCAL CHUGGA.....1ST APPLICANT
PAUL MANYILIKA.....2ND APPLICANT
HEMED RASHID ALLY.....3RD APPLICANT
MFAUME ATHUMANI.....4TH APPLICANT

VERSUS

MORFAM.....RESPONDENT

Date of Last Order: 16.07.2020
Date of Ruling: 04.09.2020

RULING

V.L.MAKANI, J

This is an application for revision in respect of the decision of Kibaha District Land and Housing Tribunal ("the **Tribunal**") in Land Application No. 132 of 2019. The applicant has sought for the following orders:

- 1. That this honourable court be pleased to revise and set aside the orders dated 19th day of August, 2019 in Bill of Costs No. 1312 of 2019 arising out of Misc. Application No. 106 of 2018 and Land Application No. 37 of 2011 of the District Land and Housing Tribunal at Kibaha.*
- 2. That the costs of this application be provided for.*
- 3. Any other order(s) that this honourable court may deem just to grant.*

The application is made under section 43(1) (a) and (b) of the Land Disputes Courts Act, Cap. 216 RE 2002 as amended, and section 95 of the Civil Procedure Code Cap 33 R.E 2002 (the **CPC**) and is supported by the joint affidavit of the applicants. The respondent through his Chairperson Mr. **Kassim Abdallah** deposed an affidavit in opposition of the application.

According to the records, the respondent (then applicant/decreed holder) had filed Bill of Costs No. 132 of 2019 arising from the ruling delivered by the Tribunal on 22/02/2019 in Misc. Land Application No 106 of 2018 (Hon. Mbuga, Chairman). The bill of costs was argued by way of written submissions but unfortunately, the applicants (then the respondents) failed to file their submissions and the Chairman proceeded to fix a ruling date. However, when the matter came for ruling, the applicants' prayed for and were granted leave to file their submissions out of time and the applicants duly adhered to the order and filed their submissions on 09/10/2019 and a rejoinder by the respondent was filed on 17/10/2019. However, when the matter was awaiting ruling on 20/11/2019 the applicants on 05/11/2019 filed a notice of preliminary objection that the respondents do not have legal status to own property, sue or be sued in the name of MORFARM. This objection was not heard and the ruling for the bill of costs which was set for ruling is yet to be delivered to this date. The applicants have now come to this court with this application for revision.

Before the hearing of the application the respondent herein raised preliminary objection on two points of law, namely:

- 1. The Applicant's application is incurably defective for wrong citation of the law.*
- 2. The Applicant's Application is time barred hence Honourable Court has no jurisdiction to entertain.*

With leave of the court the preliminary objections were argued by way of written submissions. The respondents' submissions were drawn and filed by Mr. Ladislaus Michael, Advocate, whereas Mr. Ibrahim Mbugha represented the applicants.

Submitting in support of the first point of preliminary objection Mr. Michael said that this court is not properly moved as the applicants seek to move this honourable court to revise and set aside the Order of the Taxing Officer dated 19/08/2019, in Bill of Costs No.132 of 2019. He said the citing of section 43 (1) (a) of the Land Disputes Courts Act and section 95 of the CPC was not proper. According to him the proper citation to move the court is Order 7(1) of the Advocates Remuneration Order, GN. No. 264 of 2015 (the **Advocates Remuneration Order, 2015**) since the challenged Order is from the Taxing Officer. He said that the application is therefore incompetent before the court for wrong citation. He supported his position with the case of **Elly Peter Sanya vs. Esther Nelson, Civil Application No.3 of 2015 (CAT-Mbeya)** (unreported).

As for the second point of objection Mr. Michael stated that Order 7(2) of the Advocates Remuneration Order provides 21 days within which the aggrieved party may refer the matter to the High court. He said that the challenged decision was delivered on 19/08/2019 and

this application was filed on 18/09/2019 which means 29 days had lapsed, and the applicants were late for seven days. He supported his argument by citing the case of **Paul Reginald Bramely Hii vs. Security Group Cash In Transit (T) Ltd, (HC- Labour Division, Tanga)** (unreported). He prayed for the court to strike out this application with costs.

In reply, Mr. Mbugha said that, it was proper for the applicants to move this court under section 43 (1) (a) and (b) of the Land Disputes Courts Act as the ruling in application for bill of costs No.132 of 2019 is yet to be delivered. He said that the cited Order 7(1) of the Advocates Remuneration Order by the respondent is applicable where the decision has been delivered and aggrieved party may seek remedy through the said Order 7(1) of the Advocates Remuneration Order.

On the second point of preliminary objection that the matter is time barred under Order 7(1) of the Advocate Remuneration Order Mr. Mbugha said that, the provision is irrelevant as the matter at hand was not made under Order 7(1) of the Advocates Remuneration Order. He said that section 43 (1) of the Land Disputes Courts Act and section 95 of the CPC under which this application was made are not bound by 21 days. He added that no time limit is provided for such application and in accordance with Part III of the Schedule to the Law of Limitation Act, Cap 89, RE 2002 (the **Limitation Act**), the limitation for such application is sixty days. He insisted that this

application is not time barred and prayed for the preliminary objections to be dismissed with costs.

There was no rejoinder filed by the respondent.

I have considered the submissions by Counsel for the parties. The issue is whether the preliminary objections have merit.

It is Mr. Michael's contention that the applicant ought to have moved the court under Order 7(1) of the Advocates Remuneration Order, 2015, instead of section 43 (1) (a) and (b) of the Land Disputes Courts Act. On his side, Mr. Mbugha maintained his position that he has properly moved the court since the ruling in Application for Bill of Costs No. 132 of 2019 is yet to be delivered.

It is not in dispute that the applicant in this application is seeking revision against the orders of the Tribunal dated 19/08/2019. It is also not in dispute that the Ruling in the Application for Bill of costs No.132 of 2019 is yet to be delivered.

The provisions cited by the Advocates have different implications. For the sake of clarity, I will reproduce Section 43 (1) (b) of the Land Disputes Courts Act states as follows:

"43 (1) In addition to any other powers in that behalf conferred upon the High Court, the High Court (Land Division):

(a)N/A

(b) may in any proceedings determined in the District Land and Housing Tribunal in exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit”.

Order 7(1) of the Advocates Remuneration Order, 2015 provides:

“Any party aggrieved by a decision of the Taxing officer, may file reference to the Judge of the High Court”

The former provision, that is section 43 (1) (b) of the Land Disputes Courts Act deals with revision to the High Court; while the latter provision Order 7(1) of the Advocates Remuneration Order, 2015 deals with reference to the Judge of the High Court on matters related to bill of costs.

In the case at hand, the applicant is seeking revision to the High court regarding the orders given on 19/08/2019 and not the ruling of the bill of costs which is yet to be delivered. I am therefore in agreement with Mr. Mbugha that, the cited section 43 (1) (a) of the Land Disputes Courts Act is the proper provision to move the court as the ruling in the main application for bill of costs is still pending. It would have been different if the applicant was seeking reference with regard to the decision in the main application for bill of costs No. 132 of 2019, in such instance the applicant would have been required to invoke Order 7(1) of the Advocates Remuneration Order, 2015. Having so observed, the first ground of preliminary objection is therefore devoid of merits.

As regards the second ground of preliminary objection, it has been established above that the enabling provision to move this court in this application for revision is section 43(1) (b) of the Land Disputes Courts Act. The section provides no time limit for filing revision. However, the situation has been taken care of under Item 21 of Part III of the Schedule to the Limitation Act which states:

"Application under the Civil Procedure Code, Magistrate Courts Act or other written laws for which no period of limitation is provided in this Act or any other written law.....sixty days."

The question is, was the application before this court filed in time? As stated by Mr. Michael, the alleged ruling was delivered on 19/08/2019 and the present application was filed on 18/09/2019, this is almost 29 days and well within the sixty days provided by the law. Therefore, this application was filed well within time.

From the above findings, the preliminary objections raised by the respondent are devoid of merits and are hereby dismissed. Costs shall be in the cause.

It is so ordered.


V.L. MAKANI
JUDGE
04/09/2020

