

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

MISC. LAND CASE APPLICATION NO. 183 OF 2019

(Arising from Land Appeal No. 210 of 2017 of the District Land and Housing Tribunal for Kibaha)

HASIRA MGENI.....APPLICANT

VERSUS

KIGODA ABAS KIGODA.....RESPONDENT

RULING

OPIYO, J.

Two preliminary objections were raised by the respondent herein above against the applicants' application for extension of time to file an appeal out of time in this court from the decision in Land Appeal No. 210 of 2017 of the District Land and Housing Tribunal for Kibaha. The two objections raised by the respondent are:-

1. The application is incompetent for containing a wrong provision of law
2. The Jurat of attestation is defective.

Mutalemwa Bugeza, learned counsel appeared for the respondent while the applicant appeared in person. The court had ample time to go through the submission by the rival parties in respect of both points of objection. The 1st objection by the respondent is that, the application is incompetent for want

of a proper enabling provision and law. The respondent contended that, the enabling provision and the law cited by the applicant, section 38 (1) of the Land Disputes Courts Act, Cap 216, R.E 2018 do not exist. The proper provision and law to be cited as enabling provision in the application at hand was supposed to be section 38(1) of the Land Disputes Court Act, Cap 216 R.E 2002. Disputing the respondents' arguments on the 1st objection, the applicant maintained that there is nothing wrong in the provision used as enabling provision and the law itself because cap 216 are among the laws that have been revised in 2018. His argument is based on the decision in the case of **Mwita Joseph Ikoh and 2 others versus Republic, Criminal Appeal No. 60 of 2018, (unreported), (supra)** in which the Court of Appeal referred to RE 2018 and Government Notice No. 674/2018.

From the above, point of contention is on the revision year which has been cited as 2018 instead of 2002. Both sides agrees that section (s. 38 (1)) and the law (Land Disputes Court Act) are correct. In my view, in consideration of overriding objective principle which enjoins the courts to do away with technicalities and decide justly, making reference to RE 2018 instead of RE 2002 is not fatal. Therefore, as long as the provision and the law are correct, a mere, incorrect year of the editions revision does not amount to wrong citation of enabling provision as argued by Mr. Mutalemwa. It is minor mistake that does not affect the foundation of the substantive justice. It is therefore curable by mere correction of the year.

As for the 2nd objection, looking at the copy that is before the court, the preliminary objection will stand. This is because the applicants' affidavit complained about by the respondent to be offending the provisions of

provision of section 8 of the Notaries Public and Commissioner for Oaths Act, (Cap 12 R.E 2002) that is before the court, although on the face of it seems free from such defects, it is not what it seems to be. The date that has been inserted at the Jurat of attestation as (dated 22/3/ 2019) substantially differs with the rest hand writing and ink mark used. That shows, it was not inserted by the person who attested the document at the time of attestation. It is not disputable that, the copy that was served on the respondent suffered the defect of not having such date. Under normal circumstances and in the interest of wider justice, I would have decided to be guided by the court's copy if not for the variations which give the impression that they were also having those defects, that were rectified at the unknown later stage in order to pre-empt the preliminary objection.

That being the case, the affidavit in question is incurably defective to support the current application. In the circumstances, this preliminary objection is found to be meritorious, is therefore upheld and consequently, the application is struck out for being incompetent.



**M. P. OPIYO,
JUDGE
9/3/2020**