

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

REVISION NO. 16 OF 2018

(Arising from Temeke District Land and Housing Tribunal in Misc. Application No. 300 of 2017)

HAJI BUSHIRI SELEMANI.....APPLICANT

VERSUS

WEGESA EVARIST KUSHAKA.....RESPONDENT

Date of Last Order: 12.08.2020
Date of Ruling: 19.10.2020

RULING

V.L. MAKANI, J

This is an application for revision by HAJI BUSHIRU SELEMANI. The applicant is seeking for the orders of this court as follows:

- 1. That the Honourable Court be pleased to call for, inspect the records and examine the regularity, propriety and correctness of the ruling in a Misc. Land Application No.300 of 2017 delivered by Hon. Kirumbi, Chairman and if necessary quash the ruling and drawn order thereof.*
- 2. Any other order(s) this honourable court may deem fit and just to grant.*
- 3. Cost of this application to follow the event.*

The application is made under section 43(1) (b) of the Land Disputes Courts Act Cap 216, RE 2002 and is supported by the affidavit of the applicant.

The application was argued by way of written submissions. Both the applicant and the respondent drew and filed their own submissions.



Since this is an application for revision the court had to satisfy itself of the merits of the application by going through the affidavit, submission by the parties and the file in Misc. Application No. 300/2017 of the District Land and Housing Tribunal for Temeke (the **Tribunal**).

Submitting in support of the application, the applicant said that he has filed this appeal (sic) with four grounds and that he has decided to abandon the 1st, 2nd and 4th grounds. He submitted on what he considered his 3rd ground basing on extension of time, that the Tribunal erred in law and fact by failure to consider chances of success of the appeal (sic!) in determining an application for extension of time. He said that in determining the application for extension of time the court should consider the issue of illegality of the decision to be challenged as the reasons for extension of time. He cited the case of **VIP ENGINEERING AND MARKETING LIMITED AND THREE OTHERS vs. CITIBANK TANZANIA LIMITED, Consolidated Civil Reference No.6, 7 and 8 of 2006**. He added that the issue of illegality was raised in the affidavit and submissions in chief but the Tribunal was at fault for failure to consider the same as sufficient grounds for extension of time. He prayed for the appeal (sic!) to be allowed with costs.

In reply, the respondent said that this is an application for revision and not appeal as alleged in the applicant's main submission. He said that the grounds in the revision are pegged on the assertion that the trial Chairperson erroneously disregarded the applicant's submission

in chief hence denied him right to be heard and therefore the so called grounds of appeal are new facts introduced to this court. The respondent prayed for this court to disregard the applicant's submission in chief and deal only with facts in the supporting affidavit.


In the alternative, the respondent said that the applicant was given ample time to prosecute his case, but he failed to defend himself at the Tribunal. He insisted that there is no illegality committed by the Tribunal. He said that the only option in case of failure to file submission is to dismiss the application. He insisted that the Tribunal had the right to decide the way it did. He prayed for the court to dismiss this application with costs.

The applicant did not file his rejoinder.

It is worth noting that this is an application for revision. The applicant through his Chamber Summons invited this court to inspect the records and examine the regularity, propriety and correctness of the ruling in Misc. Land Application No.300 of 2017 at Temeke District Tribunal. However, the applicant in his submissions has been labelling this application as an "*appeal*". And has crafted grounds of appeal which are not supported by any petition of appeal on record. Since the court was moved for revision, then the court will confine itself on revising the record of the Tribunal and nothing else. And in so doing, the court will disregard the submissions and in lieu thereof the affidavit being part of the evidence shall be considered in determining the merits of the application.

Now, did the Tribunal erroneously decline to consider applicant's main submission as claimed by the applicant? It is on the record that the applicant herein was ordered by the Tribunal to file his main submission on or before 24/11/2017 (see the Tribunal's proceedings dated 10/11/2017). However, the Tribunal's Exchequer Receipt No. 99000696811 showed that fees for payment of the submissions by the applicant were made on 27/11/2017. The day of payment of fees is legally the filing date according to **John Chuwa vs. Antony Ciza [1992] TLR 233** which was also cited by the Chairman of the Tribunal. This means the submissions by the applicant were filed 3 days out of time by virtue of the Tribunal's order. Apparently, the applicant is confusing between the date he presented his submissions and the date he paid the requisite fees for filing. But according to **John Chuwa vs Antony Ciza** (supra) the date the applicant paid the fees is taken to be the date of complete filing of the submissions. And therefore, the Tribunal was correct in declaring that the applicant's submissions were filed out of time and without leave of the court and proceeded to dismiss the application for want of prosecution.

From the foregoing, the application is without merit and it is consequently dismissed with costs. It is so ordered.


V.L. MAKANI
JUDGE
19/10/2020