

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND REVISION NO. 26 OF 2019**

*(Arising from Miscellaneous Land Application No. 435 of 2016, District Land and housing Tribunal for Ilala)*

**JANET JOSEPH.....1<sup>ST</sup> APPLICANT**

**DORIS JUMA MSANDO.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**BEATRICE LYINGA.....RESPONDENT**

**RULING**

**I. MAIGE- J**

This application has been brought under section 79(1) (c) of the Civil Procedure Code, Cap. 33, R.E., 2019. The substantive relief sought according to item (a) of the Chamber Summons is as follows:-

- (a) *That, this Honourable court may be pleased to make revision from the execution proceedings and order arising from the Judgment and Decree in Land Application No. No. 435 of 2016 vide Misc. Application No. 435 of 2016 of the District Land and Housing Tribunal for Ilala at Mwalimu House at 6<sup>th</sup> Floor, before Hon. Mgulambwa, Chairperson, dated 19<sup>th</sup> August 2019 and set aside the ruling, order and decision thereon.*

The application is founded on the joint affidavit of the applicants. The grounds in support of the application are contained in paragraphs 6 and 7 of the affidavit which for clarity are reproduced hereunder:-

- 6. That the Judgment and Decree of the Land Application No. 6 of 2013 which the Respondent is intending to execute is defective and unexecutable as contravening mandatory provisions of the Civil Procedure Code, Cap. 33 R.E. 2002.*
- 7. That, revision from the execution proceedings and order of the Land Application No. 435 of 2016 is of importance as the Trial Tribunal has exercised its jurisdiction illegally and irregularly, thus, we believe justice will smile if this Chamber Application will be considered.*

By a notice of preliminary objection, the respondent has questioned the maintainability of the application for being time barred. The preliminary issue was by the direction of the Court, argued by way of written submissions.

In his written submissions, Mr. Victor Ntalulu, learned advocate, started by drawing the attention of the Court on the relevant enabling provisions for a revision against a decision of the District Land and Housing Tribunal. He informed the Court that, it is the provisions of section 41 and 43 of the Land Disputes Courts Act, Cap. 216, R.E, 2019. He goes on submitting that, since the said provisions do not

prescribe for the time of limitation, the time limit for the application is 60 days from the date of the decision. This is in terms of item 21 of Part III of the Schedule to the Law of Limitation Act, Cap. 89, R.E., 2019. As the instant application seeks to indirectly fault the judgment and decree of the trial tribunal after the expire of more than five years, it is hopelessly time barred and it should, under section 3(1) of the Law of Limitation Act be dismissed with costs, he further submits.

Advocate Catherine Lyasenga who filed the written submissions for the applicants while is in agreement with her learned friend on the time limit for an application for revision against a decision of the DLHT, she is of the view that, the same is within time as it seeks to challenge an execution order issued on 19<sup>th</sup> September 2019. She submits further that, as the decree of the **trial tribunal** is un-executable for being defective, the application at hand is of importance. The counsel did not make any comment on the issue of appropriateness of the enabling provisions of law raised by the counsel for the respondent in his submissions.

On my part, I have considered the rival submissions and critically examined the affidavit. I entirely agree with Mr. Victor Ntalula that, the application at hand is not only time barred but preferred under wrong provisions of law as well. The application seeks to revise a decision of the District Land and Housing Tribunal purportedly on execution. The provision of law cited is section 78 of the CPC which applies for revision from decisions of District Court and Resident Magistrate Court in exercise of their original jurisdictions. The specific law governing revision from decision of the District Land and Housing Tribunal is section 43(1) of the Land Disputes Courts Act which provides as follows:-

*43-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court –*

- (a) shall exercise general powers of supervision over all District Land and Housing Tribunal and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay.*
- (b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or by its own motion, if it appears that there has been an error material to the merit of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit.*

The provision of section 43 (1) of the Land Disputes Courts Act does not provide for the period of limitation. Therefore, under item 21 of the Schedule to the Law of Limitation Act, the time limit for pursuing an application for revision is 60 days from the date of the decision. From paragraphs 6 of the affidavit, it is apparent, the applicant faults the decree of the trial tribunal for being defective such that it cannot be executed.

The judgment of the **trial tribunal** was pronounced on 23<sup>rd</sup> August 2016. The applicants, according to paragraph 4 of the affidavit, attempted vide Misc. Application No. 42 of 2017 to have leave to appeal out of time. For the reason better known to themselves they withdrew the application and lodged Miscellaneous Land Application No. 93 of 2017. Nevertheless, the said application was struck out for being time barred. Again, the applicants initiated Civil Application No. 149 of 2017 praying for a similar order. It was dismissed for being *resjudicata*.

Now that the applicants are barred by time limitation from faulting the decree of the **trial tribunal**, they are trying to jump the bar by cleverly drafting the chamber summons in such a way that the decree

is criticized through execution proceedings. This trend is uncalled for as the Court of Appeal has held in **TRA VS. NEW MUSOMA TEXTILES LIMITED, CIVIL APPEAL NO. 93 OF 2009** that; where the substance of the matter is such that the jurisdiction of the court is barred by law, the plaintiff cannot be allowed to circumvent the bar by the clever drafting of the plaint.

In this case, though in the chamber summons the applicants indicated that they are challenging the execution order and proceedings, in the affidavit, it is express that, what the Court is called upon to examine is the correctness and validity of the decree of the trial tribunal. In the circumstance, the preliminary objection has merit and it is sustained. The application is hopelessly time barred apart from being preferred under a wrong provision of law. It is accordingly dismissed for being time barred with costs.

It is so ordered.

A handwritten signature in black ink, appearing to read 'J. Maige', is written over the printed name.

**JUDGE**

**16/11/2020**

**Date: 16/11/2020**

**Coram:** Hon. S.H. Simfukwe - DR

For the Applicant: Ms. Catherine Yasenga, Advocate

For the Respondent: Present in person

**RMA:** Bukuku

**COURT:**

Ruling delivered this 16<sup>th</sup> day of November, 2020, in the presence of the both parties.



S.H. Simfukwe 

**DEPUTY REGISTRAR**

**16/11/2020**