

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

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 531 OF 2020**

*(Arising from Application No.123 of 2013 of District Land and Housing Tribunal for Ilala)*

**ANTIPAS ROMANI TAIRO..... APPLICANT**

**VERSUS**

**SIKUDHAN JAFARI ..... RESPONDENT**

**RULING**

23/03/2021 & 19/05/2021

**I. MAIGE, J**

In the conduct of this matter, the applicant enjoys the service of Kephas Simon Mayenje, learned advocate. The respondent appears in person and is not represented. The theme of the application is extension of time to appeal against the decision of the District Land and Housing Tribunal for Ilala (“the DLHT”) in exercise of its original jurisdiction. In accordance with the rival submissions in address of the first point of preliminary objections, parties do no doubt the appropriateness of the provision of section 41(2) Land Disputes Courts Act, Cap. 216, R.E., 2019 (“the LDCA”) in an application of this nature.

Conversely, this application has been preferred under sections 14(1) of the Law of Limitation Act, Cap. 89, R.E. 2019 (“the LLA”) and Section 95 of the Civil procedure code [Cap 33 R.E. 2019].

Notwithstanding the foregoing factuality, Mr. Kepha, in his written submissions in refutation, contends that; regardless wrong citation of enabling provision of the Law, the Court has jurisdiction to grant the prayer sought. He submits further that, since the word “Court” has been defined in section 14(2) of the **LLA** as to include the High Court, just as the provision of **LDCA**, the cited provision of the **LLA** confers jurisdiction in the High Court to grant the application.

In the alternative, it was the counsel’s submissions that, omission to cite a correct provision of law is a minor irregularity which can be ignored. Reliance was placed on the authority of my learned brother Judge Mlyambina, J in **ALLIANCE ONE TOBACCO & OTHERS VERSUS MWAJUMA HAMIS & ANOTHER**, MISC.APPLICATION NO. 803 OF 2018, HIGH COURT, DAR ES SALAAM DISTRICT REGISTRY, UNREPORTED)

So that the contention can be resolved, two issues in my view, must be addressed. The first issue is whether the provision of section 14 (1) of the **LLA** confers power to the High Court to grant time to appeal against a decision of the **DLHT** on trial. The second issue is whether the omission is fatal. For the reasons that I shall assign as I go along, the answer to the question should be no.

Under sections 43 (f) of the LLA; the application of the **LLA** is debarred in *“any proceeding for which a period of limitation is prescribed by any other written law, **save to the extent provided for in section 46**”*.

As noted above and the parties are not in dispute, limitation of time for an appeal to the High Court against decisions of on trial is prescribed under section 41(2) of the **LDCA** which in my opinion is “any other written law”. Nevertheless, I am aware that, the exclusion in the respective provision is subjected to the provision of section 46 of the same which reads as follows;-

*46. Where a period of limitation for any proceeding is prescribed by any other written law, then, **unless the contrary intention appears in such written law**, and subject to the provision of section 43, the provisions of this Act shall apply as if such period of limitation had been prescribed by this Act.*

My reading of the two provisions together would suggest that, for the **LLA** to be excluded in proceedings for which the period of limitation is prescribed for by other written laws, the latter must have intended to exclude the application of the former.

When does the **LLA** apply to the **DLHT** and High Court in land matters is covered by the provision of section 52 (2) of the **LDCA** which provides as follows:-

*(2) The Law of Limitation Act shall apply to the proceedings in the District Land and Housing Tribunal and the High Court in the exercise of their respective **original jurisdiction**.*

In **REBECCA JACOB VS. LEVIS WAMOYA, LAND APPEAL NO. 201 OF 2020, HIGH COURT, (LAND DIVISION, UNREPORTED)**, dealing with more or less a similar issue, I made the following pronouncement which I still subscribe to:-

*The above provision is clear and unambiguous that, the **LLA** applies in the High Court and **DLHT** in pursuit of their respective original jurisdiction. In my view, there being no any other provision to the contrary, the mentioning of "original jurisdiction" and omitting appellate and revision jurisdiction, would imply that, the intention of the legislature was to exclude the application of such law in respect to appellate and revisional jurisdictions. This is in line with the rule of statutory interpretation in the Latin maxim *expressio unius est exclusio alterius* (the express mention of one thing exclude all others).*

In my view therefore, the provision of section 14(1) of the **LLA** does not apply in the instant matter. The application has thus been brought under a wrong provision of law.

In relation to the second question, I have been asked to ignore the omission because the same does not affect the substantial validity of the application. I was referred to the authority of my learned brother Judge Mlyambina in **ALLIANCE ONE TABACCO CASE (supra)**. I have read the authority between lines and with all respects to the counsel, the said authority does not apply in the instant situation where the enactment cited is in applicable. Therefore, at page 5 of the ruling, my Lord Mlyambina observed as hereunder:-

*"It must be noted, however, that the imported wisdom of Rule 48 (supra) into this Court is limited to circumstances where an application has omitted to cite any specific provision of law or has cited a wrong provision, but the jurisdiction to grant the order sought exists. It does not cover where the application has cited wrong law altogether. In the later circumstances, in my humble view, the application should be struck out"*

If I can apply the above authority, I will hold, as I hereby do that, since the applicant has cited "a wrong law altogether", this Court cannot, under the cited law, enjoy the jurisdiction to grant the application. The first point of

preliminary objection is thus sustained and the application is hereby struck out, with costs, for being preferred under an irrelevant law.

It is so ordered.



**I. MAIGE**  
**JUDGE**  
**19/05/2021**

**Date 19/05/2021**

Coram: Hon. A.S. Chugulu - DR.

For the Applicant: Ms. Irene Mchau, Advocate holding brief for Mr.

Mayenje, Advocate

For the Respondent: Present in person

**RMA:** Bukuku

**COURT:**

Ruling delivered this 19<sup>th</sup> day of May, 2021 in the presence of Ms. Irene Mchau, learned advocate holding the brief for Mr. Mayenje, learned counsel for applicant and respondent in person.



**A.S. Chugulu**  
**DEPUTY REGISTRAR**  
**19/05/2021**