

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

**CIVIL REVISION NO. 4 OF 2021**

**ANGELINA MARIUS MAKUA.....APPLICANT**

**VERSUS**

**PAULINA FRANK.....RESPONDENT**

Date of last Order: 13.07.2021  
Date of Ruling: 09.08.2021

**RULING**

**V.L. MAKANI, J**

This is the ruling in respect of the preliminary objections raised by the respondent that:

- (a) The application for revision of the Tribunal's decision dated 11/12/2020 which was filed on 22<sup>nd</sup> February 2021 is time barred.*
- (b) Since the main suit (Application No. 270/2020) is still pending determination in the District Land and Housing Tribunal for Ilala District, the present application for revision against interlocutory decision is prohibited by law.*

**ALTERNATIVELY**

- (c) The impugned decision dated 11/12/2020 is appealable as such revision cannot be invoked as an alternative to appeal.*

The preliminary objections were argued by way of written submissions. The submissions by the respondent were drawn and filed by Mr. Wilson Ogunde, Advocate; while that of the applicant were drawn and filed by Mr. Rutagatina, Advocate.

As for the first preliminary objection, Mr. Ogunde submitted that no time limit has been preferred in an application for revision. He said in that regard section 51 of the Land Disputes Court Act, CAP 216 RE 2019 read together with Item 21 Part III of the Schedule to the Law of Limitation Act CAP 89 RE 2019 which provides for 60 days period to any application in which time limit has not been provided by any other law. He relied on the case of **Tima Haji vs. Amiri Mohamed Mtoto & Another, Civil Revision No. 61 of 2003 (HC-DSM)**(unreported). He said the impugned ruling was delivered by the Tribunal on 11/12/2020 and the application was filed in this court on 22/02/2021 and so the application was delayed by 11 days and without extension of time to file this application. He said the application then should be dismissed in terms of section 3(1) of the Limitation Act.

As for the second preliminary objection, Mr. Ogunde said that there is a main suit (Land Application No. 270/2020) still pending in the Land District Land and Housing Tribunal for Ilala (the Tribunal) and that an application for revision against interlocutory decision is prohibited by the law. He submitted that Land Application No. 270/2020 is still pending determination in the Tribunal as such the impugned ruling is interlocutory and has not finally and conclusively determined the matter. He said section 79(2) of the Civil Procedure Code CAP 33 RE 2019 (the CPC) was introduced by Written Laws (Misc. Amendment) Act No. 25 of 2002 where an application for revision was expressly barred in respect of any preliminary or interlocutory decision or order of the court unless such decision or order has the effect of finally and conclusively determining the suit. He relied on the case of **MIC Tanzania Limited & 3 Others vs. Golden Globe International /Services Limited, Civil Application No. 1/16 of 2017 (CAT-DSM)** (unreported). He said since the impugned decision did not conclusively determine the case it is therefore not revisable.

As for the third objection in the alternative, Mr. Ogunde said the the impugned decision is appealable as such the application for revision

cannot be invoked as an alternative to the appeal. He supported his arguments with the case of **Halias Pro-Chemie vs. Wella AG [1996] TLR 269**, **Moses Mwakibete vs. The Editor, Uhuru & 2 Others [1995] TLR 134** and **Transport Equipment Limited vs. Devram P. Valambia [1995] TLR 161**. He said since the applicant has a right to appeal then the application for revision is dead on arrival and should be dismissed with costs.

Mr. Ogunde prayed for leave to argue an additional point of preliminary objection, that the application is incompetent for being preferred under wrong provisions of the law and/or non existing law. He said the application is pegged on section 51(1) of the Land Disputes Courts Act CAP 216 RE 2002 and section 79 of the Civil Procedure Code CAP 33 RE 2002. He however submitted that under the General Laws Revision Notice, 2018 GN No. 140 of 2020 the Revised Edition of 2002 were replaced by Revised Edition 2019. The applicant therefore cited non existing law. Mr. Ogunde went on stating that an application for revision is governed by section 43(1)(b) of the Land Disputes Court Act CAP 216 RE 2019; and since there is an express provision the cited provisions by the applicant in the application are irrelevant and inapplicable. He said wrong citation of

the enabling provisions of the law renders the application incompetent and should be struck out with costs.

In response Mr. Rutagatina first attacked the preliminary objections in that they did not qualify as objections in law in terms of the case of **Mukisa Biscuit Co. Limited vs. West End Distributors (1969) EA 696**. He said the point of objections constitute matters which could have been argued in the ordinary way instead of causing undue excitement.

As regards the first objection, Mr. Rutagatina said there is no specific provision in the Limitation Act CAP 89 RE 2002 catering for an application for revision. He said such applications are treated in similar way as review which is 30 days. He said the impugned decision of the Tribunal was made available to him on 09/02/2021 and this application was made in 17/02/2012 and hence it was only 8 days and hence not time barred.

As for the second objection, Mr. Rutagatina said Application No. 555/2020 did not adversely operate against the existence of Application No. 270/2020. He submitted that similarly Land

Application cannot operate as a bar to hearing and determination of this application for revision. He said the present application investigates material irregularities which featured in Land Application No. 555/2020 which are not transferable to Land Application No. 270/2020 pending determination before the same Tribunal.

As for the third ground which was raised in the alternative, Mr. Rutagatina said appealable orders are governed by Order XL of the Civil Procedure Code CAP 33 RE 2002 and further that the order subject of this revision is not appealable.

As for the additional point of objection which was raised with leave of the court, Mr. Rutagatina called it an afterthought and that the respondent was trying to introduce a new procedure. He dissociated his submissions with this additional objection and prayed the court to share his views too. He prayed for the objections to be dismissed with costs.

In rejoinder, Mr. Ogunde submitted that limitation period is reckoned from 11/12/2020 when the decision was given and elapsed on 09/02/2021 and the time of obtaining copies of ruling and order is

not automatically excluded. He said the records are clear that this application was presented for filing in 22/02/2021 and the application suffers the fate of dismissal as it is time barred.

As regards the second objection, learned Counsel said the applicant has not disputed the fact that Land Application No. 270/2020 filed by the applicant is still pending determination at the Tribunal. He said the order for dismissal in Misc. Land Application No. 555/2020 was interlocutory in that it did not finally determine the matter. He said the matter is ongoing in the trial Tribunal and as such this application is an abuse of the court process contrary to section 79(2) of the Civil Procedure Code CAP 33 RE 2019.

Mr. Ogunde also said the impugned order is appealable and all the authorities that have been cited have not been distinguished. He said the order is appealable because the applicant is simply asking the Tribunal to lift an order of attachment made by the Tribunal in execution of its decree.

On the additional point of objection, Mr. Ogunde pointed out that the applicant has not disputed that the application is pegged on wrong

provisions of law. He said jurisdiction to adjudicate upon the case is a creature of statute and the laws cited confer jurisdiction upon this court to determine the application. He said none of the provisions cited move this court to exercise its powers. He said this is a question of jurisdiction and the court must be moved. He said jurisdiction can be raised at any time and that is why he asked for leave of the court to address the issue. He said the applicant was not prejudiced in any way. He prayed for the application to be dismissed as it is entirely misconceived and bad in law.

I have gone through the submissions by Counsel, and I would wish to first tackle the additional point of objection as it touches on the jurisdiction of the court. Admittedly, the point of objection was not raised in the notice as is the normal practice but, the respondent sought leave of this court to argue it. Fortunately, the point of objection was raised in the main submissions and so the applicant had enough notice and an opportunity to respond and was not taken by surprise. In any case, a response to the said objection would not have prejudiced the rights of the applicant. Failure or disassociation by Mr. Rutagatina from addressing this point of objection was not of assistance to the court, and in my view, I take this as an unnecessary



haughtiness which is not supportive to the court or the applicant. In that regard and considering that this point touches on jurisdiction of this court, as said hereinabove, then leave is hereby granted, and the court shall proceed to address this issue accordingly.

This application is made under Section 51(1) of the **Land Disputes Courts Act 2002 CAP 216 RE 2002** and Section 79(1) of the **Civil Procedure Code, 1966 CAP 33 RE 2002**. It is common knowledge that by virtue of the General Laws Revision Notice, 2020, the laws specified in the Schedule to the Notice were revised and published as **2019 Revised Edition** which included amendments of up to November, 2019. The **2019 Revised Edition** supersedes all previous Revised Editions in respect of the laws specified in the Schedule. The Land Disputes Courts Act CAP 216 and the Civil Procedure Code, 1966 CAP 33 are all listed in the **2019 Revised Edition**. In that respect, the cited laws by Mr. Rutagatina, that is Section 51(1) of the Land Disputes Courts Act 2002 CAP 216 RE 2002 and Section 79(1) of the Civil Procedure Code, 1966 CAP 33 RE 2002 do not exist. These legislations have been superseded by **Land Disputes Courts Act 2002 CAP 216 RE 2019** and the **Civil Procedure Code, 1966 CAP 33 RE 2019**. Consequently, this court

has not been conferred with any jurisdiction to entertain the matter as the provisions cited are under non-existing laws. And as correctly stated by Mr. Ogunde, for this court to act it must be moved. One may state that this is a mere slip of the pen, but firstly, this point was brought to the attention of learned Counsel who decided to disassociate himself with this point; and secondly, the General Laws Revision Notice, 2019 came into operation in February, 2020 and citing it one year later, by a seasoned Senior Advocate, is either conceit or negligence on the part of Counsel. If this continues then the court would be entertaining many cases based on dead laws. In view thereof, this court is not properly moved and hence has no jurisdiction to entertain the application.

This point alone suffices to dispose of the application, and I find no reason to dwell on the other issues that were raised and argued.

In the result, the application is hereby struck out with costs for being incompetent. It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**09/08/2021**

