

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 02 OF 2020

(Arising from Misc. Land Application No. 114/2020 District Land and Housing Tribunal for Temeke at Temeke)

PHILEMON LUGANGIRA.....APPLICANT

VERSUS

APOLINARY MWANANZIGE.....1ST RESPONDENT

MAGRETH NAMBILO LUGANGIRA.....2ND RESPONDENT

RULING

Date of Last Order: 13/09/2021

Date of Ruling: 12/10/2021

A. MSAFIRI, J:

This is a Ruling in respect of the preliminary objection raised on 27th February 2020 by the 1st respondent that, the application is misconceived time barred (sic).

In this Application, the applicant is moving this court to call and inspect the records of the District Land and Housing Tribunal of Temeke District in respect of execution proceedings in Misc. Land Application No. 114 of 2020 and entire proceedings from which the said execution proceedings originates that is Shauri la Madai Na. 27/2019 at Vijibweni Ward Tribunal. The applicant claims that he was not a party to the

proceedings at the Ward Tribunal but he has interest to the suit land as he is the owner of the same. That the Ward Tribunal decided in favour of the 1st respondent who was then the applicant, and then the same instituted execution proceedings via Misc. Application No. 114/2020 before the District Land and Housing Tribunal for Temeke. It is from these proceedings that the applicant seek for revision of this Court.

The preliminary objection raised was argued by way of written submissions whereby the 1st respondent's submissions was drawn and filed by Geoffrey Martin, learned advocate and the applicant's reply was drawn and filed by Wilson Moses Mafie, learned advocate.

In supporting the preliminary objection, Mr. Martin, counsel for the 1st respondent submitted that the revision before this court has been brought out of time and without leave of the court so it should be entirely dismissed with costs. He argued that the present revision was filed in this Court on 7th February 2020. Computing the days from which the judgment and decree which is sought to be revised was delivered to the day when this revision was lodged, a total of 137 days has lapsed, and this is beyond 45 days which is set by the law.

He stated further that although section 19(2) and (3) of the Law of Limitation Act, Cap.89 exclude the period requisite for obtaining a copy of judgment and decree or order appealed against or sought to be revised, that privilege does not come automatically but is subject to formal application for extension of time seeking for the leave of the court. To support his argument, Mr. Martin cited numerous cases among them the case of **Abdulrasul Ahmed & 3 Others vs. Parin Jaffer & Another**, Civil Case No. 5 of 1994 (DSM-Unreported).

Mr. Martin submitted further that, the proper remedy to a revision which is brought in the Court out of time and without leave of the Court is to dismiss that revision with its deserving costs.

On reply, Mr. Wilson Mafie for the applicant submitted that all the cases cited by the counsel for the 1st respondent are distinguishable from the present application since the cited cases and the provisions of the Law of Limitation Act deals with the appeal and not revision. He stated that appeal and application for revision are two different things, whereby the revisions are governed by section 79(1) of the Civil Procedure Code, Cap 33 and Section 43(1) of the Land Dispute Courts Act, Cap 2016, which gives power for the High Court to call for and inspect the records of the lower court at anytime.

Mr. Mafie argued that, from the above provisions of the law, it is clear that revision is a discretion and power of the supervisor Court to call and examine the records of the lower court. He pointed that in the instant case, the applicant was not a party in the lower court proceedings. It is the respondents who were litigating at the Ward Tribunal. It is from the execution proceedings when the applicant noticed that his land is subject to execution while he was not made a party to the suit. Under this circumstances the only remedy the applicant has is to institute revision before this court to safeguard his right to be heard and his interest over the disputed land. To cement his arguments, he cited among others, the case of **Hemed Hussein & Others vs. Nyembela Gandawega**, Civil Application No. 66 of 2003, High Court (unreported).

He stated that, in this case and other authorities cited in the submission, it was principled that revision can be invoked at any time by

the supervisor Court. Therefore, it is a settled principle that revision can be initiated at any time by the supervisor Court either by formal application or by receiving informal complaints or even by receiving complaint from a newspaper.

He concluded that, the matter before this court is not time barred and prayed for this Court to call for the records and inspect the same as prayed.

On rejoinder, the counsel for the 1st defendant reiterated his submission in chief and added that section 43(1) of the Dispute Courts Act provides for the circumstance where the High Court on its own motion can call for the records for revision. He stated further that the cases cited by the counsel for the applicant are distinguishable as they talk about the Court calling for records suo motu and revise them but not moved by the party.

Having gone through the court records and the submission by parties, my duty is to determine on whether the Application for revision which the applicant filed on 7th February 2020 is time barred. According to paragraph (a) of the chamber summons, the intended revision is by this court to "call and inspect the records of the District Land and Housing Tribunal of Temeke District in respect of **execution proceedings in Misc. Land Application No. 114/2020 and entire proceedings from those said execution proceedings are arising being Shauri la Madai No. 27/2019 Baraza la Kata Vijibweni...**" (Emphasis mine).

From the quoted paragraph, it is clear that the applicant is moving the Court to revise execution proceedings, and entire proceedings which

is the source of the execution proceedings i.e. proceedings of Ward Tribunal at Vijibweni.

Going through the records, particularly the affidavit of the applicant, the execution proceedings are still pending at the District Tribunal, so since the proceedings have not been determined and concluded, it is difficult to compute time and decide whether this Application is time barred or not. As per the records, the respondent has filed for execution proceedings on 16th January 2020. The applicant is not party to the proceedings since he was not also a party at the Ward Tribunal.

As I have pointed out earlier, since the proceedings of Misc. Land Application No. 114/2020 are pending in the District Tribunal, I can not determine on whether the Application before me is time barred or not. However if the time is to be computed from the date which the Application for execution No. 114/2020 was filed, that is on 16th June 2020 then as the current Application was filed on 07th February, that will be 22 days and that will make the Application to be within time.

But, as the chamber summons is moving the court to revise also the proceedings of the Ward Tribunal, then I will have to go through the said proceedings and decision to see whether the Application is within time.

The proceedings and decision of the Ward Tribunal on Shauri Na. 27/2019 were delivered on 03 June 2019 while the current Application was filed on 07th February 2020 and this is 8 (eight months) lapse of time.

The important question here is whether the applications for revision have no time limit. Mr. Martin for the applicant seems to think so. In his reply opposing the preliminary objection, he referred this Court to section 79(3) of the Civil Procedure Code which provides that;

"Nothing in this section shall be continued as limiting the High Court's power to exercise revisional jurisdiction under the Magistrates' Court Act."

He also cited Section 43(1) of the Land Disputes Courts Act which provides the Court with supervision powers over all District Land and Housing Tribunals. The provision state that, in exercise of the said power, this court may at any time call for and inspect the records of such Tribunals and give directions as it considers necessary. The counsel argued that, the limitation of time cited by the respondent's counsel under the Law of Limitation Act deals with the appeal and not a revision. He pointed that, from the provisions of law and the authorities of cases referred, it is settled principle that revision can be initiated at any time by the supervisor court either by formal application or by receiving informal complaints.

On his part, Mr. Martin for the respondent vehemently argued that the counsel for the applicant's interpretation of section 43(1) of Cap 216 is misconceived because the said provision is not for any party who is aggrieved but it is for the circumstances when the court moves on its own accord when exercising the powers conferred to it by section 43(1) of Cap 216.

I agree with the submission by the counsel for the respondent that there is difference in the circumstances when the court moves on its own accord exercising its supervision powers over the subordinate courts and the circumstances where the applicant makes a formal application moving the court to inspect and or revise the proceedings, decision and decree or order.

The applicant has instituted a formal Application for revision and this falls within Item 21 Part III to the schedule of the Law of Limitation Act. The said Item 21 provides thus;

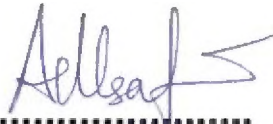
*21. "Application under the Civil Procedure Code, the Magistrates' Courts Act or **other Written Law for which no period of limitation is provided in this Act or any other Written Law**".(emphasis is mine).*

The period of limitation for the proceedings under herein above Item 21 of the cited law is sixty days (60). The applicant has filed this application under sections 41 and 43(1) of the Land Disputes Courts Act, and Sections 68 (e) and 95 of the Civil Procedure Code.

Although section 41 of the Land Dispute Courts Act provides for the period of limitation of 45 days, it is arguably that, that provision is specifically for appeal purpose as it is understandably put out by the counsel for the applicant. Nevertheless, as pointed earlier, Item 21 of Part III of the Schedule of the Law of Limitation Act provides for 60 days. Counting the days from the delivery of Ward Tribunal decision, to the date of filing of this application, almost 8 months (eight months) has passed so the Application will be hopelessly out of time.

I have considered the submissions by the applicant's counsel that the applicant was not a party in the lower court proceedings. However, this is not a justification to file an application out of time. The applicant was supposed to seek leave of the court to file the revision out of time under Section 14(1) of the Law of Limitation Act.

Since the application for revision was filed long after the expiry of sixty days which is the period of limitation, the preliminary objection is upheld, and accordingly, the application for revision is dismissed with costs. Right of Appeal explained.



A.MSAFIRI
JUDGE

12/10/2021

