

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

**MISC. LAND CASE APPLICATION NO.355 OF 2021**

(Arising from the Ruling of Hon. Kirumbi, Chairperson of the Ilala District Land and Housing tribunal, in Execution No. 569 of 2020)

**JAFARI SHOO MWAKADI.....APPLICANT**

**VERSUS**

**OMARI RAMADHANI JAMBIA.....RESPONDENT**

**R U L I N G**

*Date of Last Order: 06. 12.2021*

*Date of Judgment: 28.02.2022*

**T. N. MWENEGOHA, J.**

Before me is an application for extension of time. The intention of the applicant, Jafari Shoo Mwakadi is to challenge the decision of Hon. A.R. Kirumbi, the learned Chairman of the District Land and Housing Tribunal for Ilala District, dated 26<sup>th</sup> February, 2021, if the time is enlarged. Supported with his affidavit, the instant application was made under section 41(2) of the Land Courts Act, Cap 216 R.E 2019 and section 14(1) of the Limitation Act, Cap 89 R.E 2019. It appears however, that, the impugned decision of the learned chairman was in respect of execution proceedings, vide Execution No. 569 of 2020. This fact prompted a quick response from the respondent who advanced two preliminary objections against the application at hand as follows;-

1. This application is incompetent or bad in law as an application for execution is not appealable.
2. The application is bad in law as the applicant at the time of filling this application was within the underlined time.

By way of written submissions, the parties' arguments in favour and against the objections were as follows.

Mr. Lutufyo Mvumbangu, Advocate for the respondent was of the view on the 1<sup>st</sup> objection that, it is settled in the case of **General Tyre (EA) Ltd versus Amenyisa & Others, Civil Appeal No. 21 of 2003** as quoted in the case of **John Basilingi vs. Justinian Elizeus, Misc. Land Appeal No. 32 of 2019 (unreported)**, that

*"...apparently, no appeal lies from an execution order"*.

He insisted that, the applicant was supposed to apply to extend time to apply for revision and not for an appeal out of time. In that case, this application is incompetent and should be dismissed with costs.

On the 2<sup>nd</sup> objection it was argued by the counsel for the respondent that, at the time of filling this application, the applicant was within time, therefore the case at hand was filled prematurely. Looking at the date when the drawn order was delivered, that is on the 21<sup>st</sup> of June 2021 to the date of filling of this application, the applicant was within time as per section 19(2) of the Limitation Act, Cap 89. That, the time normally starts to run, when the person is given the copies of the drawn order. This was also the position of the court in **Valerie McGivern versus Salim Farkrudin Balal, Civil Appeal No. 386 of 2019, Court of Appeal of Tanzania**, that;-

*"Computation of the period of limitation prescribed for an appeal, is reckoned from the day on which the impugned judgment is pronounced, the appellant obtains a copy of the decree or order appealed by excluding the time spent in obtaining such decree or order".*

In his reply, the applicant who appeared in person argued on the 1<sup>st</sup> objection that, the preliminary objection is misconceived and has to be dismissed. The right to appeal being a fundamental right it should be protected as stated under **Article 13(6) (a) of the Constitution of the United Republic of Tanzania, of 1977**. He insisted that case of **General Tyre, supra** as cited by the respondent's counsel is distinguishable in this case. He went on to argue that, this court should take this objection as a mere technicality which aims at defeating the ends of justice not to be served on part of the applicant. Hence it should do away with it as stated in the case of **General Marketing Co. Ltd versus A.A Shariff (1980)**, where **Lord Biron J** held that;

*"Rules of procedure are hands of justice and should not be used to defeat the justice".*

On the second objection, the applicant maintained that, the application was not filed prematurely as the said documents were supplied to him while the time to take the intended action has already lapsed for 96 days. In his brief rejoinder, the counsel for the respondent reiterated what was argued in the submissions in chief.

After considering the submissions of parties as narrated here in above, the question for determination at this point is whether the two objections raised by the respondent have merit.

On the first objection, the contention is on the reason as to why the case at hand was preferred in the first place. According to the chamber summons on his first prayer, the applicant clearly stated and I quote:

*"This court be pleased to file an appeal out of time".*

Here is where the problem lies, as contented by the counsel for the applicant, the impugned decision sought to be challenged cannot be challenged by way of appeal, rather by revision, see **General Tyre (EA), supra.**

Taking into consideration of the purpose of an application of extension of time, that is to pave a way for future action, I wonder what the applicant will do with the decision of this court if his application will be allowed. The mistake pointed out by the respondent in his objection, 1<sup>st</sup> objection in particular affects the root of the whole case and in my opinion, the contention by the applicant that, the same is a mere technicality and this court should do away with it, is misconceived. After all, it has already been settled that, in these times of the existence of an overriding objective rule, the same should not be applied blindly to even cover the mistakes that touch the root of the case itself, see **Njake Enterprises Limited versus Blue Rock Limited and Rock Venture Company Limited, Civil Appeal No. 69 of 2017, Court of Appeal of Tanzania at Arusha, (Unreported)** and **Mondorosi Village counsel & 2 Others versus Tanzania Breweries Limited & 4 others, Civil Appeal No. 66 of 2017, Court of Appeal of Tanzania (unreported)**. I therefore find merit in the 1<sup>st</sup> objection and allow it accordingly.

That being the case, I see no need to discuss the 2<sup>nd</sup> limb of objection as the findings in the 1<sup>st</sup> objection above are capable of disposing the entire application to its finality.

To that end, I struck out this application with costs for want of competence.

It is so ordered.

Dated at Dar-es-Salaam this **28<sup>th</sup>** day of **February, 2022**



  
**T. N. MWENEGOHA**  
**JUDGE**