

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

LAND REVISION NO. 5 OF 2022

(From decision of the District Land and Housing Tribunal for Temeke at Temeke in Misc. Land Application No. 521 of 2020 arising from Application No. 25 of 2021 before Hon. P. I. Chinyele (Chairman) delivered on 7th Jan. 2022)

JUMA HASSAN MOHAMED APPLICANT

VERSUS

TABU ALLY NGALANDA RESPONDENT

Date of last order: 4/7/2022

Date of ruling: 25/8/2022

RULING

I. ARUFANI, J.

The applicant filed in this court the instant application urging the court to be pleased to call and investigate the propriety and legality of the entire proceedings in Land Application No. 25 of 2020 in attempt for execution of the decree against the applicant while there is already a notice of appeal which has been filed in the Court of Appeal. He is also praying the court to be pleased to quash and set aside the entire proceedings if found improper and illegal on the face of it and costs to follow the event.

After the respondent being served with the application and the affidavit, she filed in the court a counter affidavit accompanied by a notice of preliminary objection containing three points of preliminary objections. When the matter came on 12th May, 2022 for hearing the stated points of preliminary the applicant appeared in the court in person and the respondent was represented by Mr. Mohamed Mkali, learned advocate. The court ordered the points of preliminary objection raised by the respondent be argued by way of written submission and parties were given time for filing their written submission in the court.

When the counsel for the respondent filed his written submission in the court, he stated in his submission that he has discovered another point of preliminary objection that the application is hopelessly time barred which was not raised in the notice of preliminary objection. He prayed to abandon the points of preliminary objection raised in the notice of preliminary objection and argued the said new point of preliminary objection raised in his written submission.

He argued in relation to the said new point of preliminary objection that, the applicant seeks to revise the proceedings in Misc. Application No. 25 of 2020 which as stated at paragraph 7 of the affidavit supporting the application was determined on 7th September, 2021. He submitted that,

as there is no specific written law providing for time limit within which such an application should be filed in the court, we should take refuge to the provision of item 21 of Part III of the Schedule to the Law of Limitation Act, Cap 89 R.E 2019 which provides for time limit to be sixty (60) days.

He contended that being the position of the law the application at hand ought to be filed in the court latest by 6th November, 2021 but it was filed in the court on 4th February, 2022 which is beyond sixty days provided under the above cited provision of the law. He submitted that, as the application was filed in the court out of time then section 3 (1) of the Law of Limitation Act comes to remedy the situation which provides for only one remedy which is dismissal of the application.

He submitted further that, the cited provision of the law does not only provide for mandatory remedy but also answer in timing that, whether the defense is raised or not the court has no option but to dismiss the application. At the end he prayed the application be dismissed with costs for being filed in the court out of time.

In reply the applicant argued that, the preliminary objection raised by the counsel for the respondent is hopeless and devoid of merit. He argued that, had the respondent read properly the affidavit in support of the chamber summons together with the exhibits he could have realized

the application was timely filed in the court. He argued that, although the order annexed in the affidavit and marked APL 5 contain the 14 days' notice and Misc. Application No. 521 of 2021 but that alone cannot negate the fact that the order was issued on 7th January, 2022 which is a starting point for counting the time within which to file the application for revision in the court.

He argued that, the application was filed in the court on 4th February, 2022 while the impugned decision was issued on 7th January, 2022 which is just 29 days from the date of issuance of the order. He submitted that shows the application was filed in the court within the time limit for filing in the court an application for revision. He went on arguing that, paragraph 7 of the affidavit speaks volume that the proceedings to be revised is the one delivered on 7th January, 2022 which did not determine the application.

He argued the tribunal proceeded with execution of the decree against the applicant while there was pending notice of appeal and Civil Appeal No. 118 of 2021 before the Court of Appeal on the same subject matter. He submitted that, the point of preliminary objection has no merit and should be dismissed with costs. To support his submission, he referred the court to the case of **Mohamed Abdallah V. Kelvin Mundo**,

HC Civil Revision No. 24 of 2017 (unreported) where it was stated that, as it was clear the impugned order was delivered on 29th June, 2017, followed by an application for revision filed in the court on 5th July, 2017 the preliminary objection had no merit. Finally, he prayed the preliminary objection be dismissed with costs.

In rejoinder the counsel for the respondent stated the objection is raised basing on the prayer of the applicant on his own application seeking to revise the tribunal's Misc. Application No. 25 of 2020. He stated paragraph 7 of the affidavit states the application (i.e Misc. Application No. 25 of 2020) was terminated on 7th September, 2021. He submitted the applicant has not responded to that argument and instead of that he has sought refuge to Misc. Application No. 521 of 2021 contrary to his applied order as it appears in the application.

He argued that, the applicant may misconceive the preliminary objection but the fact remains the same that the application is for revision of Misc. Application No. 25 of 2020 and not Misc. Application No. 521 of 2021. He submitted that the objection is founded on Misc. Application No. 25 of 2020 which was indisputably terminated on the 7th September, 2021. He added that, by filing the application for revision on the 4th February, 2022 is equally and undisputedly filed over 60 days unreasonably out of

time. He submitted under that circumstances section 3 (1) of the Law of Limitation Act is require to come into play and reiterated his prayer that the application be dismissed with costs.

Having keenly considered the rival submissions from both sides in relation to the point of preliminary objection raised in this matter by the counsel for the respondent and after going through the chamber summons, affidavit supporting the application and documents annexed thereto together with the counter affidavit the court has found there is uncertainty about which proceedings the applicant wants to be revised by the court. The court has arrived to the above finding after seeing that, although the applicant states in the chamber summons that the proceedings, he wants to be revised is that of Misc. Application No. 25 of 2020 but he has stated in his submission the proceedings he wants to be revised is that of Misc. Application No. 521 of 2021.

If it will be taken the application the applicant wants its proceedings to be revised by the court as per the chamber summons which according to Order XLIII Rule 2 of the Civil Procedure Code is the one required to move the court to entertain the application and not the submission is Misc. Application No. 25 of 2020 of the tribunal, it is crystal clear as argued by the counsel for the respondent that the application for revision filed in this

court by the applicant is time barred. The court has arrived to the above stated finding after seeing that, as rightly argued by the counsel for the respondent limitation of time to lodge in the court an application like the one at hand pursuant to item 21 of Part III of the Schedule to the Law of Limitation Act is sixty days.

That being the time provided for lodging in the court an application for revision, the court has found as the mentioned application was determined on 7th September, 2021 and the application at hand was filed in the court on 4th of February, 2022, then it is crystal clear that the application was filed in the court after the elapse of 152 days from when the above said application was determined while it ought to have been filed in the court within sixty days.

Since under Order XLIII Rule 2 of the Civil Procedure Code the court is moved by what is sought in the chamber summons and supported by an affidavit and not what is stated in the submission of the applicant the court has found it cannot be said the applicant is moving the court to revise the proceedings of Misc. Application 521 of 2021 because the proceedings sought to be revised in the chamber summons is that of Misc. Application No. 25 of 2020 and not Misc. Application No. 521 of 2021.

As it is not certain about which proceedings the applicant intends to be revised between the proceedings of Misc. Application No. 25 of 2020 and Misc. Application No. 521 of 2021 the court has found it is not only that it cannot make a proper decision as to whether the application is time barred or not but also it cannot base on the chamber summons and its supporting affidavit to revise any of the proceedings of the mentioned applications because it is not clear as to which proceedings out of the two applications is supposed to be revised.

Without much ado it is the finding of this court that, although the preliminary objection raised by the respondent is meritorious and was supposed to be upheld but the court has found the appropriate remedy in the circumstances of the matter at hand is not to dismiss the application as argued by the counsel for the respondent. In lieu thereof the court has found the appropriate remedy is to strike out the application as it has neither been found it is time barred nor determined on merit. In the premises the application is hereby struck out and each party is ordered to bear his own costs. It is so ordered.

Dated at Dar es Salaam this 25th day of August, 2022



I. Arufani

I. Arufani

JUDGE

25/08/2022

Court:

Ruling delivered today 25th day of August, 2022 in the presence of both parties in persons and right of appeal to the Court of Appeal is fully explained to the parties.



I. Arufani

I. Arufani

JUDGE

25/08/2022