

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

LAND APPEAL NO. 145 OF 2021

*(Arising from Misc. Application No. 241 of 2017 of the District Land and Housing
Tribunal for Temeke District at Temeke)*

KHALIL IBRAHIM APPELLANT

VERSUS

UNYANGALA AUCTION MART AND

COURT BROKERS LTD RESPONDENT

Date of last Order: 15/06/2022

Date of Judgment: 31/08/2022

JUDGMENT

I. ARUFANI, J

The appellant filed in this court the appeal at hand to challenge the decision of the District Land and Housing Tribunal for Temeke at Temeke (henceforth referred as the District Tribunal) delivered in Misc. Application No. 241 of 2017. The background of this matter as can be grasped from the record of the matter is to the effect that, the appellant was sued by his two sisters namely Rahma Ibrahim and Mariam Ibrahim in Land Case No. 79 of 2005 filed at Temeke Ward Tribunal (henceforth referred as the Ward Tribunal). The decision of the Ward Tribunal was delivered on 16th July, 2008 against the appellant.

Thereafter, the appellants' sister filed Misc. Land Application No. 90 of 2009 before the District Tribunal seeking for execution of the decision made by the Ward Tribunal. The application was granted and the District Tribunal appointed the respondent to execute the decision of the Ward Tribunal by way of breaking and evicting the appellant from the house he was living and the house be handed over to the mentioned sisters of the appellant. In the course of evicting the appellant from the suit premises the respondent took various items of the appellant. After the said eviction process the appellant filed Misc. Application No. 241 of 2017 at the tribunal praying the respondent to be required to account for where were about the items taken from his place of residence. He also prayed the respondent be ordered to bring back to him the items taken from his place of residence and compensation for the items which had been spoiled or are no longer useful.

After hearing the parties, the District Tribunal found the application filed before the District Tribunal was not one of the matters which could have been entertained by the District Tribunal as provided under section 33 (1) of the Land Disputes Courts Act No. 2 of 2002 and dismissed the application with costs and directed the appellant to lodge his claims in a proper court. The appellant was aggrieved by the decision of the District Tribunal and decided to appeal to this court by filing in the court a

memorandum of appeal carrying the grounds of appeal quoted hereunder: -

- 1. That the chairperson of the tribunal erred in law and fact by not ordering the respondent to account for the household items he had taken from the appellant's residence when executing tribunal decision.*
- 2. That the chairperson of the tribunal erred in law and fact by not ordering the respondent to bring back all items he had unlawfully carried away to the appellant.*
- 3. That the chairperson of the tribunal erred in law and fact by dismissing the matter and order to be filed in proper court without considering the genesis and order of the matter was from Ward Tribunal of which execution was before the tribunal.*

While the appellant was represented before this court by Ms. Amina Macha, learned advocate the respondent was represented by Mr. Lusiu Peter, learned advocate. The court ordered the counsel for the parties to argue the appeal by way of written submission. I commend the counsel for the parties for filing their written submissions in the court within the time given by the court. Before going to the merit of the submissions of the counsel for the parties in relation to the grounds of appeal filed in this court by the appellant, the court has found the counsel for the respondent

has raised a point of law in his submission which this court is required to determine first.

The court has found that, although the said point was raised in the written submission of the counsel for the respondent and was not raised as a ground of appeal or cross appeal but is point of law relating to limitation of time upon which Misc. Application No. 241 of 2017 filed in the District Tribunal which is the source of the present appeal was supposed to be filed in the District Tribunal. The court has come to the above stated view after seeing that, the issue of limitation of time is an issue affecting jurisdiction of a court or tribunal which can be raised at any stage of a matter by the parties or by the court suo moto. The above view of this court is getting support from the case of **Tanzania Revenue Authority V. Tango Transport Company Limited**, Civil Appeal No. 84 of 2009 (unreported) where it was stated that: -

"Jurisdiction is the bedrock on which the court's authority and competence to entertain and decide matters rests."

The court has found it was also stated in the case of **Michael Lessani Kweka V. John Eliafye**, [1997] TLR 152 that, it is a well settled law that the question of jurisdiction may be canvassed at any stage of a case even on appeal by the parties or by the court suo moto as it goes to the substance of a trial. While being guided by the position of the law

stated in the above cited cases the court has found it is proper to start with stated point of law before going to the merit of the appeal.

The counsel for the respondent stated in his submission that; the record from the District Tribunal shows Misc. Application No. 241 of 2017 which is a subject of the present appeal originated from Misc. Application No. 90 of 2009 which was an application filed in the District Tribunal by Rahma Ibrahim and Mariam Ibrahim against the appellant in the present appeal. He argued that, the respondent came in the matter as an officer of the court particularly as a District Tribunal's Broker duly appointed to carry out execution of the decision of the Ward Tribunal sought to be executed.

He stated that, after the respondent carried out the execution ordered by the District Tribunal which was done by way of breaking the suit premises where the appellant was residing and evicted him out of the suit premises, the respondent filed in the District Tribunal an execution report on 5th January, 2010. He argued that, on 18th February, 2010 the District Tribunal issued an order directing the respondent to release the household items taken from the suit premises to the wife of the appellant under a condition that she pays the storage charges. He argued further that, on 30th December, 2011 the respondent sought from the District

Tribunal an order of selling the household items taken from the suit premises because they were deteriorating but the order was not issued.

He stated that, on 27th July, 2017 the appellant filed in the District Tribunal Misc. Application No. 241 of 2017 under section 38 (1) of the Civil Procedure Code, Cap 33 R.E 2019 urging the District Tribunal to order the respondent to account and bring back all the household items taken out of the suit premises during execution. He submitted that the application was made seven years from when the last order in execution proceedings, to wit Misc. Application No. 90 of 2009 was made. He contended that the record shows the respondent filed in the District Tribunal a notice of preliminary objection on point of law that Misc. Application No. 241 of 2017 was time barred.

He argued the record of the matter shows the stated point of law was not entertained because the respondent failed to file in the tribunal his written submission to support the preliminary objection as ordered by the District Tribunal. He submitted that, as the preliminary objection was based on point of limitation of time the District Tribunal ought to entertain the same regardless of whether submissions were filed in the court or not. He stated the said view is based on the fact that section 3 (1) of the Law of Limitation Act, Cap 89 R.E 2019 states any application instituted after

period of limitation must be dismissed whether or not limitation has been set up as a defence.

He explained that, item 21 at Part III of the Schedule to the Law of Limitation Act states all applications under the CPC which no period of limitation is provided must be filed in the court or tribunal within sixty days. He argued that, as the application was not an originating summons, rather it arose from Misc. Application No. 90 of 2009 and it was made under section 38 (1) of the CPC then Misc. Application No. 241 of 2017 was filed in the District Tribunal out of sixty days provided under the law and ought to be dismissed for being time barred regardless of whether limitation was raised as an objection or not.

He prayed the court to make a finding that Misc. Application No. 241 of 2017 was time appeal and dismissed the proceedings and ruling of the District Tribunal. He stated to entertain the present appeal while knowing the matter upon which it originates was time barred will be equal to blessing a wrong. He submitted that, regardless of what happened between 2010 and 2017 where the appellant had preferred a civil case before this court and all other unsuccessful avenues taken, the appellant ought to have first apply for extension of time when he went back to knock the doors of the District Tribunal before filing the Misc. Application No. 241 of 2017 in the District Tribunal.

In response, the counsel for the appellant stated in his rejoinder that, annexure 2 of the respondent's submission shows the preliminary objection was before Hon. Kirumbi while in actual fact it was before Hon. Amina Rajab and stated that shows the respondent's counsel is misleading the court. He stated further that, annexure 2 shows the notice was dated 24th August, 2017 but was filed and received by the District Tribunal on 23rd August, 2017. He argued that shows there is a forgery as the date was deleted and rewritten by hand which shows the respondent has tried to confuse the court. He referred the court to the maxim "*falsus in uno, falsus in omnibus*" which literally means false in one thing, false in everything.

After considering the submissions made by the counsel for the parties the court has found it is true as argued by the counsel of the respondent that the said point of preliminary objection that Misc. Application No. 241 of 2017 was filed in the District Tribunal out of time was raised at the District Tribunal. It is also true that the stated point of preliminary objection was not entertained and it was dismissed for want of prosecution after the respondent failed to file their written submission in the District Tribunal as ordered by the District Tribunal. The court has found the issue to determine here is whether the said point of law can be raised again and determined by this court at this appellate stage.

The court has found that, as the issue of limitation of time for a matter to be filed in a court or tribunal is a matter which goes to the jurisdiction of the court or tribunal to entertain a matter, then it is an issue which as stated in the case of **Michael Lessani Kweka** (supra) can be canvassed at any stage of a case even on appeal by the parties or by the court suo moto as it goes to the substance of a trial. Although it is true that the said point of law was raised at the District Tribunal and it was dismissed after the respondent failed to file its written submission in the District Tribunal as ordered by the District Tribunal but still it can be entertained and determined by this court.

The above view of this court is being bolstered by the position of the law stated in the case of **Mwananchi Communications Limited & Two Others V. Joshua K. Kajula & Two Others**, Civil Appeal No. 126/01 of 2016 CAT at DSM (unreported) where when the Court of Appeal was dealing with the issue of preliminary objection raised in the High Court but later on withdrawn the Court of Appeal stated as follows: -

"The fact that the notice of preliminary objection which first raised this issue at the trial stage was withdrawn, we find, does not by itself and under the circumstances of this case in any ways bar the issue being raised again as it was in this case. regard should be to the fact that the trial court did not have the opportunity to consider and determine this issue."

Although the above quoted excerpt shows the preliminary objection was withdrawn and not dismissed as it was done in the present appeal but it is the view of this court that, as the preliminary objection raised at the District Tribunal was not determined, the position of the law stated in the above quoted case is relevant to the present appeal. Therefore, the point of preliminary objection dismissed by the District Tribunal because of failure of the respondent to file their written submission at the tribunal can be raised and determined in this court.

That being the position of the law the court has found that, there is no any other law governing limitation of time for filing application of this nature in the court or tribunal than the Law of Limitation Act. The court has found that, as rightly argued by the counsel for respondent the provision of the law which is governing limitation of time to file application like the one filed in the District Tribunal is item 21 at Part III of the Schedule to the Law of Limitation Act which states application of this nature which is made under the CPC was supposed to be filed in the District Tribunal within sixty days.

While being guided by the position of the law stated hereinabove the court has found it is not disputed that the household items which the appellant was seeking the respondent to be ordered to account for the

same were attached in the course of execution of the order of the tribunal issued in Misc. Application No 90 of 2009 on 29th December, 2009. The court has also found the said execution order was carried out and on 5th January, 2010 the respondent filed in the District Tribunal a report of the said order of the District Tribunal. The court has also found Misc. Application No. 241 of 2017 through which the appellant was seeking the respondent to be ordered to account for the household items taken from the suit premises was filed in the District Tribunal on 27th July, 2017.

Counting from when the appellant's household items were taken from his place of residence until when the appellant filed Misc. Application No. 241 of 2017 it is crystal clear that about seven years had elapsed while the application ought to have been filed in the District Tribunal within sixty days from when the items were taken. As the application was filed in the District Tribunal out of time prescribed by the law and without leave of the District Tribunal to lodge the same out of time, the court has found the District Tribunal had no jurisdiction to entertain the stated application.

The court has considered the argument by the counsel for the appellant that the notice of preliminary objection filed in the District Tribunal by the respondent was forged as the dates were corrected by hand and the name of the honourable chairman handled the preliminary objection was different from the one stated by the respondent in his

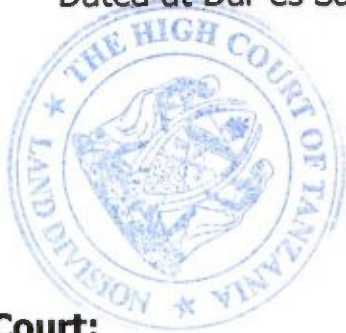
submission. The court has found that, although it is true that what was stated by the counsel for the appellant has some reality but they are not defects which can make the court to find the matter was not filed in the District Tribunal out of time prescribed by the law. They are just typing error or human error which cannot change the position of the matter that the application was filed in the District Tribunal out of time.

In the light of what I have stated hereinabove the court has found there is no need of continuing to deal with the grounds of appeal filed in this court by the appellant because the whole appeal is arising from the proceedings and decision made in a matter filed and entertained by the District Tribunal without a requisite jurisdiction. Consequently, the point of limitation of time for the application upon which the appeal originates raised by the counsel for the respondent in his written submission is hereby upheld. The proceedings and the decision of the District Tribunal delivered in Misc. Application No. 241 of 2017 upon which the appeal at hand is based are hereby quashed and set aside because the District Tribunal had no jurisdiction to entertain the stated application.

As the stated Misc. Application No. 241 of 2017 was filed in the District Tribunal out of time and without leave of the tribunal the said application is hereby dismissed pursuant to section 3 (1) of the Law of Limitation Act as it was filed in the tribunal out of time. After taking into

consideration the reason caused the court to arrive to the above finding the court is ordering each party to bear his own costs. It is so ordered.

Dated at Dar es Salaam this 31st day of August, 2022



A handwritten signature in blue ink, appearing to read 'I. Arufani'.

I. Arufani

JUDGE

31/08/2022

Court:

Judgement delivered today 31st day of August, 2022 in the presence of Mr. Hamisi Hassan Katandula, learned advocate for the appellant and in the presence of Mr. Steven Byabato and Mr. Jacob Kaisy, learned advocates for the respondent. Right of appeal to the Court of Appeal is fully explained.



A handwritten signature in blue ink, appearing to read 'I. Arufani'.

I. Arufani

JUDGE

31/08/2022