

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND REVISION NO. 02 OF 2021**

(Originating from the High Court Land Division in Revision No. 5 of 2019 before Hon. Opiyo, J Originating from Ward Tribunal Land Disputes No. 58 of 2017 and District Land and Housing Tribunal for Kibaha at Kibaha in Misc. Land Application No. 03 of 2018)

**ERASTO MWAHALEGA ..... APPLICANT**

**VERSUS**

**ELITANTE MUNUO ..... 1<sup>ST</sup> RESPONDENT**

**ROZI LUANDA ..... 2<sup>ND</sup> RESPONDENT**

**LAURENCE MSAADA ..... 3<sup>RD</sup> RESPONDENT**

**KARAN RAMADHAN ..... 4<sup>TH</sup> RESPONDENT**

**RAMADHAN HAMDUL ..... 5<sup>TH</sup> RESPONDENT**

**PAUL JOHN NJAU ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

*Date of last Order: 19.09.2022*

*Date of Ruling: 19.09.2022*

**A.Z.MGEYEKWA, J**

This is an application for Revision against the decision of the District land and Housing Tribunal for Kibaha. The application is brought under section 43 (1) (b) of the Land Disputes Courts Act, Cap 216. The application is supported by an affidavit sworn by Erasto Mwahalega, the applicant. The respondents filed a joint counter affidavit. The respondent has stoutly opposed the application by filing a joint counter-affidavit deposed by the 1<sup>st</sup>, 2<sup>nd</sup>, and 6<sup>th</sup> respondents. Before hearing of the application on merit, the counsel for the respondents orally raised a point of law that the application is time-barred.

When the appeal was placed before me for hearing on 9<sup>th</sup> September, 2022, the appellant enlisted the legal service of Mr. Andrew Chima, learned counsel, and the 1<sup>st</sup>, 2<sup>nd</sup>, and 6<sup>th</sup> respondents had the legal service of Mr. Innocent Msofe, learned counsel.

As the practice of the Court, I had to determine the preliminary objection first before going into the merits or demerits of the appeal. That is the practice of the Court founded upon prudence which I could not overlook.

Mr. Chima, counsel for the applicant was the first one to kick the ball rolling. He was brief and straight to the point. Mr. Chima conceded to the preliminary objection raised by Mr. Innocent that the application is brought out of time.

He urged this Court to grant them leave to refile the application because the applicant still has an interest to pursue his application.

In reply, Mr. Innocent submitted that the law is clear in the application which is lodged out of time. He stated that the applicant is required to adhere to the law instead of praying to withdraw the application with leave to refile.

In conclusion, Mr. Innocent urged this court to dismiss the application with costs.

I have given deliberation to the arguments for the preliminary objection herein advanced by both learned counsels. Since both parties have agreed that the application is time-barred then this Court's task is to confirm the submission made by both counsels. The time of limitation prescribed by the law in filing a Revision is prescribed under section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. For ease of reference, I wish to reproduce section 41 (1) and (2) hereunder:-

*" (1) Subject to the provisions of any law for the time being in force, all appeals, revisions, and similar proceedings from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.*

*(2) An appeal under subsection (1) may be lodged within **forty-five days after the date of the decision or order**: Provided that, the High Court*

*may, for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days." [Emphasis added].*

Applying the above provision of law, the prescribed period in filing a Revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction is 45 days. Counting the days from the date when the Ruling of this District Land and Housing Tribunal in Land Application No.03 of 2018 was delivered on 7<sup>th</sup> February, 2019 to the date when the applicant filed the instant application on 15<sup>th</sup> January, 2021 is a lapse of almost two years and the record is silent whether the applicant applied for an extension of time.

For reasons canvassed above, I find the Revision before this court was filed out of the prescribed time and in terms of section 3 of the Law of Limitation Act, Cap. 89 [R.E 2019], the remedy is to dismiss the Revision. In the case of **John Cornell v A. Grevo Tanzania Ltd**, Civil Case No. 70 of 1998 High Court of Tanzania, held that:-

*"However, unfortunate it may be for the plaintiff, the Law of Limitation, on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web."*

In the upshot, I proceed to dismiss Land Revision No. 02 of 2021 for being time-barred and based on 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup>, and 6<sup>th</sup> Respondent's counsel attendance on record, the applicant will pay half costs of the case taxable by Taxing Master.

Order accordingly.

Dated at Dar es-Salaam this date 19<sup>th</sup> September, 2022.



  
A.Z.MGEYEKWA

**JUDGE**

19.09.2022

Ruling delivered on 19<sup>th</sup> September, 2022 in the presence of Mr. Andrew Chima, learned counsel for the applicant and Innocent Msofe, counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> respondents.



  
A.Z.MGEYEKWA

**JUDGE**

19.09.2022