

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

LAND REVISION NO. 03 OF 2022
(Arising from Misc. Land Application No. 115 of 2020 and Land Application
No. 47 of 2007 Kinondoni – DLHT)

YONA MTUI APPLICANT

VERSUS

DANIEL CHAMBIRIRESPONDENT

R U L I N G

Date of last Order:27/09/2022

Date of Ruling:04/10/2022

K. D. MHINA, J.

By a chamber summons filed under Section 41(1) of the Land Disputes Courts Act, Cap. 216 [R. E. 2019] ("the LDCA) and Section 79 (1) (c) of the Civil Procedure Act, Cap. 33 [R. E. 2019] ("The CPC) the Applicant Yona Mtui moving the Court to;

- i. Call and examine the record and decision in Misc. Land Application No. 115 of 2020, dated 25th November 2021, in the District Land and Housing Tribunal for Kinondoni and thereby quash and set aside on the ground that the**

**Hon. Chairman has acted in the exercise of its
Jurisdiction illegality and with material irregularity;**

- ii. Order the Tribunal to receive evidence on the issue of the
forged letters of offer Exh. P1;**

The Application is supported by the affidavit duly sworn by Mr. Yona Mtui, Applicant.

To understand this matter better, it is desirable to preface the ruling with a brief background reflected in the records.

In Land Application No. 47 of 2007, at the District Land and Housing Tribunal for Kinondoni, the respondent sued the applicant for trespassing into his parcel of surveyed land titled Plot No. 645 Block "E" Tegeta. In its decision dated 21st June 2012, the Tribunal declared the respondent as a lawful owner that suit land. The Tribunal held;

*"As of now, Plot No. 645 Block "E" Tegeta belongs to the
Applicant by virtue of letter of offer 100 LD/135258/1/CCC
dated 10th September 1988"*

Discontented, the Applicant attempted to challenge the decision of the District Land and Housing Tribunal. Still, his efforts went unrewarded after

his application for an extension of time to file revision before this Court was dismissed for non-appearance. The application to set aside the dismissal order was also dismissed for want of merits in Misc. Land Application No. 868 of 2019.

The Applicant then returned to the DLHT for Kinondoni via Misc. Land Application No. 115 of 202, requesting it to review its previous decision dated 21 June 2007 in Land Application No. 47 of 2007.

The reasons advanced in that application were based on the discovery of new facts, that;

- i. The Letter of an offer, which was admitted as Exh. P1 was a forged document;
- ii. The Plot has been registered in the name of C.V.M Ngereja;

After hearing, the DLHT, on 25th November 2021, dismissed the application for want of merits. It assigned the following reasons;

One, the applicant provided no evidence to substantiate that the offer was a forged document.

Two, the allegation that the Plot in dispute had been registered in the name of C. V. M. Ngereja was not a discovery as it was discussed in the Judgment of the Trial Tribunal.

Three, the letters dated 21/10/2017, 03/11/2017, and the land rent assessment report dated 22/01/2020 cannot prove ownership of the surveyed land.

Dissatisfied, the applicant filed this application requesting the Court to revise the decision of the Tribunal.

At the hearing, the Applicant was represented by Mr. Juma Nassor, learned counsel, and the Respondent had the services of Mr. Lugiko John, also a learned counsel. The Application was argued by way of Oral submission.

During the hearing, when Mr. Lugiko John was replying to the submission in chief by Mr. Nassor, he raised an issue of law that touched on the competence of the application, i.e., the point of limitation.

Therefore, before I could analyze the submissions and deliberate on the merits and demerits, it is prudent to satisfy myself with the competence of the application.

The address by Mr. Lugiko John in this matter was that the application was against the DLHT review decision, which was delivered on the 25th of November, 2021.

On the record, this application was filed on 28th January 2022; therefore, 64 days lapsed from the date of the DLHT decision till the filing of this application.

He further submitted that; Item 21 of Part III of the Law of Limitation Act, Cap. 89 [R. E. 2019] provides 60 days from the date of the decision as a time limit for an aggrieved party to file revision in this Court.

Therefore, he argued that the jurisdiction of this Court had been ceased for the matter being time-barred.

On his part, Mr. Nassor submitted that; the question of time-barred was a question of both law and fact which was supposed to be raised by way of preliminary objection. That was not done; instead, the argument was raised in reply to the submission in chief.

He further submitted that the document initiated this application was filed online. Therefore, the date of filing is the date on which the document was posted online.

Furthermore, he argued that under the Law of Limitation Act, revision is supposed to be filed within 60 days. But the counting in this matter should state from 26th November to the date the application was posted online.

After careful consideration of the submission from both learned counsel, the issue before me at this point is a narrow one, and that is;

“Whether the Application is properly before this Court.”

To determine this issue, I will start with whether the matter was raised properly. I feel obliged to do so because, in his submission, Mr. Nassor argued that the issue was supposed to be raised by way of preliminary objection. He argued that it was improper for the Respondent’s counsel to raise the matter in his reply to the submission in chief.

The starting point in this matter is the decision of the Court of Appeal of Tanzania in **Tanzania – China Friendship Textile Co. Ltd vs. Our Lady of the Usambara Sister (2006) TLR 70**, where it held that:-

“The question of jurisdiction can be raised at any stage.”

In this application, the issue raised was whether it was time-barred or not (limitation), but the law is already settled that limitation is a question of law that goes to the Jurisdiction of the Court.

Again, the Court of Appeal cemented this position in **Yusuf Khamis Hamza vs. Juma Ali Abdalla, Civil Appeal No. 25 of 2020** (Tanzlii), where the Court held that:-

"We are alive with the settled position of the law that time limitation goes to the Jurisdiction issue of the Court and it can be raised at any time even at the Appellate stage by the Court; but in order for it to be noted and raised it would require material evidence to be placed before the Court."

Therefore, from two cited Court of Appeal decisions, the conditions for raising limitation are two;

- i. One, it can be raised at any stage of proceedings.
- ii. There must be material evidence to be placed before the Court (Right to be heard)

In the present application, both advocates argued on the issue after Mr. Lugiko John raised the matter in his reply. They both submitted the reasons for and against the application being time-barred.

Therefore, I hold that the counsel for the respondent rightly raises the issue of limitation in this matter. Further, the right to be heard was availed to both parties who submitted material evidence for and against the issue.

Whether the application is time-barred or not, this should not detain me long.

According to **Item 21, Part III of the Law of Limitation Act**, Cap. 89 [R. E. 2019], a provision of law that governs a time limit to file a revision at the High Court for any aggrieved party is 60 days.

In this matter, it is not in dispute that the decision of the Tribunal sought to be revised was delivered on 25th November 2021.

The argument was on the date of filing this application. While Mr. Lugiko John submitted that this application was filed on 28th January 2022, Mr. Nassor submitted that the Application was filed online. Therefore, the filing date should be when the application was posted online. However, he did not mention the date the application was posted online.

This Court, on perusing the record, it is clear that the Application was lodged on 28th January 2022.

Even in the judiciary's online filing system, to which the advocates have access, the application was posted/filed on 28th January 2022.

Therefore, both physical as per – exchequer receipt and electronic filing, the application was filed on 28/01/2022.

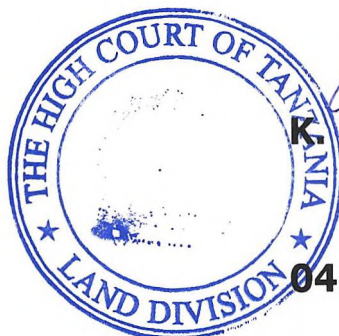
In counting the time limit for lodging this application, it had to start on 26/11/2021 because the reckoning could not begin on the date when the decision of the Tribunal was delivered. Therefore, from 26/11/2021 to 28/01/2022, a total of 64 days lapsed.

From the above, it is quite clear that the application for revision before this Court was filed out of time. As a result, it is time-barred; therefore, this Court does not have jurisdiction to entertain the same.

In the upshot, because the matter raised disposes of this application, I don't see the reason to dispose of the grounds raised in the affidavit.

Consequently, the Application is dismissed for being time-barred with costs.

It is so ordered.




K.D. MHINA
JUDGE

04/10/2022

