

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 06 OF 2022

(Arising from Land Application No. 42 of 2013)

PETER N. KIWIA APPLICANT

VERSUS

ZANTEL.....1ST RESPONDENT

MBEGU MWINYI MKUU

(Sued as a necessary party) 2nd RESPONDENT

Date of last order: 28/9/2022

Date of Judgment: 03/10/2022

RULING

KADILU, J.

This is a ruling on application for revision lodged in the Court by the above-named applicant on 24.02.2022 under s. 79(1), CPC and s. 41 (1) (b) of the Land Disputes Courts Act [CAP 216 R.E 2019]. The applicant is trying to move this court to invoke its powers of revision to firstly, call for and examine the records of the District Land and Housing Tribunal for Kibaha in Land

Application No. 42 of 2013 for the purpose of satisfying itself as to the correctness, legality or propriety of the decision or order made therein.

Secondly, the court is called upon to quash and nullify the proceedings, judgment and order of Kibaha DLHT in relation to Land Application No. 42 of 2013. Thirdly, the applicant prayed for the court to order costs for this application. On the day set for hearing, the applicant and the 2nd respondent were absent while the 1st respondent was represented by Ms. Caster Lufungulo, learned Advocate. Although the 2nd respondent did not appear, through the services of Advocate Saiwello T. J. Kumwenda, he filed a counter affidavit and the notice of preliminary objections as follows:

- 1. The applicant has wrongly moved this court.*
- 2. The revision is out of time.*
- 3. The jurat is bad in law for being contrary to s. 10 of the Oaths and Statutory Declarations Act [Cap. 34 R.E. 2019].*
- 4. The application is contrary to s. 44 of the Advocates Act [Cap. 341 R.E. 2019].*
- 5. The application is res judicata.*
- 6. The affidavit is defective for comprising a prayer.*
- 7. The application is bad in law for suing a wrong and dead person.*

As shown above, the 2nd respondent did not appear to argue his preliminary objections. However, on 21.9.2022, Advocate for the 1st respondent filed a notice of preliminary objection which is similar to preliminary objection No. 2 of the Counsel for the 2nd Respondent's objections, that is; the application is time barred. During the hearing, Advocate for the 1st Respondent elaborated that in terms s. 51 of the Land Disputes Courts Act read together with item 21, Part III of the Schedule to the Law of Limitation Act, the application is time barred.

She submitted that under the above laws, an application for revision is required to be made within 60 days from the date of decision or order. In particular, the application was supposed to be filed on 28.4.2019 because the complained judgment was made on 28.02.2019. Nevertheless, the applicant filed the application on 24.02.2022. The learned Advocate for the respondent told the court that, the application was filed about 3 years after date of the decision, and it is therefore time barred. She argued that in such circumstances, the applicant was required to file an application to appeal out of time, but he did not do so. Thus, the application is not is not properly brought before this court. I pray that it should be struck out with costs.

Having considered the learned counsels' preliminary objections and submission by Caster Lufungulo Advocate, for the sake of convenience; I shall first decide the point of objection concerning time limitation for this application. The records are very clear that Land Application No. 42 of 2013 which is the basis for this application, was decided on 28th February, 2019. The application at hand was filed on 24th February, 2022. Section 51 (1) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] allows the application of the CPC [Cap. 33 R.E. 2019] by the High Court in the exercise of its jurisdictions.

Notwithstanding, the CPC is silent about time limitation for applications for revision like the present one. Item 21 of Part III of the Schedule to the Law of Limitation Act [Cap. 89 R.E. 2019] provides that the period of limitation for applications under the CPC, the Magistrates' Courts Act or other written law for which no period of limitation is provided in the Law of Limitation Act or any other written law, is 60 days. Neither the CPC nor the Land Disputes Courts Act provide for limitation period for filing an application for revision. As such, refuge has to be sought from the Law of Limitation Act which provides for the same to be 60 days. As the judgment was made on 28.02.2019 and the application was filed on 24.02.2022, a simple arithmetic

reveals that the application before this court was made 1,091 days after the date of the decision sought to be reversed. Therefore, I concur with the learned Advocate for the 1st respondent that this application is hopelessly time barred.

In the case of *NBC LTD & Another v Bruno Vitus Swalo*, Civil Appeal No. 331 of 2019, Court of Appeal of Tanzania sitting at Mbeya held that, limitation period has an impact on jurisdiction. Accordingly, this application having been filed out of time, it bars this court to have jurisdiction to determine it. Consequently, this point of objection suffices to dispose of the application as stipulated under s. 3 (1) of the Law of Limitation Act. Such section provides:

"Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence."

In the upshot, this court finds that the preliminary objection has merit and costs for being time barred.

Order accordingly.



M. Kadilu.....

KADILU, M. J.

JUDGE

3.10.2022.

Ruling delivered on 3rd October, 2022 in the presence of Mr. Method Nestory, Advocate holding brief for Caster Lufungulo, Advocate for the 1st Respondent.



M. Kadilu.....

KADILU, M. J.

JUDGE

3.10.2022.