

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

**LAND REVISION NO. 05 OF 2021**

*(Originates from Land Case No. 184 of 2015 and the subsequent appeal No. 38 of 2015 and execution No. 743 of 2018 of the District Land and Housing Tribunal of Kinondoni at Mwananyala)*

**SALMA MOHAMED SELEKELA.....APPLICANT**

**VERSUS**

**MR & MRS BARAKA BARUTI.....1<sup>ST</sup> RESPONDENT**

**MARINO CHARLES.....2<sup>ND</sup> RESPONDENT**

**AZURINI TOAKAL.....3<sup>RD</sup> RESPONDENT**

*Date of last Order: 29/09/2022*

*Date of Ruling: 07/10/2022*

**RULING**

**I.ARUFANI, J**

Before me is an application for revision filed in this court by the applicant under section 43 (1) (a) and (b) of the Land Disputes Courts Act Cap 216 [R.E 2019], section 79 (1) of the Civil Procedure Code Cap 33 [R.E 2019] and any other enabling provision of the laws. The applicant is beseeching the court to call for records of Kinondoni District Land and Housing Tribunal in Land Appeal No. 38 of 2015 (henceforth the District Tribunal) delivered on 11<sup>th</sup> February, 2016.

The stated appeal arose from Land Application No. 184 of 2015 of Goba Ward Tribunal (henceforth the Ward Tribunal). She is also beseeching the court to call and revise the order issued by the District

Tribunal in Execution No. 743 of 2018 issued on 5/1/2021 which upheld the decision of Ward Tribunal delivered in Land Application No. 184 of 2015. The mentioned decision of the Ward Tribunal granted ownership of the land in disputed to the first respondent. The applicant is urging the court to revise the stated record of Land Appeal No. 38 of 2015 and Execution No. 743 of 2018 for the purpose of satisfying itself to the correctness, legality or propriate of the mentioned records of the District Tribunal.

The application is supported by an affidavit affirmed by the applicant and it was opposed by the counter affidavit sworn by Vumpoa Gurisha who identified herself as the first respondent. The second and third respondents told the court they are not objecting the application of the applicant to be granted. The applicant was represented in the matter by Ms. Pancrasia Augustine Protas, learned advocate and the respondents appeared in the court in persons. The court directed the parties to argue the application by way of written submissions and the parties dully complied with the scheduling order given by the court.

The counsel for the applicant stated in her submission that, the land in dispute is located at Muungano Street, Goba Ward within Ubungo District. She stated the land in dispute was part of the property of the late Zainabu Rajabu who was owning a land measuring 5 acres. She stated

that, upon death of Zainabu Rajabu in 2010, her landed property was put under control of the applicant from 2017 when she was granted letters of Administration to administer the estate of her late mother.

She argued that, during the year 2017 the applicant noticed an encroachment to the land in dispute by the 1<sup>st</sup> respondent and instituted a Land Case No. 83 of 2017 at Goba Ward Tribunal and the judgment was entered in her favour after the first respondent defaulted to enter appearance before the Ward Tribunal. She argued that, she was not aware that the 1<sup>st</sup> respondent had earlier on litigated on the same land in the same Ward Tribunal via Land Case No. 184 of 2015 and it was decided she was the owner of the land in dispute.

She went on arguing that, the 1<sup>st</sup> respondent claimed to have purchased the suit land from one Mohamedi Chipula who was the son of the late Zainabu Rajabu and stated the first respondent averred she was given another part of the land by Zainabu Rajabu as thanks. She stated the 1<sup>st</sup> respondent fraudulently obtained judgment over a disputed land against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents who are also trespassers through sale agreement which lacks authenticity.

She stated the agreement tendered before Goba Ward Tribunal was dated 11<sup>th</sup> September, 2005 meaning that it was entered before the death of Zainabu Rajabu. She stated the said seller did not endorse her signature

and the person appears as a seller is one Mohamed Chipula who was neither the owner nor the personal legal representative of Zainabu Rajabu. She stated that, any sale entered between the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents are null and void.

She submitted it is a trite law that who does not have legal title to the land cannot pass good title over the same land to another and that no one can give a better title than he himself possesses. To support her submission, she referred the court to the case of **Farah Mohamed V. Fatuma Abdallah** (1992) TLR 205 where it was held that, he who has no legal title to the land cannot pass good title over the same land to another.

She argued that, on the purported sale agreement they fraudulently endorsed words to wit that the 1<sup>st</sup> respondent was given another piece of land as thanks by the family of Zainabu Rajabu. She stated in the said piece of statement there is no any signature of the person transferring the land. She argued that, the stated sale agreement was not witnessed by the local government leaders so as to approve the correctness of the information available.

She submitted that, absence of signature of the local leaders on the sale agreement invalidates the sale agreement. To support the stated position of the law, she cited in her submission the case of **Bakari**

**Mhando Swanga V. Mzee Mohamed Bakari Shelukindo and 3 others**, Civil Appeal No.389 of 2019, CAT At Tanga and **Prucheria John V. William Wilson & Another**, Land Case No. 64 of 2019 (Both unreported) where it was stated the sale agreement was supposed to be approved by the village council or administrative authorities to make it valid.

She submitted further that the proceeding of the tribunal was irregular as the tribunal was not properly constituted at the time of hearing of the matter as provided under section 11 of the Land Disputes Courts Act, Cap 216 R.E 2019. She argued the cited provision of the law requires Ward Tribunal to consist of not less than four and not more than eight members of whom three shall be the women. She stated during hearing of the matter only 2 women members were involved. At the end she prayed the application be granted, the proceedings of the tribunal be quashed and nullified and the costs of the application be provided.

In reply the first responded prefixed her submission with the point of law requiring the court to determine whether it has jurisdiction to revise Land Appeal No. 38 of 2015 of Kinondoni District Land and Housing Tribunal. She submitted that, as the decision of the mentioned appeal was delivered on 11<sup>th</sup> February, 2016 then the application is time barred for being brought to the court after the elapse of about five years. She

submitted that, the consequences of an application or proceedings lodged in the court out of time as stipulated under section 3 (1) of the Law of Limitation Act, Cap 89 R.E 2019 is dismissal.

She referred the court to the case of **Commercial Bank of Africa (T) Ltd V. Salvatory Mwandu**, Revision No. 717 of 2018 (unreported) where it was stated that, those who seek the aid of the law in court of justice, they must file their proceedings in the court within the prescribed period of time. She submitted that the court has wrongly been moved to revise the judgment of the District Tribunal in Land Appeal No. 38 of 2015.

She went on arguing that, sometimes in 2005 the first respondent purchased the piece of land in dispute from one Mohamed Ibrahim Chipula and was also added another piece of land by Zainabu Rajabu. She stated the mentioned transaction was witnessed by the family of the late Zainabu Rajabu and the applicant was aware of the said transaction. She went on arguing that, she occupied the said land from when she purchased the same until in 2015 when it was invaded by the second and third respondents.

She submitted that, following the said invasion, she filed Land Dispute No. 184 of 2015 at the Ward Tribunal against the second and third respondents and the dispute was decided in her favour. She argued that, the second and third respondents were aggrieved by the decision of

the Ward Tribunal and lodged in the District Tribunal Land Appeal No. 38 of 2015 which was dismissed and the decision of the tribunal was upheld.

She stated that, the second and third respondents were aggrieved by the decision of the District Tribunal and lodged before this court Misc. Land Application No. 332 of 2016 seeking for extension of time to file appeal in this court but the application was dismissed with costs. She stated the mentioned respondents filed in the Court of Appeal Civil Application No. 284/17 of 2017 seeking for extension of time to appeal out of time but later on the mentioned respondents withdrew the application. She argued that, when she was pursuing the mentioned cases against the second and third respondents the applicant emerged in 2018 to claim ownership to the land in dispute but fortunately all the applicant's application including application for objection proceedings filed in the District Tribunal which was Misc. Application No. 786 of 2018 were dismissed.

She argued the applicant is claiming ownership of the land in dispute against her after the elapse of thirteen (13) years since the respondent acquired the same in 2005. She submitted that, the applicant who is claiming to be administrator of estate of the late Zainabu Rajabu has no power to undo what was done by the late Zainabu Rajabu during her lifetime. She stated the next of kins of the late Zainabu Rajabu were

present during the transfer of ownership of the land to her hence to that stance the applicant has no power to undo what was done in 2005.

She stated that, as the applicant claimed the sale agreement was fraudulently, such allegation ought to have been proved through cogent evidence at the trial. To support her argument, she referred the court to the case of **Omari Yusuph V. Rahma Ahmad Abdulkadir** [1987] TLR 169 where it was held that, when the question whether someone has committed a crime is raised in civil proceedings that allegation need to be established on a higher degree of probability than that which is required in ordinary civil cases. She submitted that the evidence available on the record supports the finding of the Ward Tribunal that she is the lawful owner of the suit property.

She went on arguing that, the applicant has been trying to challenge the sale transaction she entered in purchasing the land in dispute without success and her claim of ownership through objection proceeding before the District Tribunal in Miscellaneous Application No. 789 of 2018 was dismissed. She referred the court to section 119 of the Evidence Act, Cap 6 R.E 2019 which states when the question is whether any person is owner of anything which is in his possession, the burden of proving that he is not the owner is on the person who asserts that he is not the owner.



She also referred the court to the case of **Ally Abdallah Rajab V. Saada Abdallah Rajab**, [1994] TLR 132 where it was stated that, where the case is whole based on credibility of witnesses/evidence then it is the trial court which is better placed to assess their credibility than an appellate court which merely reads the transcript of record. She added that, the applicant wants this court to revise Execution No. 743 of 2018 which unfortunately cannot be revised by this court as it arose from the decision of Ward Tribunal in Land Dispute No. 184 of 2015. She submitted that, shows the application is not proper before the court hence the same ought to be dismissed. She insisted that, the applicant was aware of the transfer of ownership of the land in dispute to her since 2005 but she waited for 13 years to institute a matter in the court which is hopelessly out of time. At the end she prayed the application be dismissed in its entirety.

In rejoinder the counsel for the applicant argued that, the application is not time barred as the applicant was not a party in Land Application No. 184 of 2015, Land Appeal No. 38 of 2015 and Application for Execution No. 743 of 2018. He stated section 4 of the Law of Limitation Act states the limitation period begins to run from when the cause of action arose. She argued further that, in case of death of a person it is provided under section 24 (2) of the Law of Limitation Act that, the

computation of time begins to run from the date when letters of administration of estate of deceased person is issued to the administrator.

She stated the applicant in the present application obtained letters of administration of estate of her late mother Zainabu Rajabu on 11<sup>th</sup> August, 2017 via Probate Cause No. 129 of 2017. She stated under that circumstances the right of action over the estate of the deceased commenced to accrue from the date when the letters of administration were issued to the applicant. She argued that, the court has jurisdiction to revise the decisions of the District Tribunal.

She stated the court has both supervisory and revisional powers as provided under section 43 of the Land Disputes Courts Act. She stated the court can call for and inspect the records of the tribunal and if it is satisfied there is an error material to the merit of the case involving injustice it can revise such decision or order and give its directives. She went on reiterating what she argued in her submission in chief about improper composition of the Ward Tribunal when dealing with Land Case No. 184 of 2015.

She also stated that, although the respondent stated to have purchased the land in dispute with her husband but the stated husband never appeared and testify before the Ward Tribunal. She went on showing the power of the applicant to step into the shoes of her late

mother to claim for the land in dispute as provided under section 100 of the Probate and Administration of Estate Act, Cap 352 2002 and how the evidence adduced before the Ward Tribunal was not sufficient enough to determine the matter in favour of the first respondent.

She challenged the counter affidavit sworn and filed in the matter by Vumpoa Gurisha by stating it does not state how the deponent relates to the first respondent and whether the deponent was authorized to swear the same on behalf of the first respondent. She argued that, under that circumstances the said counter affidavit deserve to be disregarded and the applicant's application stands unopposed. Finally, she prays the court to grant the prayers in the chamber summons together with the costs of this application.

Having carefully considered the submissions made in the application at hand by both sides and after going through the records of the matter the court has found the issues to be determined in this application are; (1) whether the application of the applicant is an unopposed, (2) whether the court has jurisdiction to entertain the application and (3) whether the application of the applicant for revision of the impugned records deserves to be granted.

Starting with the point raised in the last part of the rejoinder of the counsel for the applicant which challenged the competency of the counter

affidavit sworn and filed in the court by Vumpoa Gurisha the court has found it is true that the said name is not appearing in the documents filed in the application by the parties as one of the names of the first respondent. However, the court has found it is not true that the deponent of the mentioned counter affidavit did not state how she relates to the first respondent as she introduced herself at paragraph 1 of the counter affidavit as the first respondent.

The court has taken the view that, as the first respondent in the present application is Mr. and Mrs. Baraka Baruti which implies they are two persons who are husband and wife it might be said the deponent is the wife of Mr. Baraka Baruti and she deposed the counter affidavit herself. Nevertheless, the court has found the stated point or concern was belatedly raised as it was supposed to be raised earlier so as to give the first respondent chance of responding to the same.

To raise such a point in rejoinder submission while the first respondent has no chance of responding to the same is not proper and it is contrary to the known principle of the law that, objections are supposed to be raised at the earliest stage of the matter and not at the end of hearing of the matter. As the said point was raised in the rejoinder of the applicant which is a last stage of hearing of the matter it cannot be entertained as it has violated the above stated principle of the law and

the first respondent has not been accorded chance of responding to the same. In the premises the court has found it cannot be said the application of the applicant is unopposed.

Coming to the issue of jurisdiction of this court to entertain the instant application the court has found the first respondent has argued that, the application for revision of Land Appeal No. 38 of 2015 is time barred. The court has found as correctly argued by the counsel for the applicant the afore stated land appeal was decided by the District Tribunal on 11<sup>th</sup> February, 2016 and the present application was filed in this court on 1<sup>st</sup> February, 2021 which is after elapse of five years. The court has found that, although the respondent has stated the present application is time barred but she has not stated when the same was supposed to be filed in the court.

The court has also found that, there is no limitation of time prescribed for filing in the court an application for revision like the one at hand provided under the Land Disputes Courts Act or Civil Procedure Code upon which the application is made. That being the position of the matter, the court has found it is required to resort to the Law of Limitation Act and specifically item 21 of Part III of the Schedule to the Law of Limitation Act which states application under the Civil Procedure Code, 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 supposed to be filed in the court within sixty days from the date on which the right of action accrued.

The above finding of this court is being bolstered by what was stated in the case of **Halais Pro-Chemie V. Wella A. G**, [1996] TLR 269 where it was stated application for revision made ten months after delivered of the judgment sought to be revised was hopelessly time barred as it was supposed to be filed in the court within sixty days. The court has found the counsel for the applicant argued that, the application is not time barred because the applicant was not a party to the Land Appeal No. 38 of 2015 and Land Application No. 184 of 2015 which gave rise to the appeal sought to be revised.

The court has also found the counsel for the applicant argued that, section 24 (2) of the Law of Limitation Act states in case of death, limitation of time begins to accrue from the date when the letters of administration are issued. After reading the above cited provision of the law the court has found is providing for a situation where a person dies before the right of cause of action accrued. It is not about a person dies after accrues of right of action as it happened in the applicant's case whereby the first respondent averred to have bought the land in dispute before the death of the late mother of the applicant. To the view of this

court the correct provision to cover the applicant situation is section 25 (2) of the Law of Limitation Act read as follows: -

*"Where a person dies after a right of action in respect of any proceeding accrues against him, in computing the period of limitation for such proceeding, there shall be excluded the period of time commencing from the date of the death of the deceased and expiring on the date when there is a legal representative of the deceased against whom such proceeding may be instituted."*

That being the position of the law the court has found that, even if the period before the applicant being granted letters of administration of estates of her late mother will be excluded from the period of limitation for filing the present application in the court but still the application is out of time. The reason for coming to the above finding is because the evidence available in the record of the matter shows the applicant was granted letters of administration of estate of her late mother on 11<sup>th</sup> August, 2017 and the present application was filed in this court on 1<sup>st</sup> February, 2021.

If you count from when the applicant was granted letters of administration until when the present application was filed in the court you will find more than three years had elapsed while the application was supposed to be filed in the court within sixty days from when the impugned decision was delivered. In the premises the court has found the

application for the applicant urging the court to revise Land Appeal No. 38 of 2015 cannot be entertained by this court as the application is hopelessly time barred.

As for the application requesting the court to revise the order given in Execution No. 743 of 2018 the court has found the order sought to be revised in the said execution proceedings was given on 5<sup>th</sup> January, 2021. As the application seeking for revision of the stated order was filed in the court on 1<sup>st</sup> February, 2021 it is crystal clear that applicant is within the time. The court has found the stated execution was seeking for execution of a decision made by the Ward Tribunal in Land Case No. 184 of 2015 which declared the first respondent is the lawful owner of the land in dispute.

The court has found the applicant deposed at paragraphs 5 to 12 of the affidavit supporting the application that, she discovered the first respondent aimed at depriving the ownership of the land in dispute by alleging that she purchased the same from one of the sons and relatives of her late mother who passed away in the year 2010. The applicant deposed further that, after the stated discovery she filed objection proceedings in the District Tribunal which was registered as Misc. Application No. 789 of 2018 but the stated application was dismissed.



The court has come to the view that, as the applicant is claiming for ownership of the land in dispute and her objection proceedings in a bid to challenge the application for execution filed in the District Tribunal by the first respondent was unsuccessful the right step to take was not to seek for revision of the order granted by the District Tribunal in the application for execution. To the contrary the applicant was required to initiate a suit under Order XX Rule 62 of the Civil Procedure Code to establish the alleged ownership or interest she has to the land in dispute.

The stated view of this court is getting support from the case of **National Housing Corporation V. Peter Kassidi & 4 others**, Civil Application No. 294 of 2017 CAT at DSM (unreported) where it was stated that, after the decision on an objection proceeding has been made by a competent court, there is no remedy for appeal or revision. The remedy available as rightly submitted by the first respondent was to initiate a suit to establish her right in the land in dispute. The stated submission is getting support from the case of **Khalid Hussein Muccadam V. Ngulo Mtiga & another** Civil Application No. 234 of 2017 (unreported) where it was held that;

*"For as rightly submitted for the respondent, the objector or claimant has remedy under Order XXI R. 62 of the CPC, to commence a fresh suit to establish his right should the objection proceedings be decided against him."*

Basing on the position of the law stated in the above cited cases the court has found the application for revision of Execution No. 743 of 2018 was wrongly filed in this court. In the premises the court has found the application of the applicant is unmaintainable because part of the application is time barred and the other part was wrongly filed in this court. Consequently, the application is hereby struck out and after taking into consideration the circumstances of the whole matter the court has found proper to order each part to bear his or her own costs. It is so ordered.

Dated at Dar es Salaam this 7<sup>th</sup> day of October, 2022



*I. Arufani*  
I. Arufani

**JUDGE**

07/10/2022

**Court:**

Ruling delivered today 07<sup>th</sup> day of October, 2022 in the presence of the applicant who is also represented by Ms. Pancrasia Augustine Protas advocate and in the presence of the first and second respondents in person but in the absence of the third respondent. Right of appeal to the Court of Appeal is fully explained.



*I. Arufani*  
I. Arufani

**JUDGE**

07/10/2022