

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

LAND REVISION No.13 OF 2020

JUMA MOHAMED FUTOAPPLICANT

VERSUS

SHABANI SELEMANI (Administrator of the Estate of
the late **ABDALA JUMA KONGE**).....**RESPONDENT**

Date of last Order: 10.12.2021
Date of Ruling: 31.01.2022

RULING

V.L. MAKANI, J

This ruling is in respect of the preliminary objections on points of law raised by the respondents that:

- 1. This application is hopelessly time barred.*
- 2. This application is incompetent for want of proper provisions of the law.*

The application was argued by way of written submissions. Mr. Frank Chundu, Advocate drew and filed submissions on behalf of the respondent while the applicant drew and filed his own submissions in reply.

Submitting in support of the first point of preliminary objection, Mr. Chundu said that the applicant is praying for an order to revise a set of different decisions among others Land Appeal No.59 of 2009 of Kibaha District Land and Housing Tribunal (**District Tribunal**) dated 17/02/2010 which is almost 11 years upon the filing this application. He said another order subject of revision is Misc. Land Application No.200 of 2016 from the District Tribunal dated 24/05/2017 which is over 4 years upon filing of this application. That section 43 (1) (a) and (b) of the Land Disputes Courts Act, Cap 216 RE 2019 does not specify the time limit within which to apply for revision and in such a situation, Mr. Chundu said, one has to resort to Part III, Item 21 of the Schedule to the Law of Limitation Act, CAP 89 RE 2019 (**Limitation Act**) which provides for 60 days to make applications under any law for which no period of limitation is provided. He said the application at hand falls under this category and therefore the time to make application for revision is 60 days. Counsel insisted that there is no order granting extension of time to file this revision and therefore this application is time barred.

On the second point of preliminary objection, Counsel said that this application has been preferred under section 38 (1) of the Land Disputes Courts Act which deals with extension of time to appeal to this court on matters originating from the Ward Tribunal. That the prayers in this application concerns revisionary powers of this court under the Land Disputes Courts Act. He insisted that citing improper provision of the law cannot be cured by overriding objective principle and he relied on the case of **Mondorosi Village Council & 2 Others vs. Tanzania Breweries Limited and 4 Others, Civil Appeal No.66 of 2017 (CAT-Arusha)** (unreported). He insisted that citing wrong provision of the law is fatal as it goes to the root of the matter. He prayed for this application to be dismissed with costs.

In reply the applicant said that, the preliminary objections raised by defendant are baseless. He said the respondent raised preliminary objection after being made party to this case through Misc. Land Application No.430 of 2020. He said that according to section 3(3) of Limitation Act when a person is made a party after the institution of the proceeding, then such proceedings, are deemed to have been instituted on the date on which he is made a party. Therefore, he said

that the application at hand is deemed to have been instituted within time.

As regards the second point of preliminary objection, the applicant said that non citation or wrong citation of enabling provision of the law is not fatal and can be cured as long as what has been prayed by the applicant are within the power of the court. He further said this second limb of preliminary objection is based on technicality. He relied on the case of **Willps Limited vs. Quality Centre Limited, Misc. Land Application No.437 of 2018 (HC-DSM)** (unreported) in which he said the court observed that what is paramount is the substantial justice and that the courts should not be carried away by technicalities. He thus prayed that the raised objections be overruled with costs.

In rejoinder, Advocate Chundu reiterated his main submissions and added that the order to which the applicant refer did not make him a new party to this matter rather he was joined as a legal representative of the deceased. He said that since the applicant is the administrator of the estate of deceased the action survived upon the death of the deceased and that administrator does not become a new party. He

insisted that wrong citation of enabling provision of the law is not a matter of technicality, he supported his argument with the case of **China Henan International Co-operative Group vs. Salvand K.A Rwegasira [2006] TLR 220.**

The main issue for determination is whether the preliminary objection raised by the respondent has merit.

As for the first objection it is without doubt that the revisionary powers by the High Court in respect of matters from the Tribunals is governed by section 43 of the Land Disputes Courts Act. As correctly submitted by Mr. Chundu this provision does not state the time within which an application should be filed, but by virtue of section 52(2) of Lands Disputes Court Act where there is such a gap then we resort to the Limitation Act which according to Item 22 Part III of the Schedule the time provided is 60 days.

According to the Chamber Summons the applicant is praying for revision in respect of many cases including Land Appeal No.59 of 2009 dated 17/02/2010 and Misc. Land Application No.200 of 2016 which are almost 11 and 4 years respectively after the filing this application.

There is nothing on record to show that the applicant has applied for and was granted extension of time within which to file application for extension of time. In this respect therefore the application is time barred.

The applicant raised the issue that since he was an administrator time starts to run from the time he was joined in the suit as the legal representative. This argument has no merit because he is not a new party but has taken over from the deceased. The right to sue or be sued does not die but survives as such the matter is a continuation from where the deceased left and is not a new one.

As for the second point of preliminary objection that the application at hand has been preferred under wrong provision of the law. Mr. Chundu observed in his submissions that the proper provision to move this court for an application for revision is section 43 (1) (a) and (b) of the Land Disputes Courts Act. According to the Chamber Summons, this application has been preferred under section 38 (1) of the Land Disputes Courts Act. In his reply, the respondent did not dispute that the application has been preferred under wrong provision of the law, he was rather of the opinion that non citation or wrong citation of

enabling provision of the law is not fatal and can be cured as long as what has been prayed by the applicant is within the power of the court. He urged the court to consider substantive law rather than technicalities. With due respect to respondent, wrong citation of the enabling provision goes to the root of application. It is not a technical matter as opined by the applicant. Simply stated, wrong citation of enabling provision cannot be cured by the principle of overriding objective. In the case of **Mondorosi Village Council & Others** (supra) it was observed that:

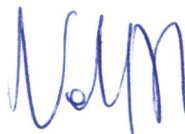
"Regarding overriding objective principle, we are of the considered view that, the same cannot be applied blindly against the mandatory provisions of the procedural law which go to the very foundation of the case....."

In view of the above cited case the principle of overriding objective cannot be applied to cure this application as suggested by the applicant. Indeed, in the case of **Willps Limited** (supra), this court invoked the principle of overriding objective, but it should be noted that each case has its own circumstances, and secondly, it is apparent that the applicant does not know what to do as in Land Revision No. 32 of 2017 his application was struck out for being under wrong provision of the law, but regrettably he has repeated the same mistake in this application. As said in **China Henan International**

Co-operative (supra) wrong citation goes to the root of the matter as such this court has been improperly moved and thus lacks jurisdiction to entertain this application.

In the result, the preliminary objections raised have merit and the application is hereby dismissed with costs.

It is so ordered.


V.L. MAKANI
JUDGE
31/01/2022

