

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 283 OF 2022

*(Arising from the decision of the District Land and Housing Tribunal of Mkuranga by (R.L. CHENYA Chairman) on Land Application No. 8 of 2020)*

MWAJUMA ALLY AMRI ..... APPLICANT

VERSUS

HASSAN ALLY OMARI ..... 1<sup>ST</sup> RESPONDENT

GASTO AKUSYUSI LUYANJI ..... 2<sup>ND</sup> RESPONDENT

RULING

*Date of last Order: 20.07.2022*

*Date of Ruling: 20.07.2022*

A.Z.MGEYEKWA

This Application by the Applicant is for leave to file an appeal before this court out of time. The applicant prayer to be declared lawful owner of

the property in dispute, in Land Application No. 8 of 2020 delivered on 5<sup>th</sup> November, 2021, whereas the decision was in favor of the respondent.

Dissatisfied, the applicant has knocked the doors of this court seeking leave to file an appeal out of time. The application is brought under section 14 (1) of the Law of Limitations Act Cap 89 [R.E. 2019] and section 95 of the Civil Procedure Code Cap.33 [R.E. 2019]. The applicant's application is supported by an affidavit deponed by Dickson Matata, counsel for the applicant. The 1<sup>st</sup> respondent has stoutly opposed the application by filing a counter-affidavit deponed by Geoffrey C. Luyanji, the respondent's counsel challenged the application on one point of preliminary objections as follows:-

1. *That the Application preferred by the Applicant is hopelessly incompetent for citing a wrong provision of the law as the correct section is section 41(2) of the Land Dispute Courts Act, Cap. 216 [R.E.2019], hence, that the Application be dismissed with costs.*

When the matter came for hearing on 20<sup>th</sup> July, 2022 the applicant was represented by Mr. Dickson Matata, learned advocate, and the 2<sup>nd</sup> respondent was represented by Geoffrey Mihariji, learned advocate who contended the affidavit of the applicant via counter affidavit, whereas the case was heard *ex parte* against the 1<sup>st</sup> respondent.

In supporting the objection, Mr. Geoffrey contended that the application is brought under the wrong citation of the provisions of the law which does not move this court in determining the application. He argued that the applicant has cited section 14 of the Law of Limitation Act, Cap 89 [R.E. 2019], and section 95 of the Civil Procedure Code Cap 33 [R.E. 2019].

He continued to argue that the proper provision to move this court to determine the application is section 41(2) of the Land Dispute Court Act Cap 216 [R.E. 2019]. To buttress his contention, Mr. Geoffrey cited the cases of **Wilfred John v Paulo Kazungu**, Misc Civil Application No. 182 of 2019, and **Gilbert Peter Sembombe v Mariam Sengao**, Misc. Civil Application No. 20 of 2021 whereas the court held that the wrong provision of the law makes the court not to have jurisdiction, hence that the application before this court is incompetent.

On the strength of the above submission, Mr. Geoffrey urged this court to strike out the applicant's application for being incompetent with costs.

In response, Mr. Dickson learned Advocate contended that failure to cite a proper provision of the law does not take away the jurisdiction of the court and that the same can be cured under the principle of overriding objective principle, whereas the court can order the

amendment and insertion of a proper provision of the law. To bolster the same Mr. Dickson cited the case of **Allience One Tobacco & Others vs Mwajuma Hamis** (Administrator Misc. Civil Application No. 803 of 2018, the court held that a wrong citation of the provision of the law is not fatal and that, it does not take away the jurisdiction of the court to determine the application.

The learned counsel for the respondent did not end there, he submitted that the court can order the applicant to insert a correct provision of the law by handwriting. Fortifying his position he referred this court to the cases of **Samsha Juma v Honest Kinyasi Maletsi & Another**, Civil Revision No. 45 and **Amani Girls Homes v Charles Kamera**, Civil Application No. 325 of 2019 CAT, **Director General LPF Pensions Funds v Paschal Ngalo**, Civil Application No. 76 of 2018 page 5 & 8 and **Mohamed Heghar v Astom Manyongo**, Civil Application No. 101 of 2017.

On the strength of the above submission, he beckoned upon this court to dismiss the objection.

In rejoinder, the 2<sup>nd</sup> respondent reiterated his submission in chief. He added that the overriding objective principle cannot blindly on the matter which goes to the root of the case. To support his submission he cited

the case of **Mondolosi Village & Others v Tz Mondolosi & Others**  
CAT at Arusha.

I have gone through the submissions of the parties and in determining the same I will be guided by the provision of Section 41 (2) of the Land Dispute Court Act Cap 216 [R.E. 2019] which provides: -

*'(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.'*

There is no dispute that the application is brought under section 14 of the Law of Limitation Act, Cap 89 [R.E. 2019], and Section 95 of the Civil Procedure Code Cap 33 [R.E. 2019]. Section 14(1) of the Law of Limitation Act Cap 89 R. E. 2019 provides;

*'14. -(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.'*

I am of the considered view that both provisions of the law are related to an extension of time, however, the only difference is that the application

of section 14 (1) of the Law of Limitation Act, Cap.89 [R.E. 2019], is only applicable where there are no specific provisions of the law regarding the extension of time.

The instant application is related to land matters and there is a specific law that is applicable in land matters. The Land Disputes Courts Act, Cap.216 [R. E. 2019] contains a specific provision for extension of time that is section 41 (2) of the Land Dispute Court Act Cap 216 [R.E. 2019]. Therefore, I fully subscribe to the submission made by learned counsel for the 2<sup>nd</sup> respondent that the court was not properly moved by citing wrong a law and provision of the law instead. I disagree with the counsel for the applicant that the defect can be cured by overriding objective, as the purpose of the overriding principle is not to fix every kind of defect and omissions committed by the litigant. In the matter at hand this court was not properly moved, thus, the defect cannot be cured.

In the upshot, I find that the application is incompetent before this court. Therefore, I proceed to strike it out without costs.

Order accordingly.

Dated at Dar es Salaam this date 20<sup>th</sup> July, 2022.



  
A.Z.MGEYEKWA  
**JUDGE**  
20.07.2022

Ruling delivered on 20<sup>th</sup> July, 2022 in the presence of both learned counsels.



  
A.Z.MGEYEKWA  
**JUDGE**  
20.07.2022