

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 145 OF 2023**

(Arising from the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Appeal No. 132 of 2021 dated 22<sup>nd</sup> December 2022 before Hon. L.R. Rugarabamu)

**PAULO MOSHI SOLOGO ..... APPLICANT**

**VERSUS**

**JAILY MWANGAMA ..... RESPONDENT**

**RULING**

Date of last Order: 22.05.2023

Date of Ruling: 25.05.2023

**A.Z. MGEYEKWA, J**

In this matter, the applicant is moving this Court for leave to file an Application for revision out of time against the Judgment and Orders of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Appeal No. 132 of 2021 dated 22<sup>nd</sup> December 2022 before Hon. L.R. Rugarabamu. The Application is supported by the affidavit deponed

by the applicant himself and contested *vide* the counter affidavit sworn by the respondent which was confronted with a notice of preliminary objection on points of law filed on 3<sup>rd</sup> May 2023 to wit that: -

1. *This Application is incurably defective for being preferred under the wrong provision of law.*
2. *This Application is bad in law since it is supported by an affidavit that contradicts prayers outlined in the Chamber Summons.*

By the Court order dated 3<sup>rd</sup> May 2023, both the application and the preliminary objections were directed to be argued by way of written submissions whereas the parties filed their written submissions in compliance with the Court's schedule. The respondent personally drew and filed his documents apropos of this Application. The applicant filed his other documents save for his written submissions in opposition to the preliminary objections which were drawn gratis by the Legal Aid Committee, School of Law and filed by himself.

Submitting in support of the 1<sup>st</sup> limb of objection, the respondent argued that this Application is incurably defective for being preferred under a wrong provision of law under section 14 (1) of the Law of Limitation Act, Cap.89 [R.E 2019], section 93 of the Civil Procedure Code, Cap.33 [R.E

2019] and section 41 (2) of the Land Disputes Courts Act, Cap.216 [R.E 2019] while the case originated from Mabwepande Ward Tribunal.

He insisted that the applicant ought to have brought this Application under section 38(1) of the Land Disputes Courts Act, Cap.216 [R.E 2019]. In that regard, he prayed this Application be struck out for being incompetent.

On the 2<sup>nd</sup> limb of the objection, he stated that the Application is bad in law since it is supported by an affidavit that contradicts prayers outlined in the Chamber Summons. He added that paragraph 10 of the affidavit implies that the affidavit is in support of the application for an extension of time to file an appeal while the applicant is seeking an extension of time to file revision out of time against the Judgment and Orders of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Appeal No. 132 of 2021 dated 22<sup>nd</sup> December 2022 before Hon. Rugarabamu, henceforth defective one.

To fortify his proposition, he cited the case of **Vehicle and Equipment Ltd vs. Jeremiah Charles Nyagawa**, Misc. Civil Application No. 246 of 2022, (unreported) on page 5 and that of **Village Chairman of Igembya Village and 4 Others vs. Bundala Maganga**, Civil Application No. 2014, (Unreported) on pages 2 to 3. He prayed that the preliminary objections raised be sustained and the Application is struck out with costs.

Responding to the 1<sup>st</sup> limb of the objection, the applicant contended that, they partly concede to the respondent's claim as they fortify that section 41 (2) of the Land Disputes Courts Act, Cap.216 [R.E 2019] and section 93 of the Civil Procedure Code Cap.33 [R.E 2019] are not proper provisions to move this Court to grant an extension of time within which to file an Application for revision in land matters.

He went on to add that, section 38 (1) of the Land Disputes Courts Act, Cap. 216 [R.E 2019], it deals with matters originating from Ward Tribunal but is only applicable where a party wants to appeal to the High Court. To buttress his stance, he referred this Court to the decision of **Bitan International Enterprises Ltd v Mished Kotak**, Civil Appeal No. 60 of 2012, and the case of **Letshego Bank (T) Ltd v James Simon Kitajo & Mashoka Auction Mart (T) Ltd**, Misc. Civil Application No. 12 of 2020, (both unreported).

On the 2<sup>nd</sup> limb of the objection, he asserted that striking out the whole affidavit and application will be tantamount to injustice. It was his view that there is a suitable solution to deal with such errors as demonstrated in the case of **Rustamali Shivji Karim Merani v Kamal Bhushan Joshi**, Civil Application No. 80 of 2009, (unreported). He cemented that, the remedy thereof is to have the impugned paragraph struck out from the affidavit instead of declaring the whole affidavit incurably defective as implored by

the respondent. To his end, he averred that the two points of the preliminary objection raised by the respondent are devoid of merits as justified above and the same should be overruled.

Rejoining, thereto, the respondent reiterated his submission in chief. He stressed that the failure of the applicant to cite a proper enabling provision of law renders this Application incompetent.

He qualified that, paragraph 10 of the said affidavit is the only one which discloses the reason for the applicant to seek an extension of time to file an appeal thus, in his view, expungement the same or not the affidavit remains defective as it cannot support the instant Application.

I have painstaking the rival arguments advanced by the parties' herein in support and against the Application to determine the merit or demerit of the preliminary objections raised as to the Application at hand.

It is an undisputed fact that the instant Application is brought under section 14 (1) of the Law of Limitation Act, Cap.89 [R.E 2019]; section 41 (2) of the Land Disputes Courts Act, Cap.216 [R.E 2019] and section 93 of the Civil Procedure Code, Cap.33 [R.E 2019]. The gist of the aforesaid section 41 (2) of the Land Disputes Courts Act, [Cap 216 R.E 2019], which for ease of reference provides thus:

*“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 the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days.”*

Guided by the spirit of the above provision of law, it connotes that, the Application before me is untenable in law as the prayers sought contravenes with the enabling provisions of laws as well with the supporting affidavit to the Chamber Summons. In the case of **Chama Cha Walimu Tanzania v The Attorney General**, Civil Application No. 151 of 2008, the Court of Appeal of Tanzania at page 17 of the Judgment principled that: -

*“As rightly admitted by Mr. Chidowu and supported by both counsel for the applicant, non-citation and/ or wrong citation of an enabling provision renders the proceeding incompetent”. [Emphasis supplied].*

See the case of **Edward Bachwa & 3 Others v The Attorney General & Another**, Civil Application No. 128 of 2008, and **Fabian Akonaay v Mathias Dawite**, Civil Application No. 11 of 2003. It is noteworthy to point out that it is the duty of a party and not the Court to correct his pleading and/ or document relied upon. Therefore, the omission in citing the proper provision of law relating to the Application for Revision and the error in

citing a wrong and inapplicable law in support of the Application is not in my considered view an issue of technicality, the same goes for the very root of the matter.

Given the foregoing, the 1<sup>st</sup> limb of the preliminary objection having disposed of the Application for being incompetent before this Court, I am not persuaded to dwell into the determination of the 2<sup>nd</sup> limb of the preliminary objection and the main Application as opting to do so calls for misuses of the Court's resources and its time.

For reasons alluded above, the 1<sup>st</sup> limb of the preliminary objection is sustained. As a result, the Application is accordingly struck out for being incompetent without costs.

Order accordingly.

Dated at Dar Salaam this 25<sup>th</sup> May 2023.



  
A.Z. MGEYEKWA

JUDGE

25.05.2023

Ruling delivered in the presence of the applicant and respondent.

  
A.Z. MGEYEKWA

JUDGE

25.05.2023

