

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 781 OF 2022

ATTORNEY GENERAL.....1ST APPLICANT

TANZANIA INVESTMENT CENTER.....2ND APPLICANT

COMMISSIONER FOR LAND.....3RD APPLICANT

REGISTRAR OF TITLES.....4TH APPLICANT

VERSUS

JULIANA SAMWEL MOLLEL.....1ST RESPONDENT

LAWRENCE MIDYANGO MASHAMBA.....2ND RESPONDENT

INGIANAEL LAWRENCE MASHAMBA.....3RD RESPONDENT

KASSIMU ABDALAH.....4TH RESPONDENT

SUN SHARE LTD.....5TH RESPONDENT

RULING

15/02/2023 & 28/02/2023

L. HEMED, J

It is a joint ruling in respect of the preliminary objection raised by the respondents and in regard to the application. On 5th day of December, 2022 the applicants herein, the Attorney General, Tanzania Investment Centre, the Commissioner for Lands and the Registrar of Titles, presented

for filing an application made under section 14(1) of the law of Limitation Act [Cap 89. RE 2019], section 95 of the Civil Procedure Code [Cap 33 RE 2019], Section 45 of the Land Disputes Court Act [Cap. 216 RE 2019] and Section 17(1) (a) of the Office of the Attorney General (Discharge of Duties) Act [Cap. RE 2019]. In the said application, the applicants are seeking for the following orders;

- i. That, the Honourable Court be pleased to extend time within which the Applicant can apply for Revision of the Judgment and Decree of the District Land and Housing Tribunal for Coast Region at Kibaha in Land application No. 56/2015.*
- ii. That, this Honourable Court be pleased to grant any reliefs for the interests of justice.*
- iii. Costs of this application to follow the event."*

The 2nd, 3rd, 4th and 5th respondents, through their advocate Mr. Dickson Ogunde, who appeared on the 19th December, 2022 submitted to have nothing to Counter. In other words, the 2nd, 3rd, 4th and 5th respondents do support the application. The 1st respondent, one Juliana

Samwel Mollel filed her counter affidavit. She also lodged a Notice of Preliminary objection containing the following points:-

- "1. That the application is bad in law and in maintainable as the applicants have involved wrong provision of law.*
- 2. That the applicant lacks locus standi to file Revision against the 1st Respondent.*
- 3. That the applicant (sic) is defective for including a prayer contrary to order XXIX Rule of the Civil Procedure Code act (Cap 33 RE 2019) (sic).*
- 4. That the applicant has unlawfully put a prayer into the affidavit."*

This court directed disposal of both the preliminary objection and the application by way of written submissions. The schedule to that effect was fixed on 22nd day of December, 2022 as follows; Submissions in Chief were to be filed by 5th January, 2023, reply submissions by 19/01/2023 and rejoinder submissions by 26/01/2023. All submissions were filed as per the directed schedule.

Let me start with the preliminary objections which were raised by the first respondent. Regarding the first limb of objection that the application

is bad in law and unmaintainable as the Applicants have involved wrong provision of law, I have revisited the enabling provisions cited in the chamber summons, I found that the same has been made under section 14(1) of the Law of Limitation Act [Cap. 89 RE. 2019], Section 95 of the Civil Procedure Code, [Cap 33 R.E 2019], Section 45 of the Land Disputes Courts Act [Cap 216 RE 2019] and section 17 (1) (a) of the Office of the Attorney General (Discharge of Duties) Act.

I have gone through all cited provision and found that Section 14(1) of the Law of Limitation Act, is a provision for extension of the period of limitation for instituting appeals or applications. The matter against which the objection has been raised is an application for extension of time to file application for revision. It is thus my firm view that Section 14(1) is relevant to the application for extension of time like the one at hand.

I am aware that the specific legislation on land disputes settlement is the Land Disputes Courts Act, (*supra*). However, it does not have a specific provision for extension of time when one intends to apply for revision in the High Court. Section 45, to Cap 216, though not directly relevant to the application, it provides for consequences of revision. In my firm view, citing section 45 of Cap 216 to the application alongside with section 14(1) of the Law of Limitation Act, is not fatal.

I have also examined section 17(1) (a) of the Office of the Attorney General (Discharge of Duties) Act and found that it concerns with the power of the Attorney General to intervene in matters against Government or which have been instituted by the Government or by Public institution. This provision in my view is relevant especially whenever the Attorney General seeks to intervene in the matter like the one at hand.

From the foregoing, I find no merits in the 1st limb of preliminary objection. I am holding so because, with the advent of the overriding objective principle enshrined in the Civil Procedure Code, [Cap 33 RE 2019], under Section 3A, wrong citation of specific law does not vitiate the application.

I do subscribe to what this court had said in the Case of **Dangote Cement Limited Vs NSK Oil and Gas Limited**, Misc. Application No. 5 of 2020, where the presiding Judge had this to say when he was faced with similar situation.

"...despite the fact that the specific law was not cited in the Chamber Summons, but so long as the law has given the powers, I will proceed to determine the application if found with sound reasons."

As to the 2nd limb that the applicant lacks *locus standi*; to file revision against the 1st respondent, I have noted that the basis of this limb is the fact that the applicants were not parties to the original case/trial. It is the opinion of the 1st respondent that since the applicants were not parties to the original case they have no *locus standi* to apply for revision.

My understanding is that application for revision is a remedy available to persons who have no right of appeal. In the matter at hand the applicants have demonstrated that they have interests over the suit landed property. However, they were not made party to the original proceedings for them to defend the said interests. The interest demonstrated in the affidavit is the one that gives *locus standi* to the applicants to institute the present application. This is pursuant to **Ballonza, Senior vs. Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203. In this case the court defined *locus standi* to mean a thing to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered.

In the matter at hand I find no merits in the 2nd limb of objection because the applicants have demonstrated their interests over the suit which they were not party to it. The only remedy available to them is to

apply for revision so that they can be given the right to defend their interests over the suit land.

As regard the 3rd limb of the preliminary objection the 1st respondent has accused the applicants for putting a prayer into the affidavit. The 1st respondent has asserted that paragraph 21 of the affidavit deponed to support the application is a prayer. I have gone through the affidavit and found paragraph 21 reading as follows.

"That, as stated above, unless this honourable Court grants the reliefs sought in chamber summons by allowing the application for revision to be filed out of time, the Government properties affected by the Tribunal Judgment and orders cannot be refiled and the Government stands to suffer irreparable loss which cannot be redressed by any means and causing loss to the public."

I have examined the wording in the above paragraph and I am convinced that they were inserted just to fortify or cement the factual depositions in the applicants' affidavit.

The way I see it, the paragraph does not contain prayers or arguments, rather, a conclusion of the entire depositions. Therefore, I am

satisfied that the wording in paragraph 21 of the affidavit supporting the application does not lead to failure of Justice. The wording can be tolerated without affecting the substantial validity of the affidavit. This position was also held by the Court of Appeal of Tanzania in **Fatuma Mohamed vs. Chausika Selema**, Civil Application No. 228/08 of 2022. In the circumstance I overrule the 3rd limb of objection.

Regarding the 4th limb, I have noted that the respondent opted not to argue it. I thus, consider that the 1st respondent decided to abandoned it. I do hereby mark it abandoned.

Having overruled the preliminary objection, let me turn to the application. My duty is to determine whether the applicants have shown good and sufficient cause to warrant this Court to grant the prayer for extension of time to lodge the lintended application.


Upon perusal of the affidavit deponed by one Ayoub Gervas Sanga, State Attorney employed in the Office of the Solicitor General, I found that one of the reason/ground under which the application is based is that, they were not party to the proceedings at the trial Tribunal.

According to the applicants, they were informed about the existence of the matter on the 23rd day of September, 2022 by the 5th respondent.

From what has been deponed and submitted before this court, I am convinced to hold that, the applicants could not possibly lodge the application for revision in time as they had no knowledge on the existence of the suit before the trial Tribunal. I have also noted that even when the matter was called for Judgment, the applicants were not informed.

In the circumstance I find good and sufficient cause having been shown by the applicants. I thus proceed to grant leave to the applicants to file application for revision out of time. It has to be filed within 14 days from the day of the ruling. In the circumstance of this case, each party to bear its own costs. It is so ordered.


Dated at Dar es Salaam this 28th February, 2023.



L. HEMED
JUDGE
28/02/2023



COURT: Ruling is delivered today, 28th February, 2023 in the presence of Frida Molel SA for the applicants and Halima Salim Said holding brief of Mr. Saiwello Kumwenda Advocate for the 1st respondent. Right of appeal explained.



L. HEMED
JUDGE
28/02/2023

