

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND REVISION NO. 14 OF 2023

FREDRICK WINSTON KITWIKA 1ST APPLICANT

GODFREY ARTHUR URASSA 2ND APPLICANT

VERSUS

RAPHAEL LEFI DAVID *suing under power of attorney in favour of* ISIHAKA JONGO JABIRI RESPONDENT

RULING

Date of last Order: 27/06/2023

Date of Ruling: 11/07/2023

A. MSAFIRI, J.

This is a ruling on the application for revision which is brought under Section 79(1) (a) (b) (c), (3) of the Civil Procedure Code, Cap. 33 R.E 2019 (the CPC). The applicants are seeking for the for the following orders inter-partes that, this Honourable Court be pleased to call records of the District Land and Housing Tribunal for Ilala in Land Application No. 155 of 2022 and revise its Ruling and Order dated 31 March, 2023 for purpose of satisfying itself as to the correctness, legality or appropriateness of the said records and orders.

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The application is supported by the grounds set forth in the two affidavits of Fredrick Winston Kitikwa, and Godfrey Arthur Urassa, the 1st and 2nd applicants respectively.

The respondent filed his counter affidavit in opposition of the application and along with it, he filed preliminary objections to the effect that;

- i. That, the applicants' application is hopelessly time barred.*
- ii. That, the applicants have totally failed to move this Court after they have failed to cite relevant applicable law.*

The preliminary objection was heard by way of written submissions. The respondent appearing in person, submitted on the first point of objection that, the application for revision is supposed to be filed to this Court within sixty days from the date which the order sought to be revised was delivered. That the ruling in Misc. Land Application No. 155 of 2022 was delivered on 20/10/2022, and this Application for revision was instituted in this Court on 30/3/2023. Hence, the applicants have filed for revision after one hundred thirty-one days (131 days) have passed and without seeking for leave to file out of time.

The respondent submitted further that Part III Item 21 of the Law of Limitation Act, Cap 89 R.E 2019 determine period for filing revision *Alls.*

where the CPC has not stated time to be sixty days (60 days). That, under Section 3(1) of the Law of Limitation Act, this application should be dismissed.

On the second point of objection, the respondent submitted that, the applicants have failed to cite the relevant applicable law. That Section 79(1) (a) (c) of the CPC which is cited by the applicants as enabling provision has been misconceived. That, Section 79 of the CPC confers jurisdiction to the High Court on its own motion to call for records of any case decided by court subordinate to it and revise the proceedings where it deems fit.

The respondent submitted further that, this application originates from the District Land and Housing Tribunal (the Tribunal) and the applicable law for revision is Section 43 (1) of the Land Disputes Courts Act, Cap 216 R.E 2019. He maintained that this application is incompetent as it has been brought wrongly by citing inapplicable law.

To bolster his points, the respondent cited the case of **China Henan International Co-operation Group vs. Salvand K. A. Rwegasira** (2006) TLR 220 at page 226 where the Court of Appeal held that failure to cite proper provision of the rule relating to a reference is *Alles*.

an error. He prayed for the Court to strike out the application for being incompetent.

The applicants' response submission was drawn and filed by Mr. Lemister Aroni Mtoni, learned advocate. On the first point of objection that the application is time barred, he submitted that, the applicants are aggrieved with the decision of the Tribunal to extend time. That it has failed to exercise its jurisdiction to correctness, legality or appropriateness in Misc. Application No. 155 of 2022 which was decided on 31 January 2023, hence, since this application was filed to this Court on 30 March 2023, this application is within time as only 58 days has passed.

On the second point of objection, that the applicants have failed to move this Court properly by citing inapplicable law, Mr. Mtoni submitted that, the applicants have moved this Court through Section 79 (1) (a) (b) (c) of the CPC for the same to revise the impugned ruling and order, and it is the correct provision.

He urged that, Section 43 (1) of the Land Disputes Act applies only when the Tribunal is in the exercise of its original, or appellate or revisional jurisdiction and not in exercise of Misc. application on extension of time. That in the impugned decision, the Tribunal was not exercising original, appellate or revisional jurisdiction.

Mr. Mtoni, argued that, Section 51 (1) of the Land Disputes Courts Act provides that;

In the exercise of the respective jurisdictions, the High Court and District Land and Housing Tribunals shall apply the Civil Procedure Code Cap 33 and the Evidence Act Cap. 6.

He insisted that the law and provision cited to move the Court in this application is appropriate as the revision is the power of superior Court as it examine the jurisdiction of a subordinate court or legality of the decision of the said court. He prayed that all preliminary objections be dismissed with costs as they lack merit.

There was no rejoinder from the respondent.

Having read the submissions filed by both parties to the suit, the issues for my determination is whether the preliminary objections raised by the respondent are tenable.

Starting with the first point of objection, the respondent has submitted that the application is time barred as it was instituted beyond sixty (60) days required by the law. The respondent claims that the decision of Misc. Application No. 155 of 2022 was delivered on 20 October

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2022. However, the applicants countered that the decision of Misc. Application No. 155 of 2022 was delivered on 31 March 2023 and not 20 October 2022 as the respondent claims.

I have gone through the pleadings and attached Ruling, along with the records of the trial Tribunal. I have seen that there are two Rulings on Misc. Application No. 155 of 2022. On the first Ruling, the parties are Raphael Lefi David (Suing under the power of attorney in favour of Isihaka Jongo Jabir) as applicant, against Fredrick Winston Kitwika, the 1st respondent and Godfrey Arthur Urassa, 2nd respondent. This Ruling is on the preliminary objections raised by the 1st respondent in Application No. 155 of 2022. The preliminary objections were overruled. The decision was delivered on 20/10/2022.

The second Ruling is on the main Application No. 155 of 2022 which was heard on merit after the preliminary objections were overruled. This Ruling on main application was delivered on 31/01/2023. It is on this Ruling of the main case upon which the applicants seeks this Court for Revision. To cement this, the chamber application supporting this application is clear that the applicants are seeking for revision of the decision of Misc. Application No. 155 of 2022 dated 31 January 2023, and not the one dated 20 October 2022. Since this application was filed in *Atle*.

Court on 30 March 2023, and the impugned decision was delivered on 31 January 2023, I find that this application is within time. The first point of objection by the respondent is therefore misconceived and it is hereby overruled.

The second point of objection is on the wrong citation of the enabling provision. This application is brought under Section 79 (1) (a) (b) (c), (3) of the CPC. It is the submission by the respondent that the proper enabling provision is Section 43 of the Land Disputes Courts Act.

In this I agree with the submission by the respondent that the enabling provisions in the land matters when it comes to this Court's revisional powers is Section 43 of the Land Disputes Courts Act. And in the circumstance, the applicants should have brought this application under Section 43 (1) (b) of the same Act which provides thus;

"43(1) (b): In addition to any other powers in that behalf conferred upon the High Court, the High Court;

b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or its own motion, if it appears that there has been an error material to the merits of the case involving

Act.

injustice, revise the proceedings and make such decision or order herein as it may think fit."

However, in this application the applicants have chosen to use the general provision which is Section 79 (1) (3) of the CPC which gives revisional powers to the High Court to any Court subordinate to it.

This could have been correct or proper if there was no specific law and specific provisions which confers revisional powers to the High Court on the District Land and Housing Tribunals but there is a specific law on that which is Section 43 of the Land Disputes Courts Act as reproduced herein above.

I agree with the arguments by the counsel for the applicants in his submission that Section 51(1) of the Land Disputes Courts Act provides that; the High Court shall apply the CPC and the Evidence Act and may, regardless of any other laws governing production and admissibility of evidence, accept such evidence and proof which appears to be worthy of belief. However, it is crystal clear that Section 51 is on admissibility of evidence and not revisional powers. When it comes to the revisional powers, Section 43 of the same Act is very clear.

I understand that it is now the position that the non-citation of the law or wrong citation of the law cannot render the application to be *Null.*

incompetent as long as the Court has jurisdiction to grant the sought order. But this position does not cover where the application has cited wrong law altogether.

The application at hand has been brought under wrong law altogether. In my opinion the correct provisions which enable the applicants to move this Court for revision of the District Tribunal's proceedings, decisions and orders is Section 43 (1) (b) of the Land Disputes Courts Act.

Section 79 of the CPC gives general powers of the High Court for revision of the Courts subordinate to it but not specifically for revision of the proceedings of the District Tribunals.

By this analysis, I find that this application is brought under a wrong law altogether and thus incompetent before the Court, and I sustain the second point of objection.

For the foregoing reasons, I hereby struck out this application with costs.


A. MSAFIRI
JUDGE
11/7/2023.

