

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION No.30 OF 2023

(Originating from the Mlanzi Ward Tribunal No.25 of 2015 and Application No.5 of 2016 the District Land and Housing Tribunal of Mkuranga)

HASHIM UBWA MATOPE..... APPLICANT

VERSUS

RAMADHANI YAKUBU NYAMLANI (as Administration of the Estate of the Yakubu Saidi Nyamlani RESPONDENT

09/08/2023 & 31/08/2023

RULING

A. MSAFIRI, J

This is a ruling for an Application which the applicant herein is moving this Court to call for the records for Ward Tribunal for Mlanzi in Application No.25 of 2015 and also records for District Land and Housing Tribunal for Mkuranga at Mkuranga (herein District Tribunal) in Application No.5 of 2016 in regard to the above parties.

The Application is made under Section 43 (1) of the Land Disputes Courts Act, [Cap 216 R.E. 2019], by way of chamber summons supported by affidavit of Hashim Ubwa Matope, the applicant. The respondent opposed the Application by filing counter affidavit which was affirmed by Ramadhani Yakubu Nyamlani, the respondent. While filing his counter

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affidavit the respondent also filed a notice preliminary objection on points of law to the effect that: -

1. *This revision is bad in law as the same is time barred.*
2. *This revision is bad in law for being preferred through a wrong procedure and forum.*

As it is the rule of procedure, the preliminary objection has to be disposed of before proceeding with the application on merit. The disposal of the above point of law was by form of written submissions by the order of this Court on 09.08.2023, whereby Mr Steven Kosi Madulu learned counsel appeared for the applicant and the respondents herein was unrepresented.

In support of the first limb of preliminary objection, the applicant contended that the Application is time barred as per Item 21 Part III to the Schedule of the Law of Limitations Act [Cap 89 R: E 2019]. The respondent submitted further that, it is trite law that any party wishing to move the High Court to revise the decision of lower court is supposed to do so within sixty days (60) from the date of decision he is wishing to challenge.

That the applicant is requesting this Court to revise the decision of the Ward Tribunal for Mlanzi in Application No. 25 of 2015 and the decision

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of the District Land and Housing Tribunal of Mkuranga in Land Application No 5 of 2016, whose decisions were made more than seven years ago. The applicant averred that this Application is grossly time barred and should not be entertained by this Court.

In the second limb, the applicant submitted that, under the provisions of Section 43 of the Land Disputes Courts Act, and Section 79(1) of the Civil Procedure Code, Cap 33 R.E 2019, the avenue for revision is available to the applicant only in matters where the appeal is not allowed. That, however in the Application No. 5 of 2016 at the District Tribunal, the applicant who was a party to the said application had an opportunity to either appeal against the said decision or to apply at the District Tribunal to set aside the ex-parte judgment. He argued that the applicant has wrongly moved the Court and this should not be entertained by the Court. He prayed for the Application to be dismissed with costs.

Mr Madulu opposed the argument that this Application is time barred and argued that Application is filed within the time, as per Section 26 (a) (b) (c) (i) and (ii) of the Law of Limitation(supra). He submitted that under the said provisions, the period of limitation starts to run when the plaintiff had discovered the fraud or mistake in the proceedings. He insisted that the applicant discovered fraud done by the respondent on

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20th May 2023 when his land (suit property) was invaded by the purchaser who was sold the property by the respondent.

That he filed this Application on 28th June 2023, thus the requisite time limitation is 60 days as per Item 21 III to the Schedule of the Law of Limitation Act (supra). He prayed to the Court to dismiss the preliminary objection raised for lack of merits.

On the second limb of objection, Mr Madulu contended that, there was errors on the way the ex-parte decision was reached. That, in the dispute at hand it is clear that the applicant and respondent had previously appeared in two forums i.e. the Village Land Council and for Mlanzi Village and the Mlanzi Ward Tribunal. That, at the forums the dispute was resolved to the applicant's side that he is the owner of the suit property.

That, the respondent decided to file Application No. 5 of 2016 at the District Tribunal and served the applicant by substituted service. That, the same was uncalled for because the applicant's permanent residence and his family stays at Mlanzi Village where the suit property is located. That, the respondent has intentionally decided to deny the applicant the right to be heard so as to benefit from the Tribunal's decision and to gain the property by fraudulent means. He prayed that this second limb should also be dismissed with costs. *Alle*.

In determination of the first limb of objection, the issue is whether the Application was filed within time as prescribed by the law. This Application is filed under Section 43 (1) (b) and 43 (2) of the Land Disputes Court Act. The Act does not specifically set the time limit for filing for revision hence the limitation of time is governed under Item. 21 Part III to the Schedule of the Law of Limitation Act which provides for sixty days (60) days as correctly observed by the respondent in his submission.

In the present Application, the decision which the applicant is moving this Court to revise i.e. Application No. 5 of 2016 of the District Tribunal at Mkuranga was delivered on 07/6/2016 which is about seven years now. Mr Madulu argued that this Application is within the time as per Section 26 of the Law of Limitation Act which provides for count of time to start on the date of discovery of fraud or mistake.

However, with due respect, I don't agree with Mr Madulu. This is for reason that the circumstance of this dispute does not fit the situation covered by Section 26 of the Law of the Limitation Act. For easy of reference I will reproduce the said provisions as follows;

S. 26; Where in the case of any proceeding for which a period of time is prescribed-

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- a) *the proceeding is based on the fraud of the party against whom the proceeding is prosecuted or of his agent, or of any person through whom such party or agent claims;*
- b) *the right of action is concealed by the fraud of any such person as aforesaid; or*
- c) *the proceeding is for relief from the consequences of a mistake,*

The period of limitation shall not begin to run until the plaintiff has discovered the fraud or mistake, or could, with reasonable diligence, have discovered,

From the contents of Section 26 hereinabove, there is no issue of fraud or mistake in the matter at hand. From the submissions of both parties to the suit, their dispute over the suit property was once presented before the Mlanzi Village Committee which after resolving the dispute, the Village Committee/ Council decided in favour of the applicant and stated that the suit property belongs to the applicant. The respondent then decided to file an Application No. 25 of 2015 at Mlanzi Ward, the same which also upheld the decision of the Village Committee.

The respondent then decided to file an Application No. 5 of 2016 at Mkuranga District Tribunal where an ex-parte judgment was entered in favour of the respondent after the applicant was served by publication and failed to appear.

Mr Madulu argued that the fraud which was discovered is the invasion of the suit property by the purported purchaser of the same. *Atle.*

Unfortunately, the counsel did not put the Court clear how the invasion of the suit property as claimed, amounts to a fraud or mistake in the previous proceedings. Since in the previous proceedings the applicant was ex-parte, then the proper way was to move the District Tribunal to set aside the ex-parte order and not to come to this Court seeking for revision. It is my finding that the applicant's arguments are misconceived and baseless.

In the upshot, I sustain the first limb of objection and find that this Application is improper before the Court for being filed out of time. I find no need to labour through the second limb of objection as the first one has already disposed of the matter.

The application is hereby struck out with costs.

It is so ordered.



A. MSAFIRI

JUDGE

31/8/2023