

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

AT DAR ES SALAAM

LAND REVISION NO. 25 OF 2023

*(Arising from Land Application No. 99/2018 Ilala District Land and
Housing Tribunal)*

VITALIS GEORGE KIHINJA &

FRANCIS GEORGE KIHINJA

(As Administrators of the Estate of George Kihinja)**APPLICANT**

VERSUS

EFC TANZANIA MICROFINANCE BANK.....1ST RESPONDENT

KHALIDI ALLY SALUMU.....2ND RESPONDENT

TANZANIA QUALITY AUCTION MART LTD.....3RD RESPONDENT

RULING

8TH September, 2023

L. HEMED, J.

On 09th day of June, 2023, the applicants' herein, **VITALIS GEORGE KIHINJA** and **FRANCIS GEORGE KIHINJA**, the joint Administrators of the estate of the late **GEORGE KIHINJA** presented this application under Sections 41 and 43 (1) (a) & (b) of the Land Disputes Courts Act, [Cap. 216 R:E 2019] with the following prayers: -

*"(a) That this Honorable Court be pleased to call for
the records of the District Land and Housing Tribunal*

for Ilala at Land Application No. 99/2018 for the purposes of satisfying itself as to the correctness, legality or propriety of the decision of the District Land and Housing Tribunal for Ilala (sic)

(b) That this Honourable Court having been satisfied itself as to the correctness, illegality or propriety of the decision of the District Land and Housing Tribunal for Ilala be pleased to quash the decision and set it aside and enable the administrators be joined in Land Application No. 99 of 2008 District Land and Housing Tribunal for Ilala. (sic)

(c) Costs be provided.

(d) Any other order this Honorable Court may deem just to grant.”

The application has been supported by the joint affidavit of the applicants. It was countered by the respondents through the counter affidavit of **ABDUL AZIZ TAINADA** and **KHALID ALLY SALUM**.

Having perused the chamber summons, the accompanying affidavit and the counter affidavit, the court discovered that the impugned ruling of the District Land and Housing Tribunal for Ilala was delivered on 28th February, 2023 while the instant application was filed on 9th June, 2023. It

was the finding of the court that the application was filed beyond 60 days and hence time barred.

On 8th September, 2023, the court called the learned advocates for the parties to address on the point. Mr. Joseph Mafie, acted for the applicants while the respondents enjoyed the service of Mr. Cleophas James.

Submitting on behalf of the applicants, Mr. Mafie conceded to the point raised by the court. He stated that since the impugned ruling was delivered on 28th February, 2023, the application at hand was filed beyond 60 days. He confessed that the application is time barred. He prayed to withdraw the same without costs.

Mr. James, learned advocate who was acting on behalf of the respondents shared the same view with the learned counsel for the applicants that the application is time barred. However, he opposed the prayer to withdraw the application. In Mr. James' view, the only remedy available to the application which is found to be time barred is dismissal. As to the prayer for waiver of costs, he left it to the court to exercise its discretion powers.

Having heard the submissions made by both learned counsel, the main

question for consideration is whether the application is time barred and due for dismissal. Both advocates have supported the point that the application is time barred. I am aware that this application for revision has been made under sections 41 and 43 (1) (a) & (b) of the Land Disputes Courts Act [Cap 216 R:E 2019]. The said provisions are silent on the time within which a party can lodge an application for revision in the High Court. It is trite law that when the specific law does not provide for period of limitation, then the Law of Limitation Act, Cap 89 takes precedent. The time limit for the application like the one at hand is as provided under item 21 of Part III to the Schedule of the Law of Limitation Act, [Cap. 89 R:E 2019] which provides thus:-

*"Application under the Civil Procedure Code, the Magistrates' courts Act or **Other written law** for which no period of limitation is provided in this Act or any **other written law**sixty days"*

[Emphasis added]

The words other written law, in the context of this application, includes the Land Disputes Courts Act, Cap. 216 which does not provide period of limitation for applications for revision. In view of the item 21 of Part III to

the Schedule of the Law of Limitation Act (*supra*), the time within which the application for revision has to be filed, is sixty days.

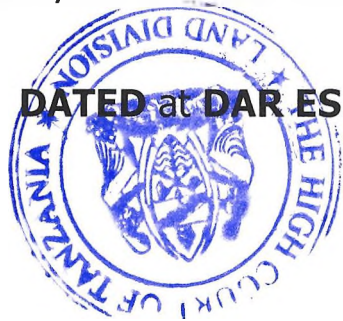
As aforesaid, the impugned ruling of the District Land and Housing Tribunal for Ilala was delivered on 28th February 2023 and this application was presented for filing in this court on 9th September, 2023, that is after 101 days. It is thus, the application is hopelessly time barred as supported by the learned advocates for both parties.

The learned counsel for the applicant prayed to withdraw the application without costs. I am at one with Mr. James, learned counsel for the respondents that the remedy available to any matter found to be time barred is dismissal. This is pursuant to section 3(1) of the Law of Limitation Act, [Cap. 89 R:E 2019] which provides thus:

*"3 (1) Subject to the provisions of this Act, every proceeding described in the 1st column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, **shall be dismissed** whether or not limitation whether or not limitation has been set up as a defence."*

[Emphasis supplied]

From the provision above quoted, it is obvious that the application at hand cannot escape from the dismissal order. In the upshot, the entire application is dismissed for being time barred. The fact that the point was raised by the court *suo moto*, each part to bear its own costs. It is so ordered.



DATED at DAR ES SALAAM this 8th September, 2023.


L. HEMED
JUDGE