

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

LAND REVISION NO.22 OF 2023

(Originating from the Judgment and Drawn Order in the Land Dispute No 101 of 2016 from the District Land and Housing Tribunal of Kibaha before Hon S.L Mbuga - Chairperson dated 30th March 2023)

JOSEPH AMBOLIKE SANGA.....1ST APPLICANT
SAMSON BERNARD BUNGA.....2ND APPLICANT
BERNARD M. MBAPILA.....3RD APPLICANT
KARIM K. MCHIMBI.....4TH APPLICANT

VERSUS

1.CLEMENT BALINA BOMANI.....1ST RESPONDENT
2.JUMA RHOBI.....2ND RESPONDENT
3.YAHAYA ASAKWE.....3RD RESPONDENT
4.RAMADHANI PANGA.....4TH RESPONDENT
5.PAUL DANIEL.....5TH RESPONDENT
6.JACKPBO JOACKIMU.....6TH RESPONDENT
7.PETER KAPENJA.....7TH RESPONDENT
8. DOTTO MUSANGA.....8TH RESPONDENT
9.JUMA HUSSEIN.....9TH RESPONDENT
10.JORAMU KAMBONA.....10TH RESPONDENT
11.WOMBOZIPASHUA.....11TH RESPONDENT
12. JOHN AKARO.....12TH RESPONDENT
13. JOICE ERNESTI.....13TH RESPONDENT
14.CHED TUNGWANA.....14TH RESPONDENT
15. SITIVINI MWAKATOBE.....15TH RESPONDENT
16. HUSSENI KAMBONA.....16TH RESPONDENT
17.HAMZA KIPETITE.....17TH RESPONDENT
18.JOSEPH MURULE.....18TH RESPONDENT

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19.HAMADI MOHAMED.....	19 TH RESPONDENT
20. JUMA NYUUBA.....	20 TH RESPONDENT
21. SONI YOSAMU.....	21 ST RESPONDENT
22. BAKARI MANGI.....	22 ND RESPONDENT
23.CHALE NYISONGA.....	23 RD RESPONDENT
24.MIRAJI ATHUMANI.....	24 TH RESPONDENT
25.MAHEMBA CHACHA.....	25 TH RESPONDENT
26.BESTI ERITONI.....	26 TH RESPONDENT
27.JAMES MARO.....	27 TH RESPONDENT
28. JAMES MVIRE.....	28 TH RESPONDENT
29.SELEMANI SAID.....	29 TH RESPONDENT
30 . FAIZA KITONKA.....	30 TH RESPONDENT
31.MWANAHAMISI SHABANI.....	31 ST RESPONDENT
32.NEEMA MSUNGI.....	32 ND RESPONDENT
33.HEPPY MWAKAROBO.....	33 RD RESPONDENT
34.MZEE MORWA.....	34 TH RESPONDENT
35.BUMI BUSESE	35 TH RESPONDENT

12/10/2023 & 18/10/2023

RULING

A. MSAFIRI, J

This is a ruling for the raised preliminary objections in this Application where the applicants are seeking for the order of this Court to call for records, proceedings, Judgement and Decree on the Land Dispute No. 101 of 2016 from Kibaha District Land and Housing Tribunal at Kibaha,(herein as the Tribunal) dated 30th March 2023 by Hon. S.L Mbuga, Chairperson. The applicants prays further that after calling for the

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said records, this Court revise and quash the Judgment and proceedings of the said Tribunal.

The brief background of the dispute is that the applicants claims to be the lawful owners of the disputed land located at Mapinga Area, Zinga Ward, Bagamoyo, Pwani, the land which they say it was allocated to them by the Village Government Authority on diverse dates. That, they have been in occupation of the disputed land for more than 18 years, and have developed it. That, surprisingly, the applicants became aware of the existing of Judgement and Decree on Land Dispute No. 101 of 2016, the decision from the District Land and Housing Tribunal of Kibaha, which involved the 1st respondent against other respondents, in which the applicants were not the party to the case. That, the above said judgement is over the disputed land which is owned lawfully by the applicants. Hence, the applicants instituted the present Application seeking for revision of the said judgement.

The Application is made under Section 43 (1) (b) & 43 (2) of the Land Disputes Courts Act, [Cap 216 R.E. 2019], by way of chamber summons supported by joint affidavit of the applicants who are; Joseph Ambolike Sanga, Samson Bernard Bunga, Bernard.M. Mbapila, and Karim K. Mchimbi. The Application was contested by a counter affidavit which

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was deponed by Stevens Kosi Madulu, learned advocate for the 1st respondent. The 2nd -35th respondents did not file the counter affidavits and through their advocate Mr Paulo Mtui, they informed the Court that they don't intend to contest the Application.

The applicants were being represented by Mr Jacob Fabian, learned advocate while the 1st respondent was represented by Mr S.K.Madulu, learned advocate and Mr Yusuph Mathias, learned advocate. However before setting hearing date, the counsels for the respondent prayed to file a notice of preliminary objection which was granted by the Court. The counsel for the 1st respondent filed a preliminary objection to the effect that;

- 1. The applicants' claim over the suit land is time barred for being brought after twelve (12) years a statutory time set for recover of the land contrary to Part 1 Schedule 22 of the Law of Limitation Act Cap 89 R.E 2019.*
- 2. The applicants' application is time barred for being filed after sixty days contrary to Part III Schedule 21 of the Law of Limitation Act Cap 89 R.E 2019.*
- 3. That the Honourable Court is not properly moved to hear and determine the application on cited provisions of law.*

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By leave of the Court, the preliminary objections were heard by way of written submissions. Having gone through the submissions by rival parties in support and opposition of the raised preliminary objections, I will determine on whether the same have merit and I will consolidate the first and second objections since they are both on time limitation.

In support of the raised objection on the point that this Application is time barred, Mr Mathias for the 1st respondent submitted that they have noticed that, the Land Application No. 101 of 2016 was instituted by the 2nd – 35th respondents claiming that the 1st respondents has trespassed on the suit land. That the 1st respondent undertook to look on the records of the Tribunal which was admitted as exhibit D1 during trial which is a Certificate of Title No. 52696 that was issued by the Commissioner for Lands on 7th August 2002. That basing on that, it is no doubt that the 1st respondent was in possession of the suit land since 2002, which means that the Land Application No. 101 of 2016 was filed against the 1st respondent after fourteen (14) years.

Mr Mathias argued that the applicants' claim over the disputed land is time barred for being brought before the Court after twenty four years (24) counting from when the land dispute was legally allocated to the 1st respondent herein.

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On the 2nd objection, Mr Mathias submitted that the instant Application was filed on 30th August 2023, which is sixty one (61) days from when the verdict in Land Application No. 101 of 2016 was delivered. He was of the view that, some litigants have been wrongly relied on Rule 21(1) of the Judicature and Application of the Laws (Electronic Filing) Rules, 2018 to contend on when exactly the documents are counted to have been completely filed in Court. He cited the case of **Mwaija Omary Mkamba vs. Mohamed Said Msuya & 2 Others**, Land Appeal No. 142 of 2020; where the Court observed that;

"It is noteworthy that the electronic filing Rules have not completely substituted the manual filing of documents. The electronic filing Rules are guiding procedures in registering a document online. Therefore the same cannot diminish the fact that a document is deemed filed upon payment of court fee".

He insisted that from the above submitted points, the claim on suit land and the Application for revision preferred by the applicants is hopeless for being time barred and prayed for the same to be dismissed with costs.

In reply, Mr Majura, counsel for the applicants contested the raised preliminary objection and submitted that the cause of action between the 1st respondent and the 2nd to 35th respondents arose between the year 2015 and 2016 and thus they were not barred by the time limitation of 12

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years when they instituted Land Application No. 101 of 2016. That the issue to be determined at the Tribunal was; who is the lawful owner of the disputed land property and the ownership documents including the Title Deed of the 1st respondent was subject of proof.

Mr Majura contended that, the applicants in the present Application intends to challenge the judgment on the Land Application No. 101 of 2016 which declared the 1st respondent owner of the disputed land, hence the 1st respondent cannot raise the preliminary objection on point of law which is based on the documents (Title Deed) which is subject to proof. He pointed that the raised preliminary objection does not qualify to be determined as point of law. To bolster his point, he referred the case of **Mukisa Biscuits Co. Ltd vs. West End Distributors Limited E.A** (1969).

On the 2nd point of objection, Mr Majura submitted that this Application was presented for electronically filing on 29th May 2023 at 17:02:13 before the expiration of 60 days, thus it was filed within the prescribed time. He referred the Court to the attached statistical dashboard Electronic Case Registration System which showed that the application was submitted on 29/5/2023. He also cited the case of *Alle-*

Mohamed Hashil vs. National Microfinance Bank Ltd (NMB),

Labour Revision No.106 of 2020 (Unreported) where it was held thus;

"...filing of the document electronically is recognised by our laws as one of the means of filing of document in court. The document which has been filed through electronic filing system is considered to be filed in Court on the date it was filed. It is practice that after the document is lodged online, the party has to file the hard copy too."

He argued further that, guided by Rule 21(1) of the Rules, 2018, the documents submitted for filing in court shall be deemed to have been duly filed on the day it is submitted. That the Application was admitted on 29th May 2023 which is within 60 days as per the requirement. He prayed for the raised 1st and 2nd preliminary objections to be dismissed with costs.

On rejoinder, the counsel for the 1st respondent mostly reiterated his submissions in chief and prayers.

Starting with the 1st ground on the Application being time barred for being brought after 12 years since the cause of action arose, I agree with the reply submissions by the counsel for the applicants that this ground of objection is not on pure point of law as it entails the point of facts which necessitate to be proved by evidence. *Adle.*

In his submission in support of the raised objection, the counsel for the 1st respondent has admitted that during the trial, the 2nd -35th respondents claimed that the 1st respondent has trespassed in the disputed land but the year on which the 1st respondent has allegedly trespassed in the said land is unknown. Hence the counsel for the 1st respondent made an assumption that the cause of action arose on 2002 the year which the Certificate of Title was issued by the Commissioner for Land to the 1st respondent.

I find that the issue of who is the lawful owner of the suit land between the applicants and the 1st respondent is at the centre of the dispute. The trial Tribunal made findings and declared the 1st respondent the lawful owner of the disputed land. In the current Application for revision, the applicants are seeking for revision of this Court on Tribunal's findings and decision. In this circumstances, the issue on whether the claims which were presented at the trial Tribunal by the 2nd -35th respondents were time barred or not cannot be determined and decided by this Court at the preliminary stage because as I have already pointed above, this involves facts which needs this Court to go through the evidence which were adduced at the trial Tribunal to ascertain on when exactly did the cause of action arose. *Adle*

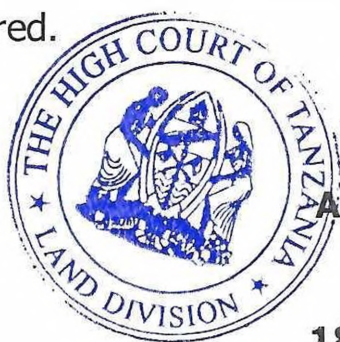
Since this point of objection is not on pure point of law but it has facts which this Court has to go through the trial Tribunal records, then it does not qualify to be a preliminary objection as per the principle set in the famous case of **Mukisa Biscuits (supra)**. I therefore overrule this point of objection.

On the 2nd point of objection, the exchequer receipt shows that this Application was filed on 30th May 2023. The impugned judgment was delivered on 30th May 2023, thus making a total of 60 days from the date of delivery of impugned judgment to the date of filing of the Application. Part III of the Schedule to the Law of Limitation Act, Item 21 provides for the limitation of time to file an Application like the current one to be sixty (60) days. By this, I find this Application to be within the time and I also overrule the second point of objection.

Before I sum up this ruling, I have noted that the 1st respondent for unknown reasons, abandoned the third point of objection, hence it was not argued. Since it was abandoned, I will also not bother to determine the same.

Having said that, basing on the above reasons, I find the preliminary objections to have no merits and I overrule them with costs.

It is so ordered.



A. Msafiri
A. MSAFIRI
JUDGE

18/10/2023