IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO. 23 OF 2023

(Originating from the Ex-Parte Judgment of Temeke District Land and Housing Tribunal in Land Application No. 100 Of 2023 dated 27/02/2023 by Hon. K.A. Sosthenes, Chairman)

SABATH MBULOUMA MKAMA ..... 1ST APPLICANT

ANNA BENJAMIN MAKABARA ..... 2ND APPLICANT

VERSUS

MOLLAND MKAMBA MASHOMBO ..... RESPONDENT

Date of Last Order: 05/10/2023

Date of Ruling: 16/11/2023

RULING

I. ARUFANI, J

This ruling is in respect of preliminary objections raised by the respondent as follows:

1. *That this application for revision is prematurely made as the applicant had the remedy of setting aside the ex-parte judgment in the trial court before exhausting other remedy.*
2. *That this application for revision is misconceived as revision is not an alternative to an appeal.*
3. *The application is hopelessly time barred.*

The objections were argued by way of written submissions. The submission on behalf of the respondent was drawn and filed in the court by Mr. Rajabu Mrindoko, learned advocate and the submission by the

applicants was drawn and filed in the court by Mr. Keregero Keregero, learned advocate.

The counsel for the respondent argued in relation to the first point of preliminary objection that, the application for revision before the court is pre-maturely made because the applicants have alternative remedy of setting aside the ex-parte judgment in the trial tribunal before embarking on any other remedy. He stated it is a long-standing procedure that one cannot go for an appeal or other action in a higher court if there are other remedies at the lower court to be exhausted first as provided for under section 13 of the Civil Procedure Code, Cap 33, R.E 2019.

The counsel for the respondent observed that, according to the affidavit supporting the application, the applicants are challenging the order issued by the tribunal to proceed ex-parte with hearing of the matter against them. He said the applicants had a remedy under Rule 11 (2) of the GN No. 174 of 2003 and Order 9 Rule 13 (2) of the Civil Procedure Code which provides for the procedure of setting aside ex-parte order or judgment. He stated an order to refuse to set aside the ex-parte order is appealable under Order XL Rule 1 (d) of the Civil Procedure Code. He argued the appropriate procedure available for the applicants would have been to first apply for setting aside the ex-parte judgment at the tribunal before seeking for any other remedy at the High Court. He concluded his

submission by arguing the application ought to be dismissed with costs for being premature.

As for the second point of preliminary objection the counsel for the respondent argued that, this court is clothed with appellate and revisional jurisdiction against the decision of the tribunal but the powers of appeal and revision do no co-exist. He stated in order to invoke the powers of revision then there must not be a right for an appeal. He submitted the right of appeal in this case is conditional upon the applicants first attempting to set aside the ex-parte judgment under Rule 11 (2) of the GN No. 174 of 2003 and Order 9 Rule 13 (2) of the CPC. He went on arguing that, since the applicants had the right to appeal it was wrong for the applicants to challenge the decision of the tribunal by way of revision. He submitted that the application is therefore incompetent and ought to be struck out.

As for the last point of preliminary objection the counsel for the respondent argued that, the application for revision is provided for under section 43 (1) (b) of the Land Disputes Courts Act, Cap 216, R.E 2019. He however argued that, the cited provision of the law does not provide for the limitation of time within which an application for revision should be lodged in the court. He argued that, in such a situation the court has to resort to the Law of Limitation Act, Cap 89, R.E 2019 where item 21 of Part III of the schedule to the mentioned law states the applications which its period of limitation is not provided for in the Act or in any other Law should be lodged in the court within 60 days.

He submitted that, the decision sought to be revised was delivered on 27/02/2023 and counting 60 days from the stated date the time for lodging the application for revision of the impugned decision of the tribunal expired on 27/04/2023. He thus pointed out that the application was filed on 30/05/2023 which was 34 days out of time prescribed by the law without leave of the court. He submitted that, since the application is time barred the remedy is dismissal of the application as provided under section 3 (1) of the Law of Limitation Act.

In his response, the counsel for the applicants argued in relation to the first point of preliminary objection that, for the court to establish whether or not the present application has been filed prematurely would lead the court into ascertainment of facts and evidence. He said this undermines the principles of preliminary objections laid down in the case of **Mukisa Biscuits Company Limited V. West End Distributors Limited,** [1969] EA 696. He argued that, the stated point of preliminary objection does not qualify to be point of preliminary of objection.

He argued in respect of the second point of preliminary objection that, there is nowhere in the record of the matter stated by the applicants that the revision is an alternative to an appeal. He said the applicants have applied for revision to challenge the ex-parte judgment of the tribunal under section 79 of the CPC and section 44 (1) of the Magistrates Courts Act Cap

11 RE 2019. He relied on several cases including **Gapco Tanzania Limited V. Sharif Mansoor t/a Mansoor Service Station,** [2002] TLR 99, **Blass Michael V. Said Selemani** [2002] TLR 260, **Moshi Textile Mills V. B. J. De Voest** [1975] TLR 17 and **Kulwa Daudi V. Rebecca Stephen** [1985] TLR 116 which provides for matters to be considered when the court is under revisional jurisdiction.

He submitted there is no law that prevents the High Court from determine revisional matter, nor is the setting aside of ex-parte judgment a legal exclusivity of the trial court at any rate. He pointed out that, it should be noted that an ex-parte judgment is not a consent judgment which cannot be revised by the High Court since it bears no right of revision. He submitted that the power of the High Court is to revise the proceedings to ensure that the applicants are not condemned unheard by virtue of Article 13 (3) of the Constitution of the United Republic of Tanzania which entitles a person to a fair hearing.

As for the third ground, the counsel for the applicants stated it is a requirement of the law for a copy of the ruling or judgment to be annexed to the application. He submitted that, although the judgment was delivered on 27/02/2023 but the copy of the impugned judgment was issued to the applicant on 06/04/2023. He stated from the date of issuance of the copy of the impugned judgment to the date of filing the application in the court it is

only 55 days which had passed which is within the period of sixty days provided by the law. He concluded his submission by praying the court to strike out the objections raised by the respondent for want of merit.

In his rejoinder, the counsel for the respondent reiterated what he argued in his submissions in chief and emphasized that, the application for revision is premature and he put his reliance on the case of **Yara Tanzania Limited vs. DB Shapriya & Company Limited, Civil Appeal No. 245 of 2018 (CAT-DSM)** (unreported). As for the point of time limitation he observed that, the applicants ought to have filed the application for leave to file the instant application for revision in the court out of time if they have evidence of obtaining copy of the ex parte judgment after expiration of 60 days provided under the law. He submitted that, the impugned judgment was certified on the same date of delivery so the applicants came late to collect the judgment and so they are shifting the blame to the trial tribunal. He reiterated is prayer for the application to be dismissed on ground that it was filed in the court out of time.

Having gone through the rival submissions from the counsel for the parties and the record of the matter the court has found the main issue for determination in this appeal is whether the objections raised by the respondent have merit and deserve to be upheld. In determine the raised points of preliminary objection I will start with third point of preliminary

objection which relates to limitation of time to lodge application for revision in the court because it has a direct implication to jurisdiction of the court to entertain the application.

The court has found section 43 (1) (b) of Land Disputes Courts Act vests the court with revisionary powers to revise any proceeding, decision or order made by all District Land and Housing Tribunals if it appears there has been an error material to the merits of the case involving injustice. However, as correctly observed by the counsel for the respondent the said provision does not state the time within which an application for revision should be filed in the court. That being the position of the law the court has found as stated in the case of **Aonali Chandoo V. Ethiopian Airlines**, [2008] TLR 55 the court is required to resort into the Law of Limitation Act which provides for limitation of time for applications which limitation of time is not provided for by any other law.

The limitation of time for lodging an application for revision like the one at hand in the court is provided under item 21 of Part III of the schedule to the Law of Limitation Act. The cited item provides for 60 days within which an application like the one at hand is supposed to be filed in the court. (See also the cases of the **NBC Holding Corporation & Another V. Supplies Limited & 2 Others,** Civil Application No. 42 of 2000, CAT at DSM

(unreported) and **Boniface Kuboja Matto V. Shani Seif Mwambo,** Land Revision No. 25 of 2016, HC Land Division at DSM (unreported)).

The being the position of the law the court has found the application at hand ought to be filed in the court within 60 days from the date when the decision sought to be revised was delivered. Since the impugned ex parte judgment was delivered on 27/02/2023, the applicants were required to file his application for revision in the court not later than 28th April, 2023. The court has found it is deposed at paragraph 12 of the affidavit of the applicants that the copy of the impugned ex parte judgment was issued to the applicants inordinately on 06/04/2023.

The counsel for the applicants argued that, counting from when the copy of the impugned ex parte judgment was issued to the applicants until when the present application was filed in the court on 30/05/2023 it is only 55 days had elapsed and that shows the application was filed in the court well within the time prescribed by the law. Although the counsel for the applicants computed the limitation of time upon which the applicants ought to lodge their application in the court from when it is alleged the copies of the ex parte judgment decree were issued to his clients but he has not stated his argument is basing on which law which allows exclusion of the period of time before being supplied with documents required for lodging application of this nature in the court.

The court has found the provision of the law governing exemption or exclusion of period of time upon which one is awaiting to be supplied with the copy of documents required for lodging appeal or application in the court is section 19 (2) of the Law of Limitation Act which provides as follows: -

> *"In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."*

The court has found the above quoted provision of the law does not provide for exclusion of time for a person wishing to lodge application for revision in the court as it is for the application at hand. It is providing for computation of limitation of time for lodging an appeal, an application for leave to appeal and an application for review of judgment. Since the stated provision of the law is not mentioning an application for revision then under the exclusion rule the limitation of time to lodge an application for revision in the court cannot be computed by basing on the above quoted provision of the law.

The court has found that, even if it will be said the cited provision of the law is applicable in the application for revision like the one before the court but the applicant is not entitled to the exclusion of time before being

issued with the impugned ex parte judgment and decree of the tribunal provided in the referred provision of the law. The court has come to the stated view after seeing that, when the Court of Appeal was considering exclusion of time spent in awaiting to be supplied with copies of documents required for appeal in the case of **Valerie Mcgivern V. Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019, CAT at Tanga (unreported) it observed as follows: -

> *"... it must be understood that section 19 (2) of LLA can only apply if the intended appellant made a written request for the supply of the requisite copies for the purpose of appeal."*

From the wording of the above quoted excerpt, it is crystal clear that, in order for an appellant or applicant wanted to successfully rely on automatic exclusion of period of time spent in awaiting to be supplied with copy of impugned decision or proceeding, he or she is required to satisfy the court he or she made a written request for being supplied with the requisite copies of documents for appeal or application purposes and delayed to get them on time. If there is no written request of the required copies made to the court the appellant or applicant cannot benefit from the exclusion of time provided in the above quoted provision of the law.

Back to the application at hand the court has found it has not been stated anywhere being in the affidavit supporting the application or in

the submission of the counsel for the applicants that the applicants made a written request to the tribunal to be supplied with the copies of the impugned ex parte judgment and decree. That would have established they are entitled to rely on exclusion of period of time before being supplied with the documents they wanted to use in their application provided under section 19 (2) of the Law of Limitation Act.

Since there is nothing fronted to the court to show the applicants made a written request of the documents they used in the instant application from the tribunal, the court has found the application was filed in the court out of time prescribed by the law. The stated finding moves the court to the settled finding that, the third point of preliminary objection raised in the matter by the respondent that the application is hopelessly time barred is meritorious. That is because the application was filed in the court after the elapse of sixty days period of time prescribed by the law for filing application of this nature in the court.

Having arrived to the above stated finding the court has come to the view that there is no need of continuing with determination of the first and second points of preliminary objections because the third point of preliminary objection is enough to dispose of the application before the court. As it has been found the application was filed in the court out of

time and without leave of the court, the court has found as prayed by the counsel for the respondent the remedy for the application filed in the court out of time as provided under section 3 (1) of the Law of Limitation Act is for the application to be dismissed. Consequently, the application of the applicants is dismissed for being hopelessly time barred and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 16th day of November, 2023.

I. Arufani
JUDGE
16/11/2023

Court:

Ruling delivered today 16th day of November, 2023 in the presence of Mr. Keregero Keregero, learned advocate representing the applicants and in the presence of Ms. Mariam Shelimo, learned advocate holding brief for Mr. Rajabu Mrindoko learned advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.

I. Arufani
JUDGE
16/11/2023