

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

MISC. LAND APPLICATION NO.638 OF 2023

SOSTHENES MAFURU.....APPLICANT

VERSUS

DAR ES SALAAM DEVELOPMENT CORPORATION

(DDC).....RESPONDENT

RULING

Date of Ruling:28.11.2023

A. MSAFIRI J

On the 27th day of September 2023, the applicant herein, Sosthenes Mafuru filed 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 the Honorable (sic) Court may be pleased to call for and examine the records of the proceedings of the District Land and Housing Tribunal for Ilala in the **Misc. Land App No. 222/2022 before Hon.A.R.KIRUMBI***
- b) Cost be provided for.*
- c) Any other order(s) and /or relief(s) as Honorable Court may deem just and proper to grant.*

The Application was supported by the affidavit of the applicant. It was countered by the respondent through the counter

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affidavit of Mr. Bahati Mabula, the principal officer of the respondent. The respondent also raised a preliminary objection on the points of law as follows: -

- 1. The Court is wrongly moved for Revision while Applicant had alternative remedy by way of appeal.*
- 2. That the Application is incompetent for being an abuse of court process.*
- 3. That this Application is hopelessly time barred.*

Hearing of this case was done by way of written submissions whereby Mr Erigh Rumisha, learned State Attorney appeared for the respondent while the applicant was unrepresented, he appeared in person.

In the course of arguing the preliminary objection on point of law Mr. Rumisha opted to abandon points of objection number 1 and 2 and argued only point number 3 that the Application is hopelessly time barred. In supporting this point, he argued that Section 41 of the Land Disputes Court Act (supra) provides the power of the High Court to revise the decision of the District Land and Housing Tribunal, and Part III of Schedule of the Law Limitation Act [Cap 89 R:E 2019] provided that time limitation is 60 days.

He further contended that the decision of the District Land and Housing Tribunal for Ilala (herein the District Tribunal) was delivered on 2nd December 2022, and this Application for revision was filed on 27th *Acils-*

September 2023, which is out of time of statutory 60 days. In supporting of the case he cited the decision of **Sospeter Kahindi vs. Mbeshi Mashini**, Civil Appeal No. 56 of 2017. He argued that this revision ought to be dismissed with cost as per Section 3 (1) of the Law of Limitation Act (*supra*).

In reply thereto, the respondent submitted on brief facts which gave rise to the current Application. He stated that the respondent (DDC) filed an Application for execution of consent settlement in which the District Tribunal heard ex-parte against him and pronounced the order that the applicant herein be arrested and detained as civil prisoner. He argued that he became aware of the said order on 24th August 2023, and he obtained the said order after payment and lodged this Application on 27th September 2023. He cited Section 19 (2) of the Law Limitation Act which provides that in computing the period for limitation, the period for obtaining a requisite copy shall be excluded. He pointed that the time started to run when the applicant paid for obtaining the impugned order from the District Tribunal. He prayed for the dismissal of the preliminary objection with costs.

There was no rejoinder.

Having heard the submissions from both parties the question for determination is whether this Application is time barred. The Application

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for revision has been made under Sections 41 and 43 (1) (a) & (b) of the Land Disputes Courts Act. 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 a period of limitation, then the enabling law is the Law of Limitation Act under Item 21 of Part III to the Schedule which provides that the limitation of time for applications under the Civil Procedure Code, the Magistrates' Courts Act or other written law which no period of limitation is provided in the said Act or any other written law, is sixty (60) days.

Thus, the time limitation in which Application for revision has to be filed is sixty days. In this present Application both parties agrees that the impugned ruling of the District Land and Housing Tribunal for Ilala was delivered on 02nd December 2022, and this Application was presented for filling on 27th September 2023 being after the lapse of about 240 days. The applicant has argued that he became aware of the said order on 24/08/2023 and he processed and paid to obtain a copy of the order.

However I find that this argument lacks proof as the applicant did not establish how he became aware of the impugned order, and he did not attach the receipt of the payment on which he claims to have paid for the said order. I have seen the copy of the impugned order of the District Tribunal, it shows that the order was certified on 13/4/2023. Even if it is

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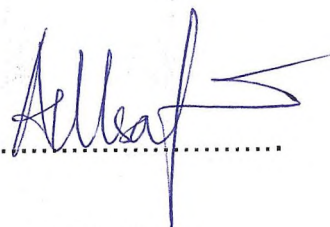
assumed by that date that the requisite copy was obtained on 13/4/2023, still the Application is time barred as the same was lodged on 27/9/2023 being about five months after the date of impugned order.

Additionally, the counsel for respondent prayed 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 provides that:-

"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..."

From the above provision, having found that the Application at hand is time barred, then it ought to be dismissed. I hereby sustain the preliminary objection and dismiss the Application with costs.

It is so ordered



A.MSAFIRI

JUDGE

28/11/2023.

