

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

LAND REVISION NO. 29 OF 2023

FORTUNATA DAMAS HAMARO APPLICANT

VERSUS

RAYMOND OMARI UWEZO 1ST RESPONDENT

NDESAMBURO SLAA 2ND RESPONDENT

NMB BANK 3RD RESPONDENT

Date of last Order: 20/12/2023

Date of Ruling: 02/02/2024

RULING

I. ARUFANI, J

The applicant filed in this court the instant application beseeching the court to call and examine the proceedings of Land Case No. 54 of 2016 and decision made in Miscellaneous Application No. 1180 of 2021 filed at Kinondoni District Land and Housing Tribunal for Kinondoni (hereinafter referred as the tribunal) by the applicant and satisfy itself as to the correctness, legality and propriety of the decisions of the tribunal dated 12th March, 2021 and 9th May, 2023 respectively. After being served with the application, the third respondent filed in the court its counter affidavit along with a notice of preliminary objections raised by the counsel for the third respondent containing the following points of law: -

- (1) This application is hopelessly time barred.*
- (2) This application is fatally defective for failure to cite specific provision of the law and the court is improperly moved*

therefore the court has no jurisdiction to grant the said orders as prayed by the applicant.

(3) This application is bad in law for containing unrelated omnibus prayers.

When the application came for hearing the applicant appeared in the court in person and the third respondent was represented by Mr. Japhet Kasuka, learned advocate. The effort to serve the rest of the respondents proved futile and that caused the court to proceed in their absence. By consent the stated preliminary objections were argued by way of written submissions.

The counsel for the third respondent stated in relation to the first preliminary objection that, the provision of the law empowering the court to revise the decision of the tribunal is section 43 (1) (b) of the Land Disputes Court Act, Cap 216 R.E 2019. He argued the cited provision of the law does not provide for time limit upon which the application for revision of a decision of the tribunal can be filed in the court. That being the position of the matter he stated the court is required to resort into the Law of Limitation Act, Cap 89 R.E 2019 and specifically item 21 of Part III of the Schedule to mentioned law which provides that, the time limit for filing in court an application which no limitation of time is provided in the mentioned law or any other written law is 60 days.

He argued that, the records show Land Application No. 54 of 2016 was dismissed by the tribunal on 12th March, 2021 for want of prosecution and Miscellaneous Application No. 1180 of 2021 was dismissed by the tribunal on 9th May, 2023 and the present application was filed in the court on 22nd June, 2023. He submitted that the applicant has joined two proceedings in the same application for revision while one of the proceedings namely Land Application No. 54 of 2016 was dismissed on 12th March, 2021 which is a period of more than two years and three months from when the mentioned land application was dismissed.

He stated the application for revision of the proceedings of Land Application No. 54 of 2016 is time barred and referred the court to the case of **Longututi Metishooki V. Godfrey Melami**, Land Revision No. 6 of 2021, HC at Arusha (unreported) where it was stated the time limit for institution of an application for revision in the court as provided under item 21 of Part III of the Schedule to the Law of Limitation Act is sixty days.

He argued in relation to the second preliminary objection that, the applicant has moved the court by relying on section 43 (i) (c) and (b) of the Land Disputes Courts Act. He stated upon reading the mentioned law he has failed to see such a provision of the law allowing the court to revise the decision of the tribunal. He argued that, even if it will be said it was a

slip of a pen but the applicant has also prayed for an order of maintenance of the status quo of the suit premises pending determination of the application for revision he has filed in the court while the provision of the law cited in the chamber summons does not empower the court to grant such an order.

He stated the application for maintenance of the status quo is governed by section 68 (e) and 95 of the Civil Procedure Code, Cap 33 R.E 2019 which have not been cited anywhere in the application filed in the court by the applicant. He referred the court to the case of **Robert Leskar V. Shibesh Abebe**, Civil Application No. 4 of 2006 cited with approval in the case of **John Marco V. Seif Joshua Malimbe**, Misc Land Application No. 66 of 2019, HC at Mwanza (unreported) together with the case of **Henan International Cooperation Group V. Salvand K. A. Rwegasira**, [2006] TLR 220 and other cases which states non-citation or wrong citation of the relevant provision of the law in an application renders the application incompetent. He submitted that shows the first and second prayers of the applicant should fail for non-citation and wrong citation of the enabling provision of the law.

He argued in relation to the third preliminary objection that it is a settled rule of law that, for omnibus application to be entertained by court the prayers in the chamber summons must be interrelated or interlinked

in the issues to be determined. He stated that, the applicant is seeking for the orders of revising the decision entered against her by the tribunal and an order to maintain the status quo in respect of the suit property. He submitted that, these are two different prayers which each of them has its own purpose and requires different yard sticks for its determination. He stated there is no interrelation between them to constitute allowable omnibus application.

He submitted that being the position of the matter the application is bad in law as prayer for revision and that of maintenance of the status quo of the suit property cannot go together and joined in the same chamber summons. To support his submission, he cited in his submission the case of **Gervas Mwakafilwa & Five Others V. The registered Trustees of Morovian Church in Southern Tanganyika**, Land Case No. 12 of 2013 (unreported) where it was stated for the omnibus application to be allowed the prayers should not be totally different, should not be under different law, should not have different time frame and the grounds for granting or refusing should not be different.

He cited in his submissions other cases which dealt with the issue of omnibus application and come up with similar position of the law stated in the foregoing cited case. He submitted the prayers contained in the chamber summons of the present application are so dissimilar and are not

governed by the same law. He based on the above stated submission to pray the court to order the application be dismissed with costs for being time barred, failure to move the court properly and for containing unrelated omnibus prayers. He also prayed the court to grant any other order it may deem just to grant.

In her response the applicant gave a brief background of the matter and stated she travelled to Moshi with her husband to attend a burial ceremony of her beloved sister and failed to notify the tribunal and that caused the application to be dismissed for want of appearance. She stated she is urging the court to examine and revise the proceedings and order made in Land Application No. 54 of 2016 together with the decision made in Misc. Application No. 1180 of 2021 dated 9th May, 2023.

She argued in relation to the first point of preliminary objection that, the application is not time barred. She stated section 41 of the Land Disputes Courts Act does not provide for time limit within which the application for revision should be filed in court. She argued that, according to the established law the application for revision like the one at hand is supposed to be governed by Law of Limitation Act which requires the application of this nature to be filed in the court within sixty days. She submitted the instant application was filed in the court under the above cited law.

As for the second preliminary objection the applicant cited in her submission section 43 of the Land Disputes Courts Act, and stated it provides for supervisory and revisional powers of the High Court over the District Land and Housing Tribunals. She stated that, where it appears there has been an error material to the merit of the case involving injustice and there is an application made in that behalf by any party or of its own motion, the High Court may revise any proceeding and make such decision or order as it may think fit. She submitted the application is appropriately made under the above cited law.

As for the third preliminary objection, the applicant cited in her submission Order XXXVII Rule 1 (a) and (b) of the Civil Procedure Code and stated the cited provision of the law allows a party to pray for an order of maintaining status quo that the applicant be left in the house in dispute without being sold. She stated the cited provision of the law can be used in the present suit and submitted that, citing the wrong provision of the law was a mere slip of a pen and it was not intentional. She submitted that, as there is a provision of the law cited in the application, the court can rely on the same provision to entertain the application. At the end she prayed the court to struck out the preliminary objections raised by the third respondent.

In his rejoinder the counsel for the third respondent reiterated what is stated in his submission in chief. He stated in relation to the second preliminary objection that, the applicant has not stated if there is section 43 (i) (c) and (b) in the Land Disputes Courts Act. He argued the applicant has not replied the third preliminary objection which states the application is omnibus and submitted that amount to an admission of the stated preliminary objection. He reiterated his prayers he made in his submission in chief that, the application be dismissed with costs for being time barred, not properly moving the court and containing unrelated omnibus prayers.

Having carefully considered the submissions made in the application at hand by both sides and after going through the records of the matter the court has found the main issue for determination here is whether the preliminary objections raised by the counsel for the third respondent deserve to be sustained. In determine the stated issue I will deal with the raised preliminary objections in the order they were raised and argued by both sides.

Starting with the first preliminary objection which states the application is time barred the court has found the applicant is urging the court to call and examine the proceedings and order made by the tribunal in Land Application No. 54 of 2016 dated 12th March, 2021 and the decision made by the tribunal in Miscellaneous Application No. 1180 of

2021 dated 9th May, 2023 and the application at hand was filed in the court on 22nd June, 2023. The court has found as rightly argued by both sides, an application for the High Court to examine and revise proceedings of the District Land and Housing Tribunals is governed by section 43 (1) (b) of the Land Disputes Courts Act which states as follows: -

"43.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-

(a) N.A

(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit."

The wording of the above quoted provision of the law shows clearly that it gives the High Court power on application by any party or of its own motion, if it appears that there has been an error material to the merit of the case involving injustice, to revise the proceeding and make such decision or order therein as it may think justifiable. However, the cited provision of the law does not provide for time limit upon which the stated application should be filed in the court.

That being the position of the law and as there is no any other provision in the cited law or any other written law providing for limitation

of time within which an application for revision of proceedings of the District Land and Housing Tribunal should be filed in the court, the court has found as rightly argued by the counsel for the third respondent and supported by the applicant it is required to resort into the limitation of time provided under item 21 of Part III of the Schedule to the Law of Limitation Act.

The cited provision of the law states the limitation of time for making any application which its limitation of time is not provided in the Law of Limitation Act or any other written law is sixty days. Therefore, it is the finding of this court that limitation of time for filing application for revision of proceedings of the District Land and Housing Tribunal in the High Court is supposed to be governed by the above cited provision of the law which is providing sixty days for making such an application. The above finding of this court is getting support from many cases decided by this court which some of them are the cases of **Jacob Petro** (As a guardian of **Nyerere Petro**) **V. Fatuma Ramadhani Mrisho** (as an administrator of the Estate of late **Mwajuma Issa @ Kabale**), Land Revision No. 2 of 2019, HC at Tabora (unreported) and **Longututi Metishooki** (supra) where it was stated in the latter case that: -

"Upon reading the Land Dispute Courts Act, I did not find any provision which specify the time limit for filing of revision application to the high court hence, resort was made to the Law

of Limitation Act, Cap 89 R.E 2019. Part III item 21 of the Schedule to the Law of Limitation Act provides the time limit of 60 days for revision."

That being the time within which the application for revision is supposed to be filed in the court, the issue to consider here is whether the application filed in the court by the applicant urging the court to revise the proceedings and decision made in Land Application No. 54 of 2016 and in Miscellaneous Application No. 1180 of 2021 is time barred. The court has found the proceedings of Land Application No. 54 of 2016 shows the stated application was dismissed for want of prosecution on 12th March, 2021.

As the application for revising the said proceedings was filed in the court on 22nd June, 2023 it is crystal clear that the application for revising the said proceedings was filed in the court after the elapse of two years and more than three months from when the stated proceedings was ended which is far beyond the sixty days provided under the provision of the law cited hereinabove. However, the court has found the application for revision of the decision made in Miscellaneous Application No. 1180 of 2021 which was delivered on 9th May, 2022 is not time barred as it was filed in the court after the elapse of forty-four days which is well withing the sixty days period provided in the above cited provision of the law.

In the premises the court has found the first preliminary objection raised by the counsel for the first respondent is partly meritorious and partly devoid of merit. The court has found the application is time barred in relation to the application for revision of the proceedings of Land Application No. 54 of 2016 but is within the time in relation to the application for revision of the decision made in Miscellaneous Application No. 1180 of 2021. That being the position of the matter the court has found the first preliminary objection cannot be sustained as it cannot dispose of the application for revision filed in the court by the applicant.

The court has come to the stated finding after seeing it was held in the case of **Mukisa Biscuit Manufacturing Company Ltd V. West End Distributors Ltd**, [1969] EA 296 that preliminary objection is supposed to be raised where if it is argued may dispose of the suit. If it cannot dispose of the whole suit, it cannot be raised and entertained by the court. It is because of the above stated reason the court has come to the view that, as the first preliminary objection cannot be upheld in total it is proper to proceed with determination of the second preliminary objection.

Coming to the second preliminary objection which states the application is defective for failure to cite specific provision of the law moving the court to grant the orders the applicant is seeking from the

court; the court has found the application is made under section 43 (i) (c) and (b) of the Land Disputes Courts Act. The applicant is relying on the cited provision of the law to urge the court to revise the proceedings of Land Application No. 54 of 2016 of the tribunal together with the decision made by the tribunal in Miscellaneous Application No. 1180 of 2021. In addition to that the applicant is also relying on the same provision of the law to urge the court to grant an order of maintenance of the status quo of the suit property pending determination of the present application.

After considering the orders the applicant is seeking from the court and after going through the Land Disputes Courts Act upon which the application is made, the court has found as correctly argued by the counsel for the third respondent there is no section 43 (i) (c) and (b) in the Land Disputes Courts Act. The provision of the law relating to an application for revision of a decision of the district tribunal by the high court available in the mentioned law is section 43 (1) (b) and not section 43 (i) (c) and (b) cited in the chamber summons filed in the court by the applicant.

The court has found that, if it will be taken as stated by the counsel for the third respondent that the stated wrong citation of the provision of the law to support the application for revision filed in the court by the applicant is a slip of a pen, the court would have relied on the position of

the law stated in the cases of **Antipas Romani Tairo V. Sikudhani Jafari**, Misc. Land Application No. 531 of 2020, HC Land Division at DSM and **Augustino Elias Sokono @ Ubwabwa Ubwabwa & Two Others V. Bilala Seleman**, Land Appeal No. 252 of 2020 HC at DSM (both unreported) to entertain the application. It was stated in the cited cases that, where citation of the law in an application is proper and the defect is on provision of the law upon which the application is made the court can ignore the said defect and proceed to determine the application or allow the defect to be corrected.

However, the court has found as rightly argued by the counsel for the third respondent, if it will be said the court is required to ignore the stated wrong citation of the provision of the law but the stated position will move the court to entertain only the application for revision of the decisions of the tribunal cited in the first prayer of the chamber summons filed in the court by the applicant. It cannot move the court to entertain and determine the second prayer of the order of maintenance of the status quo of the suit premises pending determination of the present application as the said provision of the law is not empowering the court to grant the stated order.

The stated finding of the court moved it to agree with the counsel for the third respondent that the court has not been properly moved to

entertain the second prayer of the applicant relating to the order of maintenance of the status quo of the suit premises pending determination of the present application. In the premises the court has found there is merit in the second point of preliminary objection that the court has no jurisdiction to determine the second prayer made in the chamber summons of the applicant as it has not been moved by any provision of the law to entertain the order of maintenance of the status quo the applicant is seeking from this court.

As for the third preliminary objection which states the application is bad in law for containing unrelated omnibus prayers, the court has found as stated at the outset of this application the applicant is seeking for revision of the proceedings and decision of the tribunal mentioned in the first prayer of the application and is also seeking for an order of maintenance of the status quo of the suit premises pending determination of the present application plus costs of the application. The court has found the application for revision of the proceedings and decision of the tribunal and the order of maintenance of the status quo sought from this court by the applicant are two distinct orders which cannot be sought together in the same application.

The court has found as rightly argued by the counsel for the third respondent and held in the case of **Bibie Hamad Khalid** (supra) an

application containing two or more unrelated applications is omnibus and renders the application incompetent. The court has found as stated in the case of **Mohamed Salmin** (supra) and in the case of **Gervas Mwakafilwa** (supra) together with other cases cited in the submission of the counsel for the third respondent, the settled rule as far as an omnibus application is concerned is that, for an omnibus application to stand, the prayers in the chamber summons must be interrelated or interlinked.

That being the settled position of the law, the court has found as rightly argued by the counsel for the third respondent, the order of revising the proceedings and decision of the tribunal and the order of maintenance of the status quo the applicant is seeking in the chamber summons she has filed in the court are not in any stretch of imagination interrelated or interlinked. The court has come to the stated finding after seeing the stated orders are governed by two different laws because as rightly argued by the counsel for the third respondent while the order of revision sought by the applicant is governed by section 43 (1) (b) of the Land Disputes Courts Act, the order of maintenance of the status quo is governed by sections 68 (e) and 95 of the Civil Procedure Code.

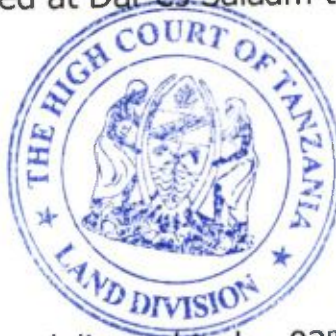
The court has found even the grounds or factors required to be considered in granting or refusing the stated orders are different because

while in the order of revision the court is required to examine the proceedings or decision of the tribunal and see whether there is any error material to the merit of the case involving injustice so that it can make a decision or an order as it may think fit, in the order of maintenance of status quo the court is required to see there is a need to prevent the end of justice from being defeated. That being the position of the matter the court has found the third preliminary objection raised by the counsel for the third respondent is meritorious.

The court has considered the submission by the applicant that Order XXXVII Rule 1 (a) and (b) of the Civil Procedure Code is a proper enabling provision of the law to move the court and that citation of wrong provision of the law in the chamber summons was a slip of a pen and it was not done intentionally but find it is not only that the stated provision of the law was not cited to support the application but also there is no way the cited provision of the law can be used to salvage the application of the applicant which contain two unrelated prayers. The court has come to the stated finding after seeing the applicant has not stated the cited provision of the law will move the court to entertain which order out of the orders is seeking from the court. To the contrary the court has found the cited provision of the law is irrelevant and not applicable in any of orders the applicant is seeking from the court.

Having find the application is containing two unrelated omnibus prayers, the court has found the application is incompetent. Consequently, the third preliminary objection raised by the counsel for the third respondent is hereby upheld and the application of the applicant is accordingly struck out for being incompetent and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 2nd day of February, 2024




I. Arufani
Judge
02/02/2024

Court:

Ruling delivered today 02nd day of February, 2024 in the presence of Ms. Elizabeth Kifai, learned advocate for the third respondent and in the absence of the rest of the parties. Right of appeal to the Court of Appeal is fully explained.




I. Arufani
Judge
02/02/2024