

TANZANIA / JUDGMENT

Manji Ruling

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA LAND REVISION NO 4075 OF 2024 (Arising from Application No. 2 of 2022
of the District Land and Housing Tribunal for Mwanza at Mwanza)

1. AMIRALI MANJI PIRBHAI
2. MOHAMED BAKIR AMIRALI MANJI APPLICANTS VERSUS
1. EMMANUEL BENJAMIN KIULA
2. DANIEL GYIMBI DUME RESPONDENTS

RULING

29th April & 24th May 2024 CHUMA, J. By chamber summons preferred under section 43(1) (a) and (b) (2) of the Land Disputes Courts Act Cap 216 RE 2019 the applicants filed this application seeking for this court to revise and set aside the withdrawal order of the District Land and Housing Tribunal for Mwanza (the DLHT) in Application No. 2/2022 dated 20th December 2023. The application is supported by the Affidavit of George Mwaisondola and contested by the counter-affidavits of the respondents herein. The application faced three points of preliminary objection as follows; 1

1. The application is time-barred;
2. The application is incompetent before this court for failure to exercise available remedy to challenge the order of the tribunal; and
3. That, the application for revision is incompetent for being sought against withdrawn order. Records tell that the 1st applicant vides Application No. 2 of 2022 sued the applicants and the 2nd respondent for trespass to his un-surveyed land estimated at 2.5 acres located at Kisoko Street Luchelele in Mwanza City acquired from the 2nd respondent (his grandfather). The matter was objected to at the DLHT with three points of preliminary objection inter alia that the DLHT lacked jurisdiction over the same. The preliminary objections were overruled by the DLHT. When PW1 the 2nd respondent herein, was testifying on 20/12/2023 the DLHT chairman raised an issue of proper description of the suit property. Eventually, the DLHT issued an order withdrawing the matter as prayed by the counsel for the 1st respondent

herein. The said order aggrieved the applicants hence this application. The raised preliminary objections were argued by way of written submissions. The scheduled dates were complied with. Messrs. Akram Adam 2 and George Mwaisondola both learned Advocates represented the 1st respondent and the applicants respectively. In his submission on the first point Mr. Adam stated that, the application is statutory time barred as the same being filed out of sixty days

- (60) as per the requirement of Item 21 of Part III of the Schedule to the Law of Limitation Act, Cap. 89 R.E.2019. That the application ought to be filed on or before 18th February 2024, but the same was filed on 28th February 2024 which renders it to be out of time for 10 days. Reference was made to the case of Isac Lazaro Sikawa and 3 Others v. Sarah Mikael, Land Revision No. 11 of 2022 (unreported). With regards to the second point, Mr. Akram submitted that the application is misconceived as they were supposed to challenge the order of the DLHT by filing an appeal as per section 41(1) of the Act. That revision cannot be used as an alternative to appeal hence the court cannot exercise its revision power while there is an avenue to appeal as stated in the case of Jacqueline Ntuyabaliwe Mengi and 2 Others v. Abdiel Reginald Mengi and 5 Others, Civil Application No. 332/01 of 2021 (unreported) 3 and Transport Equipment Ltd v. Devram P. Valambhia Civil Application 46 of 1994 (unreported). On the last point, it was submitted that revision power will only be exercised if it appears that there has been an error material to the merits of the case involving injustice as per section 43(1)(b) of the Land Disputes Courts Act, Cap 216 R.E 2019 (hereinafter the Act). That, withdrawal order does not determine a matter on merit hence no injustice was caused capable of being revised. In the case of Linus Swai v. Msimu Kombo Meela, Civil Application No. 219/01 of 2022 (unreported), the revision was found incompetent on account that the decision of the High Court sought to be revised did not dispose of the matter to finality. Mr. Akram urged the court to dismiss the application with cost. In reply, Dr. Mwaisondola submitted on the first point by admitting that 60-days time limitation is set by item 21 of Part III of the Schedule to the Law of Limitation Act (supra). However, when the court acts suo motto by invoking section 43 of the Act, there is no time limit. That, this application at hand was brought within sixty (60) days., it was lodged into e-CMS on 15th February 2024, but the control number was issued on 28th 4 February 2024, and payments were done on 1st March 2024. That, the date on which the application was filed online determines the filing date and not otherwise. He referred this court to the case of Abeed Minazali Manji (Administrator of the estate of the late Nadir Minazali Manji) vs The Registered Trustee of Daughters of Maria Kipalapala, Land Reference No. 01 of 2023. That, between 20th December 2023 and 15th February 2024, there were four days of public holidays which should be counted out in computing time that is December 25th and 26th 2023; New Year Day on Monday 1st of January 2024; and Zanzibar Revolution Day on Friday 12th January 2024. On the second point Dr. Mwaisondola contended that, in the exercise of supervisory power, the High Court will revise the decisions of the DLHT under section 43(1) of the Act. That supervisory powers are broad indeed and not restricted. The High Court can even act suo motto after being made aware of the miscarriage of justice or usurpation of jurisdiction by the DLHT. he

referred to the case of NMB Bank plc vs Fadhili Josia Kessy and 2 Others, Misc. Civil Revision No 9876 of 2024 (unreported). 5 On the last point, it was submitted that the order of the DLHT was issued after it was found that the first respondent failed to describe the suit property. That, during hearing PW1 failed to describe the suit property which forced the chairperson to ask parties to address the tribunal on the issue. After rival submissions were made and after the chairperson concluded that there was a failure to describe the suit property, instead of proceeding to dismiss Land Application No 2/2022, the chairperson issued an order which is not clear as to whether the application was dismissed or struck out, or withdrawn, or withdrawn with leave to re-file. Now since the first respondent never prayed to withdraw land application no 2/2022, the order dated 20th December 2023 is an error material to the merits of the case which resulted in a miscarriage of justice in which the High Court has a duty to supervise under section 43(1)(a) and (b) of the Act. He prayed for the points of preliminary objection to be dismissed with cost. I have dispassionately considered the submission for and against this matter from both parties and the issue for determination is whether the raised objections are meritorious. 6 Starting with the first point of preliminary objection, it is beyond doubt that parties are in consensus that the Act does not provide for time limitation to file an application for revision under section 43 (1) (a) and (b). Also, that, time limitation is set by item 21 of Part III to the schedule of the law of limitation Act to be 60 days for all applications in which the time is not specifically provided for. According to Mr. Akram, the application is time-barred a point which was vehemently challenged by Dr. Mwaisondola who has three contentions to prove his standing that the application was filed within time; first, that the application was timely and electronically filed on 15/2/2024; second, the application moves supervisory powers of this court over the DLHT which is unlimited; and third, between December and January there were four public holidays which need be counted off. I will consider one after the other contention to see whether they are meritable. In the first contention, Dr. Mwaisondola firmly maintained an argument that he filed the application online on 15/2/2024. The control Number was printed on 28/2/2024 and payments were made on 1/3/2024. I agree with Dr. Mwaisondola that, the date when the application is filed electronically is 7 a date of filling. I had time to revisit the e-CMS to see whether his contention is sound. My findings revealed that, the application was electronically filed on 21st February 2024 and control number was generated on 22 day of February 2024 and after effecting payment the matter was registered and issued with a number on e-CMS on 28th day of February 2024. The submission by both Learned counsels on the date of filling this application are therefore out of context or rather misleading as no application was filed on 15/2/2024 and or 28th day of February 2024. Regarding the second argument by Dr. Mwaisondola, it is my considered view that section 43(1) (a) of the Act was wrongly cited in this application. The provision provides for the supervisory powers of this court which are exercised administratively. Parties may only initiate the move administratively not by an application as in this case at hand. The provision reads; “43. -(1) In addition to any other powers on that behalf conferred upon the High Court, the High Court-

- (a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions 8 as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay” This court discussed a similar issue in the case of Jacob Petro as the guardian of Nyerere Petro vs Fatuma Ramadhani Mrisho as an administratrix of the estate of the late Mwajabu Issa @ Kabale; Land Revision No. 2 of 2019 (unreported) by relying upon the decision of the court of appeal in Abdallah Hassan vs. Juma Hamis Sekiboko, Civil Appeal No. 22 of 2007 in which the following was held; “In such circumstances, a party cannot move the High Court to exercise its supervisory powers through a formal application under Section 43 (1) (a) of the Land Disputes Courts Act as done by the applicant in this case. Such supervisory powers are exercised by the High Court suo motto and in deserving cases. The High Court may be moved administratively into exercising such powers by a law-abiding citizen. The remedy open to parties in challenging proceedings of the District Land and Housing Tribunal is through an appeal or revision as per Section 43 (1)
- (b) of the Land Disputes Courts Act whose limitation of time is 60 days as per Item 21 in Part III of the Schedule to the Law of Limitation Act, Cap 89, R.E 2019”. (Bolding rendered for emphasis) 9 Guided by the above authority in the instant case the provision was wrongly cited and cannot be relied upon as an excuse for 60 days time limitation to file revision under s. 43 (1) (b) of the Act. Before moving to the last contention, I find it pertinent to state that, the application is still competent before this court regardless of non or wrong-citation of law because; one, it is a settled law that where wrong provision is cited alongside proper provision the court will just ignore the wrong citation and proceed to decide the application on merit see the case of Advantech Office Supplies Limited vs Ms. Farhia Abdullah Noor and another, Civil Application No. 354/16 of 2017 (unreported) Two, it is now settled principle that wrong and/or non-citation is curable when the court has the power to grant the reliefs sought in the application as per the case of Bin Kuleb Transport Company Limited vs Registrar of Titles and 3others, Civil Application No. 522/17 of 2020 (unreported). On the last contention, the counsel for the applicant moves this court to count out four holidays between 20th December 2023 and 15th February
2024. I must confess that; I was astonished by this contention. With all due respect, I did not expect to come across such an argument so to speak for being out of context. 10 The cardinal law is that, when the last day for filing the matter is a weekend or holiday, the due date shall be the first following working day. This position delivered from a number of cases including Backlays Bank (T) Ltd v Jacob Muro, Civil Appeal No 357 of 2019; Abraham Abraham Simama vs. Bahati Sanga, Civil Application No. 462/17 of 2020; and Makomolwa Matepeli Shila v Mwanahamisi Ally Nongwa, Civil Application No. 327/17 of 2021 (all unreported). Further, Section 19 (6) of the Law of limitation provides as follows: “Where the period of limitation prescribed for any proceeding expires on a day when the court in which such proceeding is to be instituted is closed, the proceeding may be instituted on the day on which the court reopens.” (Emphasis added) A similar position is stated under s. 60

(1) (h) and (2) of the Interpretation of Law Act Cap 1 R.E 2020 which provides that; “(h) where an act or proceeding is directed or allowed to be done or taken on a certain day, or on or before a certain day, then, if that day is an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day that is not an excluded day. 11

- (2) For the purposes of this section, “excluded day” means Saturday, Sunday, or public holiday throughout or in that part of which is relevant to the event, act, thing, or proceeding concerned.” In this matter, guided by the above provision of law and case laws fully cited, by computation from 20/12/2023, the application was supposed to be filed on 18/2/2024 which was on Sunday. Therefore, the applicant would have filed the same on time on the following day which is Monday 19/2/2024. The same being filed on 21/2/2024 is obviously beyond the prescribed time. It is cardinal law under section 3(1) of the Law of Limitation Act that when the matter is filled out of time it shall be dismissed. Time limitation touches the jurisdiction of the court as it was held in the case of Said Mohamed Said vs. Muhusin Amiri, Civil Appeal No. 110 of 2020 (unreported). I am, therefore, ousted from entertaining the remaining two points of objection for want of jurisdiction. The first objection suffices to dispose of this application after being sustained. I therefore proceed to dismiss this application for being filed out of time without the leave of the court. Cost should follow the event. Right of Appeal fully explained to the parties. 12 DATED at MWANZA this 24th day of May, 2024. W. M. CHUMA JUDGE Ruling delivered online before Dr. Mwaisondola Learned counsel for applicant and Mr. Emmanuel Kiula first respondent in person this 24th May 2024. W. M. CHUMA JUDGE 13

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