

TANZANIA / JUDGMENT

RULING Fatu Rashidi vs

COURT
TANZLIIDECIDED
16 December 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA SONGEA SUB-REGISTRY AT SONGEA LAND REVISION NO. 17806 OF 2024 (Originating from the District Land and Housing Tribunal for Tunduru at Tunduru) FATU RASHID

..... APPLICANT VERSUS AUPHI SELEMANI
..... RESPONDENT

RULING

02nd & 16th December, 2024. KAWISHE, J.: The applicant, Fatu Rashid filed this application requesting for this court to call and examine the records and proceedings of Nanjoka Ward Tribunal in Land Case No. 18 of 2012 and the District Land and Housing Tribunal for Tunduru in Applications No. 12 of 2016, 05 of 2017, 10 of 2018, 14 of 2020, 58 of 2021, 59 of 2021 and 15 of 2022. The application is supported by an affidavit sworn by the applicant. The reasons for the application are found under paragraph 13 of the affidavit that, is to the fact that the proceedings, judgment, orders 1 and awards in the decisions sought to be revised are tainted with illegalities; to wit multiplicity of applications, proceedings, judgment, decisions, orders and awards between the same parties and the same subject matter which is an abuse of the court processes. When the matter was called for the hearing, the applicant had the legal service of Mr. Joshua Mwakatumbula, learned advocate while the respondent fended for himself. The hearing of the application was argued orally. Having heard the submissions from both parties, the court pressed the parties to address on the competence of the application in respect to the court's jurisdiction to revised the decisions made by Nanjoka Ward Tribunal in Land Case No. 18 of 2012 and the District Land and Housing Tribunal for Tunduru in Applications No. 12/2016, 5/2017, 10/2018, 14/2020, 58/2021 and 59/2021, in respect to time limitation. Responding to the court's issue raised, the applicant's learned counsel stated that, since Land Case No. 18 of 2012 is at execution stage before the District Land and Housing Tribunal at Tunduru in Application No. 15 of 2022 and the application for execution was made within 12 years as provided under item 20 of Part III to the Schedule made in the Law of Limitation Act (Cap. 89, R.E 2019) it is within time. 2 He contended further that, Application No. 14 of 2020 is still pending before the trial Tribunal and there is no need to seek for an order for extension of time. Mr. Mwakatumbula insisted that, this court has power under section 79 (1) of the Civil Procedure Code (supra) to call and revise the decisions sought to be revised. He prayed for the court to determine the application at hand and revise the decisions or make any other alternative remedy. Being legally indigent, the respondent had

nothing useful to address the court. Therefore, this court is bound to determine on whether the court has jurisdiction to determine the application for revision in respect to the decisions made in 2012, 2016, 2017, 2018 and 2021 without seeking for an order for extension of time. From the records available as filed by the applicant's learned counsel reveal that, the decision of Nanjoka Ward Tribunal in Land Case No. 18 of 2012 and the District Land and Housing Tribunal for Tunduru in Applications No. 12/2016, 5/2017, 10/2018, 14/2020, 58/2021, 59/2021, were delivered in 2012, 2016, 2017, 2018 and 2021 respectively. Item 21 of Part III to the Schedule made under the Law of 3 Limitation Act (Cap. 89, R.E 2019), provides for the time limitations for an application for revision to be made within sixty days from the date of delivery of the decision. In his submission, the applicant's counsel has averred that, Land Case No. 18 of 2012 is at execution stage and this court may revise it since the execution was made within the prescribed period of 12 years. That, Applications No. 14 of 2020 and 15 of 2022 are still pending before the trial Tribunal and there is no need of making an application for extension of time. Nothing has been submitted in respect to Applications No. 5/2017, 10/2018, 58/2021 and 59/2021. In court proceedings, time limitation touched the jurisdiction of the court to adjudicate the matter before it. The Court of Appeal in the case of Yusuf Khamis Hamza vs. Juma Ali Abdalla, Civil Appeal No. 25 of 2020, has the following to be observed in respect of time limitation. It stated that: "We are alive with the settled position of the law that time limitation goes to the jurisdiction issue of the court and it can be raised at any time even at the appellate stage by the court." Also, in Tanzania - China Friendship Textile Co. Ltd vs. Our Lady of the Usambara Sister (2006) TLR 70, the Court of Appeal held that: "The question of jurisdiction can be raised at any stage." 4 Unquestionably, the finding of the Court of Appeal in the quoted authorities, succumb the application at hand. It is well settled that the issue of time limitation is a question of law that goes to the jurisdiction of the court and it can be raised at any stage either by the parties or the court. In tandem with the position set by the Court of Appeal, as per the cited cases, the issue of limitation of time was raised by this court and parties were invited to address the court on the same. Time limitation is a legal issue which affects the jurisdiction of the court. Thus, the court cannot close eyes on an illegality. Whether by chance or intentionally not raised by the parties, this being a court of justice, it has to dispense justice accordingly. In the instant application, the applicant is requesting for this court to revise the decisions delivered in 2012, 2016, 2017, 2018 and 2021 respectively. The application was filed on 24th July, 2024, which is beyond the sixty days prescribed under item 21 of Part III to the Schedule made under the Law of Limitation Act (supra). It is my view that, the application for revision made before this court in respect to the decision made in the year, 2012, 2016, 2017, 2018 and 2021 was filed out of time. As a result, it is time-barred and this court does not have jurisdiction to entertain the same. 5 The applicant's learned counsel argued that, applications number 14 of 2020 and 15 of 2022 are still pending before the tribunal hence, this court can revise them without having an order for extension of time. It is correct that this court can determine the stated applications, but having properly scrutinized pleadings filed by the applicant, I found the prayers made therein requesting this court to revise the applications as whole. In other words, this application is an omnibus application. The applicant's learned counsel calling this court to determine them distinctly, is an afterthought born after the issue of time has been raised by this court. In such circumstances, I

am of the view that it cannot be proper for this court to determine applications number 14 of 2020 and 15 of 2022 in isolation of the others. As I stated, the application engulfed all the applications. The split came into existence following the court's raised issue of time. The applicant's learned counsel, tried to sunder the applications to trick this court to determine the matter from an unacceptable corner. I am persuaded to state that, this court is not a separator of applications, to see which is time barred and which is not. The learned counsel was duty bound to filter the applications and file his applications accordingly. It is clear that, that omnibus applications cannot be entertained. 6 Having found the application to be improperly filed, what is the remedy thereof? I am totally embracing the decision of the Court of Appeal in Tatu Mgetta & Another vs Mwanza Sattelite Cable TV (Civil Appeal 142 of 2019) [2022] TZCA 779 (6 December 2022; TanzLII), the Court of Appeal stated that: "It is settled position that a court of law or quasi-judicial board is not enjoined to determine on merit any incompetent matter. In case of any incompetent matter being placed before it, the remedy is to struck out, reject or refuse the same." Following the position of the Court, this application does not meet the criteria to grant application for revision. From the discussion I made earlier, this application was bound to seek extension of time. Also, for the applications which the learned counsel claimed to be pending hence qualified for revision should have not been squeezed in the same basket as he did. Subsequently, I am not enjoined to determine it on merit. In the upshot, the application is struck out for being incompetent. The applicant is ordered to bear the costs of the application. It is so ordered. DATED and DELIVERED at Songea this 16th day of December, 2024. 7 E. L. KAWISHE JUDGE COURT: Ruling delivered in the presence of Mr. Joshua Mwakatumbula, advocate for the applicant and in the presence of the applicant and the respondent Mr. Auphi Selemani in person. E. L. KAWISHE JUDGE 16/12/2024 8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlil.org/media/judgment/323841/source_file/eb32f4f4655511e9/RULING_Fatu_Rashidi_vs._Auphi_Seleman.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/fatu-rashid-v-auphi-seleman-revision-tanzlil-2024--6a3ea5243b1caa912981a0f5>

Prepared on 14 October 2026 · Esheria