

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 32 OF 2019

*(Originating from the decision of Kinondoni District Land and Housing Tribunal Application No.
422 of 2013 dated 20th May, 2016 by Hon. R. Mbilinyi)*

THE REGISTERED TRUSTEES

ARCHIDIOCESE OF DAR ES SALAAM.....APPLICANT

VERSUS

ADELMARSI KAMILI MOSHARESPONDENT

RULING

Date of last Order: 18/02/2020
Date of Ruling: 20/03/2020

MLYAMBINA, J.

The Applicant has moved this Court to grant leave for extension of time to file revision out of time in respect of Application No. 242 of 2013 of the Kinondoni District Land and Housing Tribunal dated 20th May, 2016 upon which an extracted copy was ready for collection on 25th March, 2019. The application has been preferred under *Section 52 (2) of The Land Disputes Courts Act Cap 216 [R.E. 2002]* and *Section 14 (1) of The Law of Limitation Act Cap 89 [R.E. 2002]*.

The Respondent in reply raised the hereinafter four preliminary points of legal objection which forms Centre of this ruling:

- 1) The Applicants' application is incurably defective for the failure to endorse the name of the drawer.
- 2) The affidavit of the Applicant contained arguments in matter of laws evidence and hearsay contrary to *Order XIX Rule 3 (1) and (2) of the Civil Procedure Code, Cap 33 R.E. 2018.*
- 3) The Applicant's application is incurably defective for citing improper name of this Honourable Court.

The Applicant application is baseless and abuse of the Court process.

With a purpose, I will start to decide on the second ground of objection. The Respondent argued that *Order XIX Rule 3 (i) and (2) of the Civil Procedure Code Cap 33 [R.E. 2018]* requires an affidavit being a substitute of oral evidence must contain only facts of which the deponent is able of his own knowledge to prove. The Respondent went on to submit that in the affidavit of the Applicant there are matters of laws, evidence and hearsay in paragraph 7, 8 and 9. One of the impugned phrase was that "deed of settlement was attested and witnessed by an advocate who had no instruction from the Applicant herein." To bolster up such point, the Respondent cited the case of *Uganda v. Commissioner of Prisons, Ex-parte Matovu* (1966) E.A. 514.

In reply, the Applicant told the Court that one who comes to equity must come with clean hands. It was the humble submission that the Respondent is challenging the erroneous application. To the contrary, the Respondent cited Cap 33 [R.E. 2002] which does not exist. According to the Applicant, the Civil Procedure Code, Cap 33 R.E. 2018 was revised in 2018 by G.N. No. 674 General Laws Revision Notice, 2018.

With due respect to both counsel Hardson B. Mchau for the Respondent and Francis M. Mwita for the Applicant, I hope I will not be misunderstood, when I observe that, my respected counsel for both parties improperly cited the Civil Procedure Code. The proper citation is the *Civil Procedure Code Cap 33 [R.E. 2019]*. The said revision was made through The Laws Revision Act (Cap 4) published through the Government Notice No. 140 of 2020 on 28th February, 2020.

As per the G.N. No. 140 of 2020 various laws have been revised and published as Revised Edition 2019 and have incorporated amendments including and up to November, 2019. Such laws are as follows:

No.	TITLE	CAP
1	The Interpretation of Laws Act	1
2	The Basic Rights And Duties Enforcement Act	3
3	The Reciprocal Enforcement of Foreign Judgements Act	8

4	The Magistrates Courts Act	11
5	The Government Proceedings Act	5
6	The Evidence Act	6
7	The Notaries Public and Commissioners for Oaths Act	12
8	The Law of the Child Act	13
9	The Arbitration Act	15
10	The Penal Code	16
11	The Corporal Punishment Act	17
12	The Criminal Procedure Act	20
13	The Legal Aid Act	21
14	The Inquests Act	24
15	The Bankruptcy Act	25
16	The Law of Marriage Act	29
17	The Civil Procedure Code	33
18	The Oaths and Statutory Declarations Act	34
19	The Gaming Act	41
20	The Vocational Education and Training Act	82
21	The Foreign Vehicles Transit Charges Act	84
22	The Law of Limitation Act	89
23	The Drug Control and Enforcement Act	95
24	The Public Private Partnership Act	103
25	The National Examinations Council of Tanzania Act	107
26	The Land Act	113
27	The Village Land Act	114
28	The Land Acquisition Act	118
29	The Mining Act	123
30	The Motor Vehicles (Tax on Registration and Transfer) Act	124
31	The Appellate Jurisdiction Act	141
32	The Excise (Management and Tariff) Act	147
33	The Value Added Tax Act	148
34	The Stamp Duty Act	189
35	The Economic and Organized Crime Control Act	200
36	The Land Disputes Courts Act	216
37	The Road and Fuels Tolls Act	220
38	The Proceeds of Crime Act	256
39	The Port Service Charge Act	264
40	The Office of The Attorney General (Discharge of Duties) Act	268

41	The Local Government Authorities (Rating) Act	289
42	The Local Government Finance Act	290
43	The Public Service Act	298
44	The Labour Institutions Act	300
45	The Law Reform (Fatal Accidents And Miscellaneous Provisions) Act	310
46	The Oil and Gas Revenues Management Act	328
47	The Prevention and Combating of Corruption Act	329
48	The Income Tax Act	332
49	The Land Registration Act	334
50	The Advocates Act	341
51	The Law of Contract Act	345
52	The Statistics Act	351
53	The Judicature And Application of Laws Act	358
54	The Airport Service Charge Act	365
55	The Employment and Labour Relations Act	366
56	The Extradition Act	368
57	The Tanzania Revenue Authority Act	399
58	The Customs (Management and Tariffs) Act	403
59	The Tax Revenue Appeals Act	408
60	The Anti-Money Laundering Act	423
61	The National Prosecutions Service Act	430
62	The Tax Administration Act	438

In the light of the foregoing, I find the second objection is devoid of any merits. The reason, at this juncture, is that the objection of the Respondent is premised on wrong citation of the law. Even if could be brought under proper citation, the remedy is to expunge or ignore the said paragraphs in terms of what was held by the Court of Appeal of Tanzania in *Phantom Modern Transport (1985) Ltd v. D T Dobie (Tanzania) Ltd* as cited at page 9 of the

decision in the case of *Convergence Wireless Networks (Mauritius) Ltd and 3 Others v. WIA Group Ltd and 2 Others*, Civil Application No. 263 "B" of 2015 (unreported).

On the first ground of objection, the Court is of considered view that, though the Applicant has disputed the first ground of objection the position of law is that every person who draws any documents to be filed in the Court shall endorse his/her name and address thereon. However, in the further found view of the Court, omission on the drawer's name on a chamber summons was a mere irregularity in form. It has nothing to do with the substance of the matter provided the supporting affidavit is proper.

Further, the word endorse is not synonymous with signature. So, the Respondent cannot tell this Court with certainty that the endorsement made to the chamber summons was by a different person from the one who signed the affidavit. The comparison would call a hand writing expert. That alone makes the objection to cease being a proper legal objection in terms of the *Mukisa Biscuit Manufacturing Company Ltd v. West End Distributors Ltd* (1969) EA 696 in which Sir Charles Newbold, P. kept the position at page 701 that:

A preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. *It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.* (Emphasis applied)

As regards the third point of objection, the Respondent submitted that the Applicant's application cited the name of this Honourable Court at the top of the chamber summons and affidavit as "IN THE HIGH COURT OF TANZANIA" which is improper and incorrect as is contravening Article 108(1) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time.

The Respondent submitted that Article 108(1) (*supra*) establishes this honourable Court as "The High Court of the United Republic of Tanzania" and the Interpretation of Laws Act (Cap 1 R.E. 2018) defines the High Court in Section 4 as "The High Court of The United Republic" and not "The High Court of Tanzania" as cited by the Applicant in the Application.

The Applicant in reply to the third point was of submission that Article 108(1) of the Constitution of the United Republic of Tanzania 1977 as emended does not state on the format in

framing pleadings to be filed in the High Court of Tanzania. Thus, the Article states on the establishment of the High Court of Tanzania. It simply brings to being such Court in the United Republic of Tanzania. In view of the Applicant, the same is what is defined under Section 4 of the Interpretation of Laws Act, Cap 1 R.E. 2018.

The Applicant was, therefore, of position that the third point of objection is misconceived as none of the provisions address the modality of framing the pleadings at the High Court.

In view of the foregoing, the Court is of considered view that Article 108(1) of the Constitution of the United Republic of Tanzania and Section 4 of the Interpretation of Laws R.E. 2019 depicts the correct citation of the law. However, the title of the Court in which the matter is filed has to be traced from the High Court Registry Rules, 2005 (G.N. No. 96 of 2005) whose Rule 8(2) provides:

When any cause or matter, whether original or appellate, has been entered in the district registry, it shall be titled "IN THE HIGH COURT OF THE UNITED REPOBLIC OF TANZANIA IN THE DISTRICT REGISTRY AT..."

It follows, therefore, that it was not proper for the Applicant to title "IN THE HIGH COURT OF TANZANIA". However, this is a matter of form which has nothing to do with the substance of the matter. In that regard, the remedy is neither to struck out nor to dismiss the application. The proper remedy is to allow amendment by inserting the missing words.

On the fourth point, the Respondent premised his submission on the proper procedure. In his view, the Applicant being aggrieved with the drawn order caused by consent of the parties for the issue of illegality or fraud as indicated in paragraph 7, 8 and 9 of the Applicant's affidavit. The proper remedy is for the Applicant to apply before the District Land and Housing Tribunal for Kinondoni at Mwananyamala for the extension of time to file review of the said ruling and not revision.

In response, the Applicant submitted that the objection is a total misconception of the law. Thus, the prayer before this Court is for extension of time, whereof fraudulent act being an illegality constitutes one of the grounds among others for the Court to grant extension of time. To buttress the point, the Applicant cited the case of *Transport Equipment Ltd v. D.P. Valambia* (1993) T.L.R. No. 91 in which it was held:

(ii) When point at issue is one alleging illegality of the decision being challenged, the Court has a duty even if it means extending time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right.

It was the Applicant's position that to determine that the application is baseless and abuse of the Court process, requires going into the merits of the application which requires proof. Hence, the objection is pre-maturely preferred.

In the premises of the above arguments, it must be appreciated that the grounds for review are listed under *Order XLII (1) (b) of the Civil Procedure Code (supra)* which provides that:

- 1) Any person considering himself aggrieved;
(b) by a decree or order from which no appeal is allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reasons, desires to

obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

Order XLII (1) (b) of the Civil Procedure Code (*supra*) is very explicit that a Court can only review its orders if the following four grounds exist:

- a) There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the Applicant at the time the decree was passed or the order was made; or
- b) There was a mistake or error apparent on the face of the record; or
- c) There were other sufficient reasons; and
- d) The application must have been made without undue delay.

It is true, as submitted by the Respondent, that the proper remedy, if there is a discovery of new fact is to file review with the same Court. However, revision application can also be preferred when it appears that there has been an error material to the merits of the case involving injustice. In hearing revision application, this Court retains its appellate jurisdiction. *Section 43*

and 45 of the Land Disputes Courts Act Cap 2016 (R.E. 2019) provides:

43. Supervisory and revisional powers

(1) In addition to any other powers in 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 as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;
- 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.

2. In the exercise of its revisional jurisdiction, the high Court shall have all the powers in the exercise of its appellate jurisdiction.

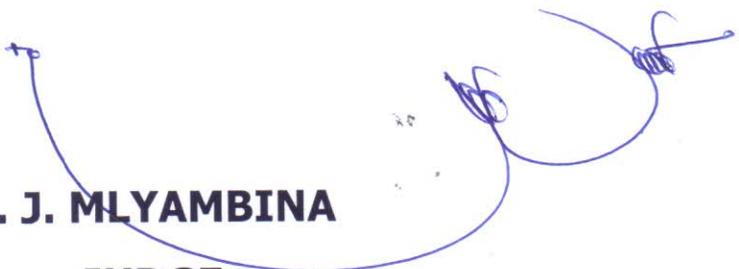
45. Substantial justice.

No decision or order of a ward tribunal or district land and housing tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice.

Further, as submitted by the Applicant, the application at hand is for extension of time to file revision. One of the grounds for granting application of such nature is the illegality of the alleged decision. It follows, therefore, important for this matter be determined on its merits to ascertain whether the impugned decision was circumvented with fraud and illegality.

In the end, the third ground of preliminary objection is sustained. The Applicant is allowed to amend the Chamber Application by

inserting the missing words for the proper title of the Court. Costs shall follow events.



Y. J. MLYAMBINA

JUDGE

20/03/2020

Ruling delivered and dated 20th March, 2020 in the presence of Mungai Raphael (Legal Officer from Acute Law Chambers) for the Applicant and in the presence of the Respondent in person.



Y. J. MLYAMBINA

JUDGE

20/03/2020