

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

MIC LAND APPLICATION NO. 44 OF 2021

*(Arising from the decision of the District Land and Housing Tribunal of
Mwanza District at Mwanza in Land Application Appeal No. 179 of 2020)*

NELSON MESHA E. MPEMBA APPLICANT

VERSUS

1. STEPHANO S. M. MPEMBA 2. PETER S.M. MPEMBA 3. MARY S.M. MPEMBA 4. DAUD S.M. MPEMBA 5. ELIAS S.M. MPEMBA 6. EMMANUEL S.M. MPEMBA	 RESPONDENTS
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RULING

26/8/2021 & 23/09/2021

W. R. MASHAURI, J;

This application is filed in this court by Nelson Mesha E. Mpemba (The applicant against Stephano S.M. Mpemba & 5 others (The respondents). The application is made and/or filed under section 43(I)(a) and (b) and section 51(I) of the Land Disputes Courts Act No. 2 of 2002 and order XLIII rule 2 of the Civil Procedure Code Cap. 33 R.E. 2019 and any other enabling provisions of the law.

The relief sought by the applicant as revealed in the chamber summons are that: -

1. This court be pleased to exercise its general supervisory powers over the District Land and Housing Tribunal of Mwanza by calling for and inspect the records in Land Application No. 179 of 2020 between the parties herein, the proceedings and ruling in the applicant's preliminary objection on points of law and give directives as may be considered necessary in the interest of justice
2. Costs of the application.
3. Any other relief this court may deem just and fit to grant.

The applicant is represented by Mr. Lucas Bundala learned counsel and the respondents are enjoying the services of Mr. Mfinanga Sheck learned counsel.

It appears on record that, upon being served with the application, the respondents through their learned counsel raised two points of preliminary objection.

To the effect that: -

1. The application is untenable in law for being interlocutory, thus not subject to revision by this court.

2. That, the revision application is hopelessly time barred and made in abuse of the court process.

When the matter was called in court for hearing on 26/08/2021 learned counsel for both parties unanimously agreed to dispose of the raised points of preliminary objection by filing written submissions. Their agreement was blessed by this court, hence this ruling of the court.

In his written submission in support the points of preliminary objection, the learned counsel for the respondents argued that, on 10/07/2020, the respondents were lodged in the District Land and Housing Tribunal for Mwanza at Mwanza a Land Application No. 179 of 2020 against the Applicant. In the said application, the respondents were requesting among other reliefs by tribunal a declaration that, the suit land in dispute is a lawful property of Stanley Mesha E. Mpemba (the deceased).

That, on 21/07/2020, the applicant in his written statement of offence did embody in three points of preliminary objection and on 22/01/2021, all the said three points of preliminary objection were overruled by the tribunal with no order as to costs.

The learned counsel for the respondent further argued in support of the 1st point of preliminary objection that, the tribunal had no jurisdiction to

entertain the matter filed before it which were overruled by the tribunal, hence this application filed by the applicant. That, under section 29(2) of the CPC Cap. 33 R.E. 2019, appeals against interlocutory orders or decisions which do not determine the matter to its finality is not permissible. To back up his submission, the learned counsel for the respondent referred the court to the case of **Peter Junior v/s. Omari Daudi Mshana**, Misc. Land Revision No. 27 of 2019 and **Shenaz Ismail Noray v/s. Dhirajal Mulji Dursa Land Case Revision No. 23 of 2019** in which the court abhorred (?) the **tendency** of filing revision against interlocutory and un appealable orders.

That, an **interlocutory order defined under the legal Dictionary by S.L. Swan and UN. Norang. 25th Ed. 2015** to mean: -

"Order determining an intermediate issue made in the course of a pending litigation which does not dispose of the case but abides further court action resolving (?) the entire controversy. They are steps taken towards the final adjudication for assisting the parties at the prosecution of their case in the pending proceedings"

That, in the case of **Vodacom Tanzania Public Limited Co. v/s. Planetel Communications Ltd** Civil Appeal No. 43 of 2018. The court of Appeal held that: -

"It seems to me that the real test for determining this question ought to be this: -, Does the judgment or order as made finally disposed of the rights of the parties? if it does, then I think it ought to be treated as final order, but if does not, it is then in my opinion an interlocutory order. The interlocutory order tends not to determine the matter to its finality."

That, in this matter the applicant raised three points of preliminary objection to the effect that, the tribunal has no jurisdiction to entertain Land Application No. 179 of 2020. In his decision, the chairman of the Tribunal overruled both points of preliminary objection and finally ordered the matter to proceed on *merit*.

That, it was also held in the case of **Managing Director Souza Motors Ltd v/s. R. 192 Gulamali and another** (2002) TLR 405 that: -

"A decision or order of preliminary nature is not appealable unless it has the effect of final determination of the suit."

For the 2nd ground of objection the learned counsel for the respondent submitted that, section 41 of the Land Disputes Courts Cap. 216 R.E. 2019 empowers the High court to revise the proceedings arising from the District Land and Housing Tribunal. The Land Disputes courts (*supra*) does not specify the time within which the revision application should be filed.

Therefore, the applicable law is part III of the schedule to the Law of Limitation Act Cap. 89 R.E. 2019 which provides that: -

"Application under the Civil Procedure Act, Magistrates' Act or other written law for which no period of limitation is provided in this Act or any other written law the limitation period is sixty days. The 60 days Rule."

That, in this matter, the decision of the District Land and Housing Tribunal against which this application for revision lies was delivered on 22.01.2020 and this application for revision was filed on 31/05/2021 hardly after a lapse of more than 330 days which is out of time of the statutory period of 60 days, the delay of which is too inordinate.

The issue is whether this application is filed in this court being hopelessly time barred.

It is on record and not disputed that, this application is accruing from the decision of the District Land and Housing tribunal for Mwanza in Land Application No. 179 of 2020 of which its decision was given on 22nd January 2020 Hon. Mrirya N. chairman. Aggrieved by the decision of the DLHT for Mwanza at Mwanza given on 22/01/2020, the applicant has now filed this application requesting this court to exercise its general supervisory powers over the District Land and Housing Tribunal of Mwanza and or inspect the

records in Land Application No. 179 of 2020 between the parties. This application has been filed in this court on 31/05/2021 and as shown above the application is against the decision of the DLHT for Mwanza which was delivered on 22/01/2020 and this application has been filed in this court on 31/05/2021 after a lapse of 11 months which is almost 330 days which is out of time of the statutory period of 60 days, and in an affidavit deposed by Nelson Mesha Mpemba in support of the application there is no sufficient reason given by the deponent to support the delay nor did the deponent accounted for each day of delay, which is contrary to the guidance laid down by the Court of Appeal in the case of **Tanzania Fish Processing Ltd v/s. Eusto Ntagalinda** Civil Application No. 4 of 2008. CAT Mwanza Registry (unreported) in which the Court of Appeal held that: -

"The law is clear that in application for extension of time the applicant should account for each day of delay...a delay of even a single day should be accounted for. Otherwise there should be no point of having rules prescribe in period within which certain step has to be taken."

It should therefore be noted from the decision of the Court of Appeal that, the issue of limitation of time is a fundamental one and not merely a technicality. Once a challenge of time is raised, the court is obliged to pursue the pleadings filed by the parties and found whether or not the suit is time

barred before proceeding with the case on merit. The rules of limitation are not merely meant to destroy the right of the parties but instead, they are meant to see that their remedy is appropriately in time.

From that look of events I sustain the 2nd point of preliminary objection that this application is field in this court being hopelessly time barred. And upon sustained the 2nd point of preliminary objection, I find it superfluous to deal with the 1st point of preliminary objects as by so doing amounts to embark on a futile exercise.

In the event this application is dismissed with costs.



A handwritten signature in blue ink, appearing to read 'W. R. Mashauri'.

W. R. MASHAURI

JUDGE

23/09/2021

Date: 23/09/2021

Coram: Hon. W. R. Mashauri, J

Applicant:

Respondents:

B/c: Elizabeth

Mr. Kileo, Advocate for the applicant

Mr. Mfinanga, Advocate for the respondents

Court: Ruling delivered in court in presence of Mr. Kileo advocate for the applicant and Mr. Mfinanga Advocate for respondents' this 23/9/2021. Right of appeal explained.




W. R. MASHAURI

JUDGE

23/09/2021