

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

MISC. LAND APPLICATION NO. 124 OF 2021

(Arising from Land Application No. 60 of 2017 at the District Land and Housing Tribunal for Muleba)

- 1. REHEMA MOHAMUDU.....1ST APPLICANT**
- 2. NURIATH MOHAMUDU.....2ND APPLICANT**
- 3. ABDALLAH MOHAMUDU.....3RD APPLICANT**
- 4. RAMLATH MOHAMUDU.....4TH APPLICANT**
- 5. IDRISA MOHAMUDU.....5TH APPLICANT**

VERSUS

KAGERA COOPERATIVE UNION (1990) LTD.....RESPONDENT

RULING

03.03.2022 & 11/03/2022

NGIGWANA, J.

This is a ruling in respect of the preliminary objections on point law raised by the respondent against the application at hand brought by way of chamber summons made under Section 14(1) of the Law of Limitation Act Cap. 89 R: E 2019. The applicants are seeking for extension of time within which to file an appeal to this court against the judgment of the District Land and housing Tribunal (DLHT) for Muleba at Muleba in application No. 60 of 2017 handed down on 5th day of January 2021.

The application is supported by an affidavit sworn by the 5th applicant Idrisa Mohamudu for and on behalf of the 1st, 2nd, 3rd and 4th applicants.

Upon being served with the chamber summons, the respondent through advocate Projestus Mulokozi from Orbit Attorneys-Bukoba, filed a counter affidavit together with the notice of preliminary objections on point of law. The points of law raised are as follows:-

- 1. That the applicant's application is bad in law for wrong citation of enabling provision, hence this court is not properly moved*
- 2. That an affidavit in support of the applicant's application is bad in law for containing extraneous matters.*
- 3. That the applicant's application is bad in law for want of sworn affidavits by 1st, 2nd, 3rd and 4th applicants.*

Wherefore the respondent prays to the court to strike out the application with costs.

On 03/02/2022, when the matter came for hearing of the PO, the applicants entered no appearance notwithstanding the fact that they were aware of the hearing date because the hearing date was scheduled on 15/02/2022 in the presence of the 3rd and 5th applicants, and no notice of absence filed in court or reasons given for their non-appearance. Since, the matter was cause listed in the Special Civil Clearance Session, Mr. Matete learned counsel who appeared for the respondent, prayed to the court to proceed exparte, the prayer, which was duly granted.

In the first place Mr. Matete prayed to abandon the 2nd point of preliminary objection on point of law and remained with the 1st and 3rd points. In his brief oral submission in support of the first limb of preliminary objection Mr. Matete submitted that the applicants were barred under Section 43 (f) of the Law of Limitation Cap. 89 R: E 2019 to prefer the application under

Section 14 (1) of the Law of Limitation Act because there is a specific provision of law regulating applications for extension of time to file Appeal to the High Court to wit; Section 41 (2) of the Land disputes Courts Act Cap. 216 R: E 2019. He further submitted that failure to cite the provision of the law is fatal. He made reference to the decision of the Court of Appeal in the case **of Edward Bachwa and 3 others versus the Attorney General and Another**, Civil Application No. 128 of 2006 (unreported).

Submitting in support of the 3rd limb of preliminary objection, Mr. Matete argued that, in this application, the applicants are five (5) in total, but the affidavits of the 1, 2, 3rd and 4th applicants are missing. He further argued that the 5th application tried to show in paragraph 1 of the founding affidavit that that he was instructed by the said applicants to swear on their behalf but the verification clause does not reflect that he was authorized to do so, and no document attached to the said affidavit to show that the 5th applicant was instructed in writing to swear for and on behalf of the said applicants. In that premise, he urged the court to struck out this application for being incompetent.

Having heard the oral submission of from Mr. Peter Matete, learned counsel for the respondent, the issue before this court for determination is whether the preliminary objection on point of law raised have any merit or otherwise.

At the outset, the 3rd limb of preliminary objection should not detain me for the obvious reason that the 5th applicant has stated in paragraph one that he was authorized by the 1st, 2nd, 3rd and 4th applicants to swear on their

behalf. It is my view that, that suffices to show that the 5th applicant did so under authorization since there is nothing showing the contrary. However, under the circumstances of this application, if I were to opt, the joint affidavit was the best, however, that does not mean that the founding affidavit in the matter at hand is defective. Having made those observations, the 3rd limb of objection crumbles and overruled for want of merit.

Turning to the first limb of preliminary objection on point of law, it is the common understanding of the law that once any specific law is self-sufficient, resorting to general provisions should be discouraged. The matter at hand originated from Land Application No. 60 of 2017, hence a land matter. It is undisputed that the Land Disputes Courts Act Cap. 216 R: E 2019 has a specific provision aimed at regulating applications for extension of time to lodge Appeal to the High Court. The specific provision is section 41 (2) which provides that;

"An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order;

Provided that the High Court may, for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days".

The herein above provision must be read together with sections 43 (f) and 46 of the Law of Limitation Act Cap. 89 R: E 2019. Section 43 (f) provides that;

"This Act shall not apply to any proceeding for which a period of limitation is prescribed by any other written law, save to the extent provided for under Section 46"

Section 46 provides that;

"Where a period of limitation for any proceeding is prescribed by any other written law, then unless the contrary intention appears in such written law, and subject to the provisions of Section 43, the provisions of the act shall apply as if such period of Limitation has been prescribed by this Act".

Reading the herein above provisions, it is apparent that, resorting to general provisions while there is a specific provision of law is definitely wrong and unacceptable. The application at hand was brought by way of chamber summons made under Section 14(1) of the Law of Limitation Act Cap. 89 R: E 2019 only, and that was wrong as correctly submitted by Mr. Matete.

It follows therefore that, the question to be resolved here is whether the omission or irregularity can be cured by invoking the principle of overriding objective? I am alive that the Principle of Overriding Objective introduced in 2018 vide the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 8 of 2018 was aimed to facilitate the just, expeditious, proportionate and affordable resolution of disputes without due regard to technicalities as opposed to substantive justice but I am also alive that the principle does not help a party to circumvent the mandatory procedures. **See Martin Kumalija & 117 Others versus Iron and Steel Ltd**, Civil Application No. 70 o/18 of 2018 CAT (unreported). This position was stated in the case of Juma **Busiya versus Zonal Manager, South Tanzania Postal**

Corporation, Civil Case No. 273 of 2020 where the Court of Appeal had this to say;

"The principle of overriding objections is not the ancient Greek goddess universal remedy called panacea, such that its objective is to fix every kind of defects and omissions by the parties in court".

Speaking specifically about the omission to wit; non-citation a specific provision of the law, I am alive of the Court of Appeal decision in the case of **Samwel Munsiro & 5 others versus Geita Gold Mining Ltd**, Civil case No. 539/8 (unreported) where the court held that;

"Where an application omits to cite any specific provision of the law or cites a wrong provision, but the jurisdiction of the court to grant the order sought exist, the irregularity or omission can be ignored and the court may order that the correct law be inserted".

However, reading between the lines, the holding of the Court of Appeal herein above, it is apparent that even where the jurisdiction of the court to grant the order sought exists, the court is still left with the discretion to decide whether to ignore the omission or otherwise depending to the circumstances of each case. What to remember is the principle of law that, the discretion must always be exercised judiciously.

In the matter at hand, since there is a specific provision to wit, Section 41 (1) of the Land Disputes Court Act Cap. 216 R: E 2019 guiding applications for extension of time to the High Court, the procedure must be applied with and it leaves no room to apply other general procedure because it was barred by section 43 (f) of the Law of Limitation, and the term used there is **"Shall"**, meaning that, where there is a specific law providing for

limitation of time, it is totally prohibited to resort to the Law of Limitation Act Cap 89 R:E 2019 save for the extent stated under section 46 of the same Act. In that premise, it is my considered view that the omission noted in the matter at hand cannot be cured by invoking the principle of overriding objective.

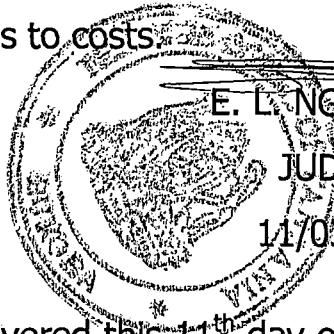
Stressing on compliance of the mandatory procedures, the Supreme Court of Zambia in the case; ***Access Bank (Zambia) Limited and group five Zcon Business Park Joint venture (2016)*** (although it is a persuasive decision) had this to say:

"Justice also requires that this court, indeed all courts, must never provide succor to litigants and their counsel who exhibit can't respect for rules of procedure. Rules of procedure and timeliness serve to make the process of adjudication fair, just, certain and even-handed. Under the guise of doing justice through hearing matters on their merit, courts cannot aid in the bending or circumventing of these rules and shifting goal posts, for while laxity in application of the rules may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules.

In our considered view, it is in the even-handed and dispassionate application of the rules that courts can give assurance that there is a clear method in which things should be done so that outcomes can be anticipated with a measure of confidence, certainty and clarity. This is regardless of the significance of the issues involved or questions to be tried.


From the foregoing analysis, the 1st limb of preliminary objection is meritorious, thus sustained. Consequently, this application is hereby struck

out for being incompetent. Given to the nature of the application, I order no order as to costs.



E. L. NGIGWANA
JUDGE
11/03/2022

Ruling delivered this 11th day of March, 2022 in the presence of the 2nd, 4th and 5th applicants, Mr. Peter Matete, learned advocate for the respondent, Mr. E. M. Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu B/C.



E. L. NGIGWANA
JUDGE
11/03/2022.