

IN THE HIGH COURT OF TANZANIA

AT DODOMA

MISC. CIVIL APPLICATION NO. 41 OF 2003

(Original Employment Cause No. 21 of 2001 of the District
Court of Dodoma District at Dodoma)

DODOMA TRADING COMPANY APPLICANT

VERSUS

1. FRANK MJELWA}
2. DAVID MTENDA} RESPONDENTS

R U L I N G

KAIJAGE, J.

The applicant, DODOMA TRADING COMPANY, has filed the present application under S. 44 of the Magistrates Courts' Act, 1984 and S. 14 of the Law of Limitation Act, No. 10 of 1971. The Application is supported by the affidavit of applicant's learned counsel, Mr. Kuwayawaya, and it is for the following orders:

1. THAT, execution of a decree passed ex-parte be stayed pending the hearing of an application to set aside the said judgement.

2. THAT, the court to be pleased to issue a revisional order to the effect that there was an error on the material record occasioning injustice.
1. THAT, costs of the application be costs in the main suit.
2. THAT, the court be at liberty to issue any such order as it shall deem fit to grant.

On 20th November, 2003, the respondents namely; FRANK MJELWA and DAVID MTENDA filed a joint counter affidavit in which the following two points of objection, forming the subject matter of the present Ruling, are raised:

1. THAT, the application is time barred.
2. THAT, the application is bad in law.

Learned counsel representing the parties were, on 27th April, 2004, granted leave to argue the said two points by way of written submissions.

On the 1st point of objection, Mr. Njulumu, learned counsel for the respondents has submitted that the provisions of S.14 of the Law of Limitation Act are not meant to defeat the time limit prescribed therein. He went on to submit that a party could only succeed in invoking the provisions of the said section and law if reasonable and

sufficient cause for the delay in filing a particular application is shown.

Admittedly, the present application has been brought under S.14 of the Law of Limitation Act without there being a prayer for orders that time for filing the present application be extended. The provisions of rules 3 and 8 of Part III of the 1st Schedule to the Law of Limitation Act prescribe the period within which applications such as the present one could be brought. A quick glance at the said rules reveals that the present application is hopelessly time barred, it having been brought eight months after the dismissal of the applicant's application to set aside the judgement and decree passed ex-parte, in Dodoma District Court Employment Cause No. 21 of 2001.

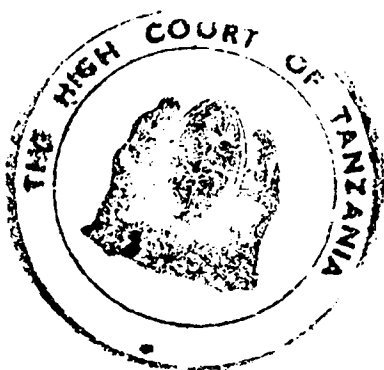
The applicant having not prayed for orders extending time within which to file the present application, this court has no basis upon which to grant that which has not been prayed for – notwithstanding applicant's mere citation of S. 14 of Act No. 10 of 1971 in the application. In any case, the application is time barred as herein above indicated.


Arguing in rebuttal, Mr. Kuwayawaya for the applicant states that S. 44 (1) of the Magistrates Courts' Act suffers no limitation period, provided the court finds that there has been an error material to the merits of the case involving

injustice. On this aspect of the matter, he referred to the case of ABDU V'S MOHAMED AHMED [1989] TLR 181 at page 184.

Let me say, at this stage, that entertaining considerations on a question as to whether or not there is, in the record of proceedings and judgement of the lower court, an error or errors material to the merits of the case involving injustice, will inevitably entail canvassing the main application on its merits.

Suffices to say that for reasons already stated hereinabove the application is incompetent for being time barred and as such cannot be entertained. Accordingly, the application is hereby struck out. Considering the nature of the proceedings giving raise to the present application, I direct that each party to bear the costs of this application.




S. S. KAIJAGE
JUDGE
30/4/2006