

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
MISCELLANEOUS CIVIL APPLICATION No. 18 of 2011

AMINA ATHUMANI KAUZENI.....APPLICANT

VS.

MAIMUNA AHMADI.....RESPONDENT

RULING

Date of last Order: 04-04-2011

Date of Ruling: 23-05-2011

JUMA, J.:

On 25th February 2011 the applicant (Amina Athumani Kauzeni) filed an ex parte chamber application seeking an extension of time to enable her to seek a certification by this court that there is a point of law involved in the Judgment of this Court which was delivered on 22-07-2005 by Mandia, J. (as he then was). The applicant is moving this court under section 5-(2) of the **Appellate Jurisdiction Act, Cap 141**, Order Xxxix Rule 1 and section 95 of the **Civil Procedure Code, Cap. 33**. This application is supported by a twelve paragraph affidavit affirmed by the applicant.

The background facts that led to this application are to be found in the affidavit, in the judgment of the District Court (Civil Appeal No. 1 of 2003) dated 19th May 2003 and also in the judgment of this court (by Mandia, J.) which was delivered on 22nd July 2005. The facts are that in 1961 the applicant Amina Athumani Kauzeni inherited a parcel of land from her

father. Upon getting married the applicant went away to live with her husband. In her absence the village government allocated that same parcel of land to the respondent Maimuna Ahmadi. The applicant went back to claim her parcel of land later in 2001 only to find the respondent had already built a house and planted permanent crops like cashew nut trees, coconut palms and oranges.

The applicant went to the Primary Court of Chalinze (Civil Case Number 19 of 2001) to sue for recovery of that land. The applicant lost. The trial primary court found that because the respondent had been in continuous and adverse occupation of the land the doctrine of adverse possession operated in favour of the respondent. The aggrieved applicant filed an appeal to the District Court of Bagamoyo. The district court upheld the decision of the primary court. Dissatisfied, the applicant preferred a second appeal to this Court (PC Civil Appeal No 167 of 2004) wherein Mandia, J. (as he then was) found that since the applicant's memorandum of appeal did not challenge the findings of the trial primary court and the district court on the doctrine of adverse possession; the appeal by the applicant to be without merit and dismissed it on 22nd July 2005.

Records further show that the applicant; still dissatisfied, applied for a review of the judgment of this court. But this court found that the application for a review was in reality an attempt to appeal to this same court against the decision of this same court. As result on 21 February 2006, this court struck out that application for a review.

Reasons that occasioned delay to file his appeal within time are disclosed in paragraph 10 (a) and (b) of the affidavit the applicant took out in support of her application. The applicant contended and submitted that she was sick and hence could not lodge his application on time. The applicant further claims that she was misdirected by a High Court official to seek legal aid which delayed her till when she obtained the services of an Advocate. The applicant furnished further elaboration of these reasons in her written submissions which she filed presented on 18th April 2011.

The law is settled that in applications like this one, courts invariably look at the existence of sufficient reasons explaining the delay in taking action which is required to be taken in a given case. Before I consider whether the applicant has advanced sufficient reasons to explain her delayed application for certification of point of law by this court it is important to determine whether the applicant has employed correct provisions of law to move this court to extend time. I have considered the chamber application and the written submissions submitted on behalf of the applicant. The applicant wants this court to exercise its judicial discretion to extend time but cited inapplicable provisions of the law.

Section 5-(2) of the **Appellate Jurisdiction Act Cap 141** which the applicant has cited has sub paragraphs (a), (b), (c) and (d) which are not concerned with extension of time to seek any order of this court. Similarly, the cited Order Xxxix Rule 1 of CPC is not concerned with extension of time but is about what format appeals should take, and contents of memorandum of appeal. Section 95 of the **CPC** which the applicant has

cited in support of her application governs inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

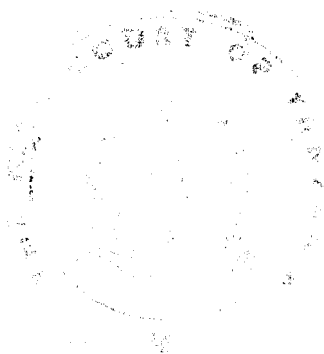
The law in Tanzania is well settled that the inherent power of the court under section 95 of the Code cannot be resorted to where the law has made specific provision governing the particular matter at hand. The correct provision governing application for extension of time is section 14-(1) of the **Law of Limitation Act, Cap 89** which the applicant did not include in her chamber summons seeking an enlargement of time. It is trite law that if a party fails to cite a specific provision of the law upon which his/her application is based and/or cites a wrong provision of the law, the matter becomes incompetent as the court will not have been properly moved.

Given the the failure to move this court by appropriate provision of the law noted above the application is hereby struck out. No order is made on costs.



I.H. Juma
JUDGE
23-05-2011

Delivered in presence of: Amina A. Kanzeni (Applicant).



I.H. Juma
JUDGE1
23-05-2011