

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 51 OF 2020

IN THE MATTER OF THE JUDICATURE AND APPLICATION OF LAWS ACT

AND

IN THE MATTER OF AN APPLICATION BY

EBENEZA KIMARO (a.k.a EBENEZER KIMARO,) ESAYA KIMARO, GEORGE MASASI, KASTO KISULA, RSHID ABUBAKAR KIHANGE, MARTIN LIYANGA, HARISON SARAKIKYA, RICHARD RINGO, ERICK JOSEPH, SULEIMAN SAID, NAETAL NAETAL, BAKARI JUMA, KIPA JUMA, ELIZABETH LUBUVA, ZAITUNI MOHAMED, DEO SAIDI, JAMILA MUSHI

FOR LEAVE TO FILE AN APPLICATION FOR ORDERS OF CERTIORARI

AND

IN THE MATTER OF THE LAW OF LIMITATION ACT

EBENEZA KIMARO

(a.k.a EBENEZER KIMARO).....1ST APPLICANT
ESAYA KIMARO.....2ND APPLICANT
GEORGE MASASI.....3RD APPLICANT
KASTO KISULA..... 4TH APPLICANT
RASHID ABUBAKAR KIHANGE..... 5TH APPLICANT
MARTIN LIYANGA6TH APPLICANT
HARISON SARAKIKYA..... 7TH APPLICANT
RICHARD RINGO..... 8TH APPLICANT
ERICK JOSEPH..... 9TH APPLICANT
SULEIMAN SAID..... 10TH APPLICANT
NAETAL NAETAL..... 11TH APPLICANT

BAKARI JUMA..... 12TH APPLICANT
KIPA JUMA..... 13TH APPLICANT
ELIZABETH LUBUVA..... 14TH APPLICANT
ZAITUNI MOHAMED 15TH APPLICANT
DEO SAIDI..... 16TH APPLICANT
JAMILA MUSHI.....17TH APPLICANT

VERSUS

HAMISA WALII..... 1ST RESPONDENT
AMINA WALII..... 2ND RESPONDENT
ZAINABU WALII..... 3RD RESPONDENT
HONOURABLE MINISTER FOR
CONSTITUTIONAL AND LEGAL AFFAIRS..... 4TH RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 5TH RESPONDENT

RULING

8/11/2021 & 17/12/2021

ROBERT, J:-

The applicants herein seek to be granted leave to apply for prerogative orders of certiorari against the Hon. Minister for Constitutional and Legal Affairs (4th Respondent) to the effect that the order issued by him extending the period of limitation which the first, second and third Respondents herein may wish to commence any suit for a claim based on land which commenced on 1999 against the applicants is extended to 29th December, 2025 on the

ground that the said extension of time offends the provisions of section 44(2) of the Law of Limitation Act and therefore ultra vires.

The application was brought under section 2(2) of the Judicature and Application of Laws Act, Cap. 358 (R.E. 2002) and section 17(2) and 18(2) of the Law Reform Fatal Accidents and Miscellaneous Provisions Act, Cap. 310 (R.E.2002) and supported by joint affidavit of the applicants.

At the hearing of this application the applicants were represented by Mr. Nelson Merinyo, learned counsel assisted by Mr. Lengai Nelson Merinyo, learned counsel whereas the 1st, 2nd and 3rd Respondents were represented by Mr, Salehe Salehe, learned counsel while the 4th and 5th Respondents were represented by Mr. Peter Msetti, Senior State Attorney.

The Respondents, through their respective counsel, opted not to oppose the application. Consequently, Mr. Nelson Merinyo proceeded to pray for leave to be granted for the applicants to apply for prerogative orders of certiorari and the Court to issue an order of stay of proceedings taking place at the District Land and Housing Tribunal as per Rule 5(b) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act.

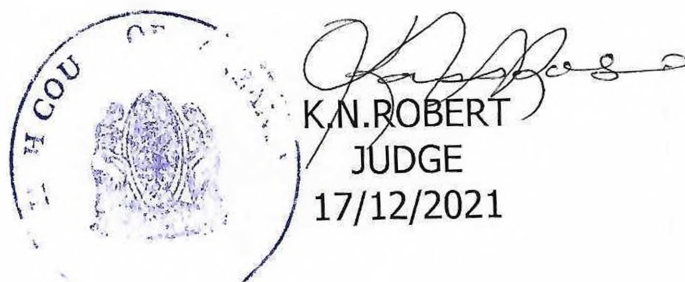
Responding on the prayer for stay of proceedings taking place at the District Land and Housing Tribunal, Mr. Salehe Salehe submitted that there is a preliminary objection raised at the District Land and Housing Tribunal (DLHT) in respect of that matter which has not been determined and therefore staying proceedings of that matter would amount to pre-empting the pending ruling of that objection. However, Mr. Lengai Merinyo opposed this argument on the grounds that an order to stay proceedings cannot affect the ruling of the DLHT as that ruling can be given after the application at the High Court has taken place and determined.

From the submissions made by the learned counsel for the parties, it is apparent that the applicants' prayer for leave to apply for prerogative orders of certiorari is not resisted by the respondents. However, parties do not agree on whether the proceedings at the District Land and Housing Tribunal should be stayed. Considering that an application for judicial review cannot be made unless leave to file such an application has been granted by the Court and given that this application met the requirements of the law and stood uncontested, at least in respect of the prayer to apply for certiorari, this Court finds no reason not to grant the prayer made.

With regards to the prayer for stay of proceedings at the DLHT, this Court is aware that under Rule 5(6) of the G.N. No. 324/2014 the grant of leave by this Court, if directed by this Court, may operate as stay of proceedings in question until the determination of the application or as otherwise ordered. However, considering the nature of preliminary objection raised at the DLHT to the effect that the said application was filed contrary to section 44 of the Law of Limitation Act, this Court finds it prudent not to stay the proceedings of that application at this stage to allow the determination of that objection. The applicants in this application may have an opportunity to move this Court in respect of that prayer at the time of filing the application for prerogative orders of certiorari if they wish to do so.

That said, this application is allowed, leave is granted for the applicants to apply for prerogative orders of certiorari. Each party to bear its own cost.

It is so ordered.

A circular court seal is visible on the left, featuring a central emblem and the text 'H COU' around the perimeter. To the right of the seal is a handwritten signature in blue ink. Below the signature, the text 'K.N. ROBERT', 'JUDGE', and '17/12/2021' is printed in a sans-serif font.

K.N. ROBERT
JUDGE
17/12/2021