

**IN THE HIGH COURT OF TANZANIA  
(MAIN REGISTRY)  
AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 3 OF 2022  
IN THE MATTER OF APPLICATION FOR ORDERS OF MANDAMUS  
AND CERTIORARI**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO FILE AN  
APPLICATION FOR JUDICIAL REVIEW FOR MANDAMUS AND  
CERTIORARI AGAINST THE REGISTRAR OF TITLES OF THE  
UNITED REPUBLIC OF TANZANIA TO REMOVE A CAVEAT BY THE  
NATIONAL HOUSING CORPORATION AND RELEASE THAT  
ORIGINAL CERTIFICATE OF TITLE NO. 1821 TO THE APPLICANT**

**BETWEEN**

**JEHANGIR AZIZ.....APPLICANT**

**VERSUS**

**THE REGISTRAR OF TITLE.....1<sup>ST</sup>RESPONDENT  
THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

**18 May & 2 June, 2022**

**MGETTA, J:**

In response to the statement of facts and affidavit filed by the applicant in support of his application for leave, the respondents herein filed a joint reply to the statement of facts and counter affidavit accompanied with a notice of preliminary objections to the effect that:

1. The application is fatally defective and untenable for being frivolous vexatious and abuse of court process as he has

alternative means of redress under the provision of section 78 (4) of the Land Registration Act, Cap. 334 R.E 2019.

2. The application is defective for contravening the provision of Order 1 Rule 3 of the Civil Procedure Code, CAP 33 R.E 2019 and rules of Natural justice.
3. The application for leave is hopelessly time barred contrary to **Rule 6 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedures and Fees) Rules, 2014** (hereinafter referred to as the 2014 Rules)

At the very beginning Mr. Gallus Lupogo, the learned state attorney for the respondents, abandoned the second preliminary objection and choose to start with the 3<sup>rd</sup> preliminary objection which, he said if sufficiently proved, shall have the effect of disposing of this application. He submitted that according to **rule 6 of the 2014 Rules** it is a mandatory requirement that application for leave should be filed within six months from the date the cause of action arose, which for that matter, prevented the applicant to repossess original certificate of title, from the 1<sup>st</sup> respondent who is currently retaining it since 2013 and as per the statement of facts as well paragraph 4 of applicant's affidavit. The ground for retaining it given to him by the 1<sup>st</sup> respondent was that there were

court proceedings which refrained the applicant from repossessing it. However, the said court proceedings at High Court Land Division ended on 3<sup>rd</sup> June, 2021.

He insisted that time started to run from 3<sup>rd</sup> June, 2021 when the said court proceedings ended. Counting from that day up to 15<sup>th</sup> February, 2022 when this application for leave was filed is equal to more than eight (8) months, hence the application is time barred. He stressed that even if there were any subsequent negotiation, the same cannot vitiate running of time. He relied his argument to the case of **M/S. P & International LTD Versus the Trustee of Tanzania National Parks (TANAPA)**, Civil Appeal No.265 of 2020 (CA) (Tanga) (Unreported) at page 10, para 2. He finally prayed this application to be dismissed.

Responding to the submission made by the state attorney, Mr Gideon Phares, the learned advocate for the applicant asserted and stressed that the application was brought within time. While joining hands with the submission of Mr. Lupogo that the proceedings which precluded the applicant from having in his possession of the original certificate of title were terminated on the 3<sup>rd</sup> June, 2021. He averred that on 26<sup>th</sup> July, 2021, the applicant wrote to 1<sup>st</sup> respondent requesting to be supplied with his certificate of title, but the 1<sup>st</sup> respondent did not reply to the said letter.

On 21<sup>st</sup> January, 2022 the applicant wrote a reminder letter to the 1<sup>st</sup> respondent, again there was no response. According to him, time started to run from 21<sup>st</sup> January, 2022 when the reminder letter was sent to the 1<sup>st</sup> respondent. He prayed the preliminary objection on time limitation be overruled with cost.

Having heard the learned Counsel for both parties on the issue of time limitation, the main issue here for determination is whether this application was brought within time.

I find it plausible to note at this very early juncture, that the purpose of this application is for the applicant to be granted leave so that he could apply for the orders of certiorari and mandamus against the 1<sup>st</sup> respondent's decision of retaining his original Certificate of Title No. 1821 in respect of Plot No.1169/19 in Ilala Municipal since the year 2013. According to paragraphs 5,6,7 and 8 of the applicant's affidavit, there were court civil proceedings which precluded him from obtaining such title deed from the 1<sup>st</sup> respondent.

However as per paragraph 9 of the applicant's affidavit, the said civil proceedings were dismissed on 3<sup>rd</sup> June, 2021. Therefore, cause of action accrued from the said date when the proceedings precluding him from obtaining his title from the 1<sup>st</sup> respondent, were ended.

According to **section 4 of the Law of Limitation, CAP 89**, the period of limitation accrued from the date on which the right of action for those proceedings ended. In the circumstances, it is on 3<sup>rd</sup> June, 2021. Now, counting from 3<sup>rd</sup> June, 2021 to 15<sup>th</sup> day of February, 2022 when this application was filed, it is more than eight (8) months already passed, which is beyond the prescribed time of six months as per **Rule 6 of the 2014 Rules**. For ease of reference, **rule 6 of 2014 Rules** is hereunder quoted:

*"The leave to apply for judicial review shall not be granted unless the application for leave is made within six months after the date of the proceedings, act or omission to which the application for leave relates".*

The submission made by Mr. Phares, the learned advocate for the applicant, that time started to accrue on the date of the reminder letter the applicant sent to the 1<sup>st</sup> respondent on 21<sup>st</sup> January, 2022 is inconceivable and therefore does not hold water as the said letter did not establish a cause of action. It is sufficing to say that the effect of that letter amounted to a subsequent negotiation as per the case of **M/S P & International LTD** (supra) cited by Mr. Lupogo. Thus, the reminder letter did not act as bar for a running out of the time to file the present

application. For the reasons given herein above, I do accordingly uphold the 3<sup>rd</sup> preliminary objection that the application for leave is hopelessly time barred. As this preliminary objection disposes of the application, I see no need of pondering on the remaining preliminary objection.

At the end, the present application for leave is found time barred; and, is accordingly struck out with no order as to costs.

It is so ordered.

**Dated at Dar es Salaam** this 2<sup>nd</sup> day of June, 2022.



  
**J.S. MGETTA**  
**JUDGE**

**COURT:** This ruling is delivered today this 2<sup>nd</sup> day of June, 2022 in the presence of Mr. Gideon Phares, the learned advocate for the applicant and in the presence of Mr. Gallus Lupogo, the learned state attorney for respondents.

  
**J.S.MGETTA**  
**JUDGE**  
**02/6/2022**