

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 24 OF 2022

(C/F Resident Magistrate Court of Arusha at Arusha in Civil case No. 34 of 2020)

TAZAMA TANZANIA PROPERTY COMPANY.....1ST APPLICANT

NTALAMA STEPHEN EMMANUEL2ND APPLICANT

VERSUS

FAITH ALEXANDER IHANO.....RESPONDENT

RULING

28.06.2022 & 26.07.2022

N.R. MWASEBA, J.

The applicants herein knocked the door of this court in order to be granted the following orders; -

1. That, the Honourable court be pleased to grant the Applicants extension of time to file Appeal out of time to the High Court of Tanzania, in the Arusha Registry at Arusha against the decision of the Resident Magistrate Court of Arusha at Arusha in Civil Case No. 34 of 2020.
2. Costs be provided for.

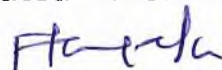


3. Any other and further Orders as the Honourable Court shall deem proper in the circumstances to grant.

The application was supported by an affidavit sworn by Ms Witness Selemani Abubakari, legal representative of the 2nd Applicant (holding Special Power of Attorney) and it was opposed by counter affidavit sworn by the respondent herself.

When the application was called for hearing which was conducted orally on 28.06.2022, Mr Stephano James, learned Advocate represented the applicant whilst Mr Ephraim Kisanga, learned advocate represented the respondent.

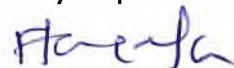
Supporting the application, Mr James told the court that the applicants preferred this application for extension of time so that they may file an appeal against the decision of Resident Magistrate's Court in Civil Case No. 34 of 2020 which was delivered on 29.11.2021. The main reason for delay which was also advanced in their affidavit supporting the application was the late supply of the certified copies of Judgment and decree despite their several reminders made to the court via letters dated 11.01.2022, 25.01.2022 and 21.02.2022 (Annexure A3 and A4 collectively). He submitted further that they received a copy of the judgment in January, 2020 after reminding the court via a letter dated 11.01.2022 and the



decree was served to them on 4.03.2022 (See Annexure A6) following the complaint letter of 1.03.2022 (Annexure A5) and it shows it was certified on 1 .03.2022. Thereafter, as soon as they were supplied with the certified copy of the decree, they filed the present application for extension of time to file an appeal out of time. He prayed for their application to be granted.

Opposing the application, Mr. Kisanga told the court that the applicant has failed to account for each day of delay. Moreover, the application is incompetent before the court since the application was supported by the affidavit of the 2nd applicant only while there are two applicants. The said omission renders the application incompetent. He buttresses his point by citing the case of **The Registered Trustees of St. Trustees of St. Anita's Greenland Schools (T) and 6 Others Vs Azania Bank Limited**, Civil Application No. 168/16 of 2020 (Tanzlilii).

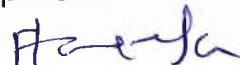
Mr Kisanga submitted further that when they were requesting for a certified copy of judgment and decree, the applicants requested for a copy in respect of Civil Case No. 56 of 2020 instead of Civil Case No. 34 of 2020, thus, they failed to request a proper copy of judgment and decree that's why the trial court did not supply them within the time. More to that Annexure A3 revealed that the applicant's letter was received on 11.01.2022 while the time to appeal has already lapsed. Therefore, his



failure to appeal within the time was not caused by the court but his own conducts. So, he prayed for the application to be dismissed with costs.

In his brief rejoinder, the counsel for the applicants told the court that there is no there is no requirement that all applicants must swear an affidavit supporting the application. **Order XIX of the CPC** only provides that application must be supported by an affidavit and they did so. The cited case of **The Registered Trustees of St. Trustees of St. Anita's Greenland Schools (T) and 6 Others** (supra) is distinguishable in our case since in that case they were dealing with Court of Appeal Rules and not CPC. Besides, since the said point of objection was never raised separately at the earliest stage of the case, he prayed for it to be disregarded by the court. As for the issue of requesting certified copies of judgment and decree from Civil Case No. 56 instead of 34 was just a typographic error and the court were supposed to supplied them the said copies before the lapse of time.

Having gone through the submissions made by the learned counsels for both parties, this court will now determine the merit of the application. However, prior to that it is pertinent to determine the point raised by the respondent's counsel that the application is incompetent for being supported by an affidavit sworn by one applicant while there are two



applicants. Now the issue is whether the application is incompetent before this court.

Order XLIII Rule 2 of the Civil procedure Code, Cap 33 R.E 2019 provides that; -

"Every application to the Court made under this Code shall, unless otherwise provided, be made by a chamber summons supported by affidavit"

As per the cited authority it is crystal clear that in order for this application to be proper it must be made by way of chamber summons supported by an affidavit. The affidavit can be joint affidavit if they are more than one applicant or each applicant may have his/her own affidavit.

In this application, the same has been made by way of chamber summons however, it was supported by an affidavit of the 2nd applicant alone. The deponent did not identify whether she also deposed on behalf of the 1st applicant or not. For ease of reference the first paragraph of an affidavit will be reproduced as follow;

"That, I am the legal representative of the 2nd Applicant (holding Power of Attorney) in the instant application, hence conversant with the facts I am deposing herein."



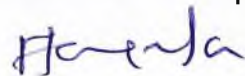
The cited paragraph proved that the applicant deponed on her own and it was not a jointly affidavit. The said paragraph proved the 1st applicant did not file any affidavit to support the application as required by the law.

As it was held in the case of **The Registered Trustees of St. Anita's Greenland Schools (T) and 6 Others (supra) that; -**

"The above stated scenario is not new, because it has been dealt with by the court in its previous decision including the case of LRM Investment Company Limited & Five others v. Diamond Trust Bank Tanzania Limited & Another, Civil Application No. 418/18 of 2019 (Unreported). In that application two affidavits ere filed by the third and fourth applicants on their own behalf and on behalf of the first and second applicants. Therefore, were no affidavits on behalf of the first and second applicants. There were no affidavits on behalf of the fifth and sixth applicants and the court observed thus;

The ailment of the application not being supported by the affidavit of the fifth and sixth applicants rendered the application incompetent"

The allegation made by the counsel for the applicant that the said objection ought to have been raised at the earliest stage of the case is irrelevant since he was accorded a right to be heard and he replied to the same.



In the event, for the foregoing reasons the application is hereby struck out with costs for being incompetent.

It is so ordered.

DATED at **ARUSHA** this 26th day of July, 2006.



N.R. Mwaseba

N.R. MWASEBA

JUDGE

26.07.2022