

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

MISC. CIVIL APPLICATION NO. 6 OF 2022

EZEKIAH TOM OLUOCH.....APPLICANT

VERSUS

CHAMA CHA WALIMU TANZANIA.....1ST RESPONDENT

LEACH H. ULAYA.....2ND RESPONDENT

DEUS G. SEIF.....3RD RESPONDENT

ABUBAKAR S. ALAWI.....4TH RESPONDENT

RULING

19 July & 4 Aug 2022

MGETTA, J:

Early in this year, 2022 Mr. Ezekiah Tom Oluoch, the applicant filed a chamber summons made under **section 14(1) of the Law of Limitation Act, Cap. 89** (henceforth Cap 89) and **section 95 of the Civil Procedure Code Act, Cap. 33** (henceforth Cap 33) praying for extension of time to file a petition on violation of his rights and duties protected by the Constitution of the United Republic of Tanzania as amended; and, to file a claim for compensation and or reparation, exemplary damages and an apology for the alleged violation from the respondents namely Chama cha Walimu Tanzania, Leah H. Ulaya, Deus G Seif and Abubakar S. Alawi. The application is supported by the affidavit sworn by the applicant.

Along with filing counter affidavit through their counsel, the respondents filed a Notice of Preliminary objection that:

1. The application is unmaintained in law for being filed in a wrong forum;
2. The application is misconceived and unmaintainable in law for being brought under a wrong provision of law under which this court has no power to grant the order sought;
3. The application is bad in law for suing improper parties.

In disposing of the raised preliminary objections as well the main application, the parties herein agreed to file written submissions on both. The applicant fended for himself; while, the respondents were represented by Mr. Nesto Adamu Mkoba, the learned advocate. Indeed, each party complied with the schedule of filing written submissions. I now begin with determining the three preliminary objections. If that will not dispose of the application, then I will endeavor to determine the main application. I have read their respective submissions and I wish to deal with the raised preliminary objections straight away starting with the second preliminary objection.

As pointed out herein before, this application is brought under section **14(1) of Cap. 89** and **Section 95 of the Cap. 33**. For ease of reference the cited laws are hereunder quoted. **Section 14 of Cap 89** reads:

"14. (1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

(2) For the purposes of this section "the court" means the court having jurisdiction to entertain the appeal or, as the case may be, the application"

And **section 95 of Cap 33** reads:

"95. Nothing in this Code shall be deemed to limit or otherwise affect the 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".

A glance at the above **section 14 of Cap 89**, it is clearly shown that the intention and purpose of the enactment of that provision, are to limit it to the extension of time for institution of appeal and or filing application to the court that have jurisdiction to entertain such appeal or, as the case may be, to entertain such application. In this application, the applicant intends to file a fresh suit. The provision of **section 14 of Cap 89** does not apply and this court cannot therefore extend time sought by the applicant who intends to file a fresh suit. This position was cemented by this court in the case of **Joachim Adolf Maniglim Nungu Versus CRDB bank Limited**; Misc. Land Case Application No. 409 of 2018, (H C) (DSM) (unreported) referred to me by Mr. Nesto, where after finding that the applicant intended to file or institute a fresh matter, my learned brother proceeded to strike out the application.

Similarly, I would not invoke the inherent powers of this court enshrined under **section 95 of Cap 33** as the same law, I am afraid to say, does not apply in the present circumstances.

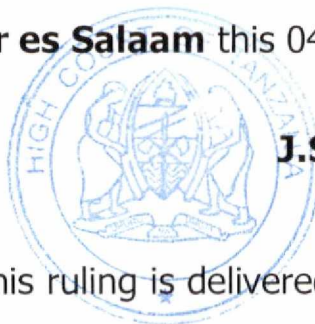
By and large to be specific, I have never come across a provision of law providing for time limit in lodging a petition before this court complaining against violation of human rights. The applicant in his submission has failed to specifically tell this court when the time limitation to file such a petition

started to run and when it will end or be expired. In the same vein, I endeavored to search for the law providing time limit to file a petition but without success. The Law of Limitation as well the Civil Procedure Code Act are inapplicable in this matter. The petition can be filed at any time if the applicant so wishes, even without such application for the purported extension of time.

Having expounded the foregoing, and without wasting time of this court and of the parties, the above finding suffices to dispose of this application. Hence, this application is found incompetent and not properly before this court. It is accordingly struck out with no order as to costs.

It is so ordered.

Dated at Dar es Salaam this 04th day of August, 2022.



J.S. MGETTA

JUDGE

COURT: This ruling is delivered today this 4th day of August, 2022 in the presence of Mr. Nesto Mkoba, the learned advocate for the respondents, but in absence of the applicant for reason known to himself.



J.S. MGETTA

JUDGE
04/8/2022