

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

MISCELLANEOUS LAND CASE APPLICATION NO. 25 OF 2021

(Arising from Misc. Land Application No. 21/2021, Land Appeal No. 14/2017 and Original Land Case No. 29/2013)

KIGOMA UJIJI MUNICIPAL COUNCIL ----- APPLICANT

VERSUS

KIGOMA CINEMA ----- RESPONDENT

RULING

Date:01/03/2022 & 11/03/2022

BAHATI SALEMA, J.:

This ruling is on a preliminary objection raised by the respondent Kigoma Cinema after the applicant Kigoma Ujiji Municipal Council made an application to this Court under Order IX, Rule 9(1) of the Civil Procedure Code, Cap. 33 [R.E 2019] seeking an order to restore Miscellaneous Application No. 46 of 2020.

Before I dispose of the preliminary point of objection raised, I find it trite to give a brief history of what led to this application. On 10/05/2019 the applicant, Kigoma Ujiji Municipal Council, filed a Miscellaneous Land Application No. 21 of 2019 seeking leave to appeal to the Court of Appeal of Tanzania, but on 11/11/2020, the application was dismissed for non-appearance of the applicant.

On 24/12/2020 the applicant filed another application, which is Miscellaneous Land Application No. 46 of 2020 seeking an order to set aside the dismissal order in Misc. Land Application No. 21 of 2019. On 22/06/2021 the application was dismissed for non-appearance by the applicant.

Third time, on 02/08/2021 the applicant approached this court through this application seeking an order to set aside a dismissal order in Misc. Land Application No. 46 of 2020. Before the application could come for hearing, the respondent raised one point of preliminary objection, to wit the applicant's application is time-barred.

Ms. Flavia Francis learned counsel who appeared for the respondent, submitted that Application No. 46/2020 was dismissed on 22/06/2021 and that the applicant filed this application for restoration on 02/08/2021 almost 40 days later. She buttressed her argument that, as per Part 3(4) of the Schedule to the Law of Limitation Act, Cap. 89 [R.E

2019], the applicant ought to have filed this application within 30 days from the date the dismissal order was passed, so the application is out of time.

In reply, Ms. Beatrice Mongi, solicitor started by challenging the correctness of the preliminary point of objection attached to the counter affidavit. It is her submission that the objection ought to have been presented in a separate paper and not within the counter affidavit as the respondent did.

As to the point of objection, Ms. Mongi submitted that it is provided under part 3 (11) of the schedule to the Law of Limitation Act that the time limit for filing this kind of application is 45 days. Further, the applicant received proceedings on 12/07/2021, so counting the days from the date proceedings were received, the applicant was within time.

In a short rejoinder, Ms. Flavia submitted that, the applicant did not cite any law to challenge the correctness of the counter affidavit and that the applicant's application was outside the time prescribed under the law. She thus prayed for the dismissal of the application.

Having heard the arguments and submissions from both sides, the issue for determination here is whether this court should uphold the preliminary objection raised by Ms. Flavia.

The point of objection advanced by Ms. Flavia is that the application is time-barred. With due regard to the Law of Limitation Act, Cap. 89 [R.E 2019] I find that this objection has merit. Part III, subpart 4 of the schedule to the Law of Limitation Act states that,

*"For an order under the Civil Procedure Code or the Magistrates' Court Act to set aside a dismissal of a suit for **thirty days**"*
[Emphasis provided]

Counting from the date Misc. application No. 46/2020 was dismissed to the date this application was admitted, almost 40 days have passed, which is far beyond the thirty-day limit set by the law for application to set aside the dismissal of a suit. I wish to remind the applicant that Part III subpart 11 of the schedule to the Law of Limitation, as it applies only to proceedings under the Magistrates' Courts Act. The proper provision for matters of this kind is part III sub-4.

As to the correctness of the affidavit, I am persuaded by the respondent's argument that, since it was an objection on a point of law, the applicant ought to have stated the law which was contravened so

that the court could consider the objection. Assuming that the counter affidavit filed by the respondent was defective that could wash out the requirement to abide by the law of limitation in filing this application. Still, the applicant would be out of time.

In these circumstances, the preliminary objection is sustained. Consequently, I hereby strike out the application with cost.

A. BAHATI SALEMA

JUDGE

11/03/2022

Ruling delivered under my hand and Seal of the court in Chamber this 11th day March, 2022 in the presence of both parties.

A. BAHATI SALEMA

JUDGE

11/03/2022

Right to appeal is fully explained.

A. BAHATI SALEMA

JUDGE

11/03/2022

