

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 422 OF 2021**

(C/O Misc. Civil Application No. 703 of 2021 originating from Civil Case No. 363 of 1998)

**WEBSTER MOHAMED J. FERUZI & 445 OTHERS ..... APPLICANTS**

**VERSUS**

**THE ATTORNEY GENERAL ..... RESPONDENT**

**RULING**

Date: 23/02 & 01/03/2023

**NKWABI, J:**

This application brought under section 93 of the Civil Procedure Code, Cap. 33 R.E. 2002 now revised edition 2019 for enlargement of the period within which to lodge an application for execution of the decree of the High Court of Tanzania in Civil Case No. 363 of 1998 met a preliminary objection on points of law.

The notice of preliminary objection, duly filed by the counsel of the respondent has two limbs of preliminary objection as follows:

1. That, the application untenable and bad in law for abuse of the Court process.
2. That, the application is res judicata.

The preliminary objection was disposed of by way of written submissions. Submissions for the respondent was filed by Andrew A. Rugarabamu, learned Principal State Attorney, while submissions resisting the preliminary objection was filed by Messrs. Hamza Abraham Senguji and Hilal H. Rashid, both learned advocates.

For the point of objection that this application is an abuse of the court process it was submitted for the respondent that this application for extension of time to file execution to be granted while there is ongoing suit i.e. Execution No. 80 of 2020 in this Court is like trying to ride two horses at the same time. The learned Principal State Attorney cited **East African Development Bank v. Blueline Enterprises Limited**, Civil Appeal No. 101 of 2009 at page 15 where it was observed that:

*"After the dismissal the appellant went back to the same court (Sheikh, J.) and filed an application for extension of time similar to the one which was earlier marked withdrawn! Surely, by the above sequence of events the appellant exhibited what we may safely term as "forum shopping." This was no doubt, an abuse of court process."*

Indeed, in the case of **the Registered Trustees of Kanisa la Pentekoste Mbeya v. Lamson Sikwazwe & 4 Others**, Civil Appeal No. 210 of 2020 CAT (unreported) at page 9 it was held:

*"Forum shopping is not less than abuse of court process. ... riding two horses at the same time is an abuse of court process."*

He prayed the application be dismissed with costs.

In reply submission, Mr. Senguji maintained that the learned Principal State Attorney failed to differentiate the legal terms between extension of time within which to file an application and to enlarge the period of an order granted or fixed by the Court. Mr. Senguji also did not bother to read the law applied to move the Court. He said the submission of the respondent are misleading the Court. It is also stated that it is unfortunate that the applicants filed execution No. 80 of 2020 without seeking the enlargement of the period of the Court order. That application for execution was abandoned by the applicant as it was filed out of the extended time, thus this application.

It was added that the applicants were aware that they have already been granted extension of time in Misc. Civil Application No. 703 of 2017 and now are seeking enlargement of time fixed by the Court that they should file the Application for execution within forty-five days. It is maintained that execution No. 80 of 2020 is not pending in Court, thus no two cases pending in respect of execution in Civil Case No. 363 of 1998. Mr. Senguji insisted there is no abuse of the Court process.

I have carefully considered the objection, it is unfortunate that Mr. Rugarabamu, did not indicate execution No. 80 of 2020 is pending in this Court and is at what stage. I took trouble to ascertain on the JSDS and found that that execution No. 80 of 2020 is not pending in court just as per Mr. Senguji's submission. Thus, the claim that the applicants are riding two horses which is equated to an abuse of the court process does not arise. The 1<sup>st</sup> limb of the preliminary objection is overruled.

On the 2<sup>nd</sup> limb of the preliminary objection which states that the application is res-judicata, it was contended for the respondent that this suit and the orders sought was already determined by the High Court of Tanzania, Dar-es-Salaam District Registry citing paragraph 8 of the affidavit which referred

to Misc. Application No. 703 of 2017 in respect of seeking extension of time within which to file execution was already determined by the High Court of Tanzania which the parties are identical and the Court gave them forty five (45) days from the date of the ruling to file the application for execution and the identity of the subject matter in issue or cause of action and invited me to look at paragraphs 8 and 14 and insisted that the application for extension of time has already been determined by the same Court. It is thus prayed the application be dismissed with costs.

In reply submission, the counsel for the applicant argued that the question of res-judicata does not arise in this case, and all the cases cited by the learned Principal State Attorney are irrelevant to the matter and are not applicable to the facts of the case (they are distinguishable). He prayed the preliminary objection be dismissed with costs and allow Misc. Civil Application No. 422 of 2021 to proceed on merit.

I agree with Mr. Senguji that the learned Principal State Attorney did not appreciate the import of the enabling provision invoked to bring this application, had he appreciated, the 2<sup>nd</sup> limb of the preliminary objection would not have been preferred. What the applicants are applying for in this


application is the duration 45 days granted in Misc. Civil Application No. 703 of 2017 be enlarged (extended). I do not see that the application is res-judicata, the respondent does not indicate that there was ever such application which was granted or dismissed.

Consequently, the preliminary objection is found wanting in merits. The preliminary objection is dismissed. Costs shall abide to the outcome of this application.

It is so ordered.

**DATED** at **DAR-ES-SALAAM** this 1<sup>st</sup> day of March 2023.



  
J. F. NKWABI  
**JUDGE**