

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(MUSOMA SUB REGISTRY)
AT MUSOMA

Misc. LAND APPLICATION No. 18 OF 2023

*(Arising from the High Court of Tanzania (Musoma Sub Registry) in Land
Appeal No. 12 of 2022; originating from the District Land and Housing
Tribunal for Mara at Musoma in Land Application No. 6 of 2019)*

AGINEDA BALISELA APPLICANT

Versus

ABILA BENEDICTOR RESPONDENT

RULING

08.03.2023 & 08.03.2023

Mtulya, J.:

Two (2) decisions of the Court of Appeal (the Court) were cited by two learned minds in this court today regarding determination of time limitation for suits filed out of time in courts and points of preliminary objection raised by learned minds before hearing of matters. According to **Mr. Emmanuel Gervas**, learned counsel for **Agineda Balisela** (the applicant) there is in place current decision of the Court of Appeal (the Court) in **Geita Gold Mining Limited v. Anthony Karangwa**, Civil Appeal No. 42 of 2020, which had interpreted section 21 (2) of the **Law of Limitation Act [Cap. 89 R.E. 2019]** (the Law of Limitation), which requires those spent time in following up their matters in courts to prefer appeals by excluding all the time spent in court. Finally, Mr. Gervas prayed

to withdraw the application contending that his client is within time to prefer an appeal in this court by use of the authority.

The prayer was protested by **Mr. Emmanuel Werema** learned counsel for **Abila Benedictor** (the respondent) contending that it is now established law that an incompetent proceedings, be it an appeal or application, is incapable of adjournment, for the court cannot adjourn or allow to withdraw what is incompetently before it. In order to persuade this court, Mr. Werema cited the authority in **Ghati Methusela v. Matiko Marwa Mariba**, Civil Application No. 6 of 2006. In his submission, Mr. Werema stated that he had already filed a point of preliminary objection resisting the mandate of this court and it has to be determined first before the prayer to withdraw the application.

I have perused the two (2) decisions of the Court and think that there is trouble in deciding whether after the decision of **Geita Gold Mining Limited v. Anthony Karangwa** (supra) all applications of enlargement of time which are currently filed in our courts and still in time to file appeals within time can be withdrawn, even if there are points of law raised. The precedent in **Geita Gold Mining Limited v. Anthony Karangwa** (supra), shows at page 9 that: section 21 (2) of the Law of Limitation Act requires the court to automatically exclude the time spent by the applicant in prosecuting other proceedings against the same party for the same reliefs. On the other hand, the decision of **Ghati Methusela**

v. Matiko Marwa Mariba (supra), at page 2 shows that: it is now established law that an incompetent proceeding, be it an appeal or application, is incapable of adjournment, for the cannot adjourn or allow to withdraw what is incompetently before the court.

In my considered view, the question whether applications currently within time to prefer an appeal or not, but incompetent before courts, they risk struck out orders instead of withdraw. I am aware of the new position in **Geita Gold Mining Limited v. Anthony Karangwa** (supra) regarding time limitation and filing of appeals. However, I think, for prayers of withdraw to be successful, applications before courts must be competent. This stems from the fact that it is now settled practice of our courts of record that an incompetent proceedings is incapable of being adjourned or withdrawn.

There is a large docket of precedents in favour of the position (see: **Theobald Kainam v. The General Manager, KCU Ltd**, Civil Application No. 3 of 2003; **Ashura Abdulkadri v. The Director of Tilapia Hotel**, Civil Application No. 2 of 2005; **Meet Singh Bhachu v. Gurmit Singh Bhachu**, Civil Application No. 144/02 of 2018; **Method Kimomogoro v. Registered Trustees of TANAPA**, Civil Application No. 1 of 2005; **Godfrey Nzowa v. Seleman Kova & Tanzania Building Agency**, Civil Appeal No. 3 of 2014; **Mary John Mitchel v. Sylvester Magembe Cheyo & Others**, Civil Application

No. 161 of 2008; and **Yazidi Kassim t/a Yazidi Auto Electric Repairs v. The Attorney General**, Civil Application No. 552/04 of 2018.

Having said so, I struck out the present application for want of competence without costs.

Ordered accordingly.




F.H. Mtulya

Judge

08.03.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of the applicant's learned counsel Mr. Emmanuel Gervas and in the presence of the respondent, Abila Benedictor and her learned counsel, Mr. Emmanuel Werema.


F.H. Mtulya

Judge

08.03.2023