

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)
AT KIGOMA**

LAND CASE NO. 27 OF 2022

JOEL NTIMBA RUGANO PLAINTIFF

VERSUS

NSEZEYE MELESIANA 1ST DEFENDANT

KIBONDO DISTRICT COUNCIL 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

13/3/2023 & 28/3/2023

L.M. Mlacha,J.

The plaintiff Joel Ntimba Rugano filed this suit on 17/11/2022 against the defendants, Nsezeye Melesiana, Kibondo District Council and The Attorney General (hereafter referred to as the first, second and third defendants) seeking to be declared the lawful owner of plot No. 448 Kumweluro village, Kibondo District Kigoma region, a permanent injunction against the defendants, general damages and costs of the suit. Service to the second and third defendants was effected through the office of the solicitor General at Kigoma but no defence was filed within 21 days as required by the law. When the matter was called for mention on 13/3/2023, Mr Anold Simeo state

attorney sought for extension of time to file the defence saying he could not get the response from the second defendant in time. He agreed that they were served on 13/12/2023 adding that the 21 days of filing the defence expired on 4/1/2023. He added that the additional 7 days expired on 11/1/2023. He prayed for extension of time under section 95 of the Civil Procedure code, Act, cap 33 R.E 2019, (the CPC). Mr. Joseph Mathias who represented the plaintiff objected saying that section 95 of the CPC is not applicable in the situation at hand. He said that section 95 is applicable where there is no specific provision to govern a given situation which is not the case here. Counsel submitted that the present situation is governed by order VIII rule 1 (3) of the CPC which direct the extension of time to be applied within 7 days which follows after the 21 days.

He said that lack of communication with the second defendant cannot change the law.

In reply, Mr. Anold Simeo stressed that section 95 is general and can come in to rescue the situation.

I had time to read order VIII rule 1 (3) of the CPC. It reads as under:



*"The court may, **on application by the defendant before the expiry of the period provided for filing a written statement of defence or within seven (7) days after expiry of that period** and upon the defendant showing good cause for failure to file such written statement of defence, **extend time** within which the defence has to be filed for another **ten days** and the ruling to that effect shall be delivered within 21 days".*
(Emphasis added).

The Law is clear that, extension of time has to be applied within 7 days. The counsel for the second and third defendant could not do so. He has instead applied for extension of time after 60 days. He has avoided rule 1(3) for that matter and is now coming under section 95 of the CPC. He argues that he had no communication with the second defendant. With respect, I think that he is wrong. Mr. Mathias is correct.

We cannot move away from the relevant Law and jump to section 95. This provision is applicable only where there is no proper provision, See, **Attorney General v. Maalimu Kadau & 16 Others.** (CAT), Civil Application No. 51 of 1996. *Pg. 10. where it was said thus;*



*"The application was thus granted by invoking the inherent powers of the court under Section 95 of the Civil Procedure Code, 1999. We must at once point out that this was a misapplication of this section. The reason is not far to seek. It is trite knowledge that the inherent powers of the court provided under this section of the Civil Procedure Code are invoked in situations where the court has authority or jurisdiction to deal with the matter and there is **no specific provision of the law in place.**" (Emphasis added).*

Further, the delay of 60 days is just too long under any imagination.

That said, the application is denied. It is ordered so.



L.M. Mlacha

Judge

28/3/2023

Court: Ruling delivered.



L.M. Mlacha

Judge

28/3/2023