

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

**IN THE SUB-REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 147 OF 2023**

**AVINASH RAMESHKUMAR GALANI ..... 1<sup>ST</sup> APPLICANT**

**KISSHORI MUKESH MAGANLAL ..... 2<sup>ND</sup> APPLICANT**

***VERSUS***

**ANAMIKA AGNIHOTRI..... 1<sup>ST</sup> RESPONDENT**

**RAHUL GANESHAN MUDALIAR ..... 2<sup>ND</sup> RESPONDENT**

**ATVANTIC GROUP (T) LIMITED ..... 3<sup>RD</sup> RESPONDENT**

***(Arising from the consent judgment and decree of this Court in Civil Cause No. 4 of 2022)***

**RULING**

25<sup>th</sup> and 27<sup>th</sup> April, 2023

**KISANYA, J.:**

By a chamber summons made under section 96 of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC), **AVINASH RAMESHKUMAR GALANI** and **KISSHORI MUKESH MAGANLAL**, the applicants, have moved the Court to be pleased to amend its judgment and decree in Civil Cause No. 4 of 2022 by rectifying the name of the 3<sup>rd</sup> respondent and issue a rectified judgment and decree. Supporting the application is an affidavit deposed by Ms. Magreth Joseph Magebbo, learned advocate for the applicant.

Briefly, the factual background that culminated to this application is that; the applicants, were the petitioners in Civil Cause No. 4 of 2022 which was lodged in this Court against the above respondents whose names were as follows:

**"ANAMIKA AGNIHOTRI ..... 1<sup>ST</sup> RESPONDENT**  
**RAHUL GANESHAN MUDALIAR ..... 2<sup>ND</sup> RESPONDENT**  
**ATVANTIC GROUP (T) LIMITED ..... 3<sup>RD</sup> RESPONDENT"**

On 16<sup>th</sup> March, 2022, this Court (Ismail, J) delivered a consent judgment. However, the 3<sup>rd</sup> respondent, **ATVANTIC GROUP (T) LIMITED** was erroneously named in the said consent judgment and decree extracted thereon as **"ATVANTIC GROUP LIMITED (T) COMPANY"**. The applicants became aware of the said anomaly on 10<sup>th</sup> January, 2023 when the parties appeared before this Court (Ismail, J) in Misc. Civil Application No. 582 of 2022. On 26<sup>th</sup> January, 2023, the applicant wrote a letter requesting the Court to rectify the name of the 3<sup>rd</sup> respondent. In her letter dated 27<sup>th</sup> March, 2023, the Deputy Registrar of this Court advised the applicant to lodge a formal application. That is when the applicants filed the present application.

Upon being served, the respondents filed a counter affidavit to contest the application. In addition, their counsel, lodged a notice of preliminary objection on the following point of law:

*1. THAT, this Application is timely (sic) bared.*

At the hearing of this matter, Mr. Jerome Msemwa and Ms. Magreth Maggebo, learned advocates appeared for the applicants, while Mr. Chance Luogal also learned advocate appeared to represent the respondents. Both parties appeared remotely, through virtual court system.

In order to save time, I entertained the preliminary objection and the main application and informed the parties that the ruling on the main application would only be composed if the preliminary objection is found unmerited.

As it has been the practice of this Court, I will deal with the preliminary objection first, before embarking on the determination of the application.

Mr. Luoga prefaced his submission by taking note that the application is made under section 96 of the CPC. He then submitted that the said provision does not specify the time within which to file the

application of this nature. In that regard, he argued that the time is specified under item 21, Part III of the Schedule to the Law of Limitation Act, Cap. 89, R.E. 2019. To support his argument, he cited the case of **Omary Rwechungura Kakweke vs Evarist Magoti**, Misc. Land Application No. 1 of 2022, HCT at Mwanza (unreported). On that account, the learned counsel submitted that the application ought to have been filed within sixty days from from 10<sup>th</sup> January, 2023 when the applicant became aware of the defect in the consent judgment and decree. He therefore, urged the Court to dismiss the application under section 3 of the Law of Limitation Act, for being time barred.

In response, Ms. Magebbo admitted that the anomaly was detected on 10<sup>th</sup> January, 2023. However, she was of the firm view that the application was timeous. Her argument was based on the ground that, on 27<sup>th</sup> January, 2023, the applicants wrote a letter requesting for correction of the judgment and decree. The learned counsel asked the Court to consider that it was on 27<sup>th</sup> March, 2023 when the applicant received the response from the Deputy Registrar advising them to lodge a formal application and thus, the present application which was lodged on 8<sup>th</sup> April, 2023.

Mr. Msemwa added that, in its order date 10<sup>th</sup> January, 2023, this Court acknowledged to have committed an error featuring in the judgment and decree. That being the case, he was of the firm view that the argument that the application ought to have been lodged within 60 days is misconceived and that it would be unfair to dismiss the application for the error committed by the Court.

In his rejoinder, Mr. Luoga submitted that every application is governed by the law. He was of the view that the applicants do not dispute that the application was lodged beyond sixty days. It was his argument that the time started to run from when the applicant became aware of the anomaly and not from the time of receipt of the letter from the Deputy Registrar.

Having considered the submissions advanced for and against the preliminary objection, the issue is whether this application is time barred.

As stated earlier on, this application is an application for correction of judgment and decree. It is governed by the provision of section 96 of the CPC which was also referred to this Court by Mr. Luoga. The said provision stipulates:

*"Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising there from any accidental slip or omission may, **at any time**, be corrected by the court either of its own motion or on the application of any of the parties."*(Emphasis supplied)

Reading from the the bolded expression, it is clear that application for correction of judgment may be filed at any time. In other words, there is nothing to suggest that the application aimed correcting or rectifying clerical or arithmetical mistakes in judgments or decrees or errors arising from accidental slip or omission, is subject to law of limitation as rightly submitted by Mr. Msemwa, this is when it is considered that the error sought to be rectified or corrected was committed by the court and not the parties. I am fortified, among others, by the decision of the Court of Appeal in the case of **Jewel & Antiques (T) Ltd vs National Shipping Agencies Co. Ltd** [1984] TLR 107, where it was held that:

*"On our part we are satisfied that the phrase 'at any time' means just that, 'at any time'. Subject to the rights of the parties, there should be no point in limiting the time in which to correct such innocuous mistakes or errors which are merely clerical or arithmetical with absolutely no effect on the substance of the judgment, decree or order."*

I have considered that the relief sought in the chamber summons is for correction of errors arising accidental in respect of the names of the 3<sup>rd</sup> respondent appearing in the consent judgement and decree. Being guided by the the foregoing position, I hold the view that Mr. Luoga's arguments in support of the preliminary is misconceived. For what I have discussed herein, I find that the preliminary objection is devoid of merit and it is accordingly dismissed.

Now, moving to the main application, Ms. Maggebo and Mr. Msemwa urged the Court to rectify the name of the 3<sup>rd</sup> respondent to read ATVANTIC GROUP (T) LIMITED. To support her prayer, Ms. Maggebo referred the Court to the case of **Christina Mrimi vs Coca Cola Kwanza Bottlers Ltd**, Civil Application No. 113 of 2011, CAT (unreported). Mr. Msemwa moved the Court to order each party to bear its own costs.

Mr. Luoga conceded that the consent judgment and decree have errors in respect of the name of the 3<sup>rd</sup> respondent. However, he objected the the application on the contention that it was incompetent for being time barred.

Citing the case of **Christina Mrimi** (supra), Mr. Msemwa rejoined by arguing that the application for amendment of judgment or decree can be made at any stage.

I have gone through the record of Civil Cause No. 4 of 2022 and this application. Having done so, I am satisfied that 3<sup>rd</sup> respondent in Civil Cause No. 4 of 2022 is **ATVANTIC GROUP (T) LIMITED**. That fact is not disputed in the counter-affidavit filed by the respondents. Given that there was no amendment as to the names of the parties, the name, **ATVANTIC GROUP (T) LIMITED** ought to have featured in the consent judgment and decree. In their counter-affidavit and submission made by their counsel, the respondents do not dispute that there is accidental slip of the pen in the judgment and decree in which the 3<sup>rd</sup> respondent was named "**ATVANTIC GROUP LIMITED (T) COMPANY**" in lieu of **ATVANTIC GROUP (T) LIMITED**. In that regard, I agree with the learned counsel for the applicant that this Court is enjoined to correct or rectify the said anomaly under section 96 of the CPC. Having dismissed the preliminary objection, I find no need of considering Mr. Luoga's contention that the application is incompetent for being time barred.

On the foregoing, the application is found meritorious. In consequence, I hereby grant the application and proceed to order as follows:

1. The consent judgment and decree dated 16<sup>th</sup> March, 2022 in Civil Cause No. 4 of 2022, are corrected or rectified in respect of the

name of the 3<sup>rd</sup> respondent which shall now reads as  
**"ATVANTIC GROUP (T) LIMITED"**. For avoidance of doubt,  
the names of respondents in the said consent judgment and  
decree shall now read as follows:

**"ANAMIKA AGNIHOTRI ..... 1<sup>ST</sup> RESPONDENT**  
**RAHUL GANESHAN MUDALIAR ..... 2<sup>ND</sup> RESPONDENT**  
**ATVANTIC GROUP (T) LIMITED ..... 3<sup>RD</sup> RESPONDENT"**

2. The consent judgment and decree dated the 16<sup>th</sup> day of March,  
2022 in Civil Cause No. 4 of 2022, shall be read together with  
this ruling.
3. Considering that parties are not to be blamed for the anomaly,  
each party shall bear its own costs.

It is so ordered.

**DATED at DAR ES SALAAM this 27<sup>th</sup> April day of 2023.**



**S.E. KISANYA**  
**JUDGE**