

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 200 OF 2023

(Arising from the Misc. Civil Application No. 466 of 2022)

AHMED ABDALLAH SALEH APPLICANT

VERSUS

EUTROPIA JOSEPH TARIMO

(Administrator of the Late Andrew Joseph Tarimo)..... 1st RESPONDENT

SHABANI SELEMANI JUMA.....2nd RESPONDENT

ALLIANCE INSURANCE CORPORATION 3RD RESPONDENT

RULING

27th July, & 29th September, 2023

BWEGOGGE, J.

The applicant herein above named has instituted an application herein praying for an extension of time within which the same may file an application to set aside the dismissal order in Miscellaneous Civil Application No. 466 of 2022 entered by this court on 23rd March, 2023. The application

is brought under the provision of section 14 (1) of the Law of Limitation Act [Cap. 89 R.E 2019] and supported by the affidavits of Ahmed Abdallah Saleh - the applicant herein, Thomas Joseph Massawe - the applicant's advocate and Henry Joseph Mboya - the law assistant.

In tandem with filing the counter affidavit, the 3rd respondent raised the preliminary objections on points of law as thus: -

- 1. The application is an abuse of the court process and incompetent as it has been filed prematurely before this court contrary to Part III, item 21 of the Schedule to the Law of Limitation Act [Cap. 89 R. E. 2022].*
- 2. That the application is incompetent and incurably defective for having been supported by an incurably defective affidavit containing hearsay and opinions.*
- 3. The application is incompetent and incurably defective for being supported by an affidavit of a stranger to the application.*

In substance, the background of this matter as gathered from the pleading filed herein is as follows: The applicant herein was the 2nd defendant in Civil Case No. 125 of 2015 lodged in this court which was heard and decided *exparte*. The execution of the decree of the *exparte* judgment was lodged in this court via Misc. Civil Application No. 606 of 2021. The applicant herein was served with the summons to show cause whereas he engaged Mr.

Thomas Joseph Massawe, learned advocate, to take necessary steps. The applicant's counsel lodged in this court several applications seeking to object the execution proceedings filed herein this court, namely, the application (Misc. Civil Application No 606 of 2021) for stay of execution of exparte decree and the application (Misc. Civil Application No.592 of 2021) for extension of time to file the application to set aside an exparte judgment. The application for extension of time to file the application to set aside an exparte judgment was granted on 10/8/2022 and on 21/10/2022 the applicant filed the application (Misc. Civil Application No. 466 of 2022) to set aside exparte judgment. On 16th March, 2023 the applicant travelled outside the country leaving the matter in control of his counsel. On his return, he found that the application had been dismissed for want of prosecution.

The applicant requested to be supplied with the dismissal order so that he can file an application to set aside the dismissal order. Allegedly, the applicant was supplied with the dismissal order belatedly. Hence, this application.

The applicant was represented by Mr. Thomas Massawe, learned advocate, whereas the 3rd respondent was represented by Mr. Allan Nanyaro, learned

advocate. The 1st and 2nd respondents absconded to appear in court; hence, the matter was heard in their absence. The counsel herein made their arguments by written submissions as hereunder recounted.

In substantiating the 1st limb of the advanced preliminary objections, Mr. Nanyaro, argued that, this application is an abuse of the court process and incompetent due to the fact that it was prematurely brought before this court. That Part III, item 21 of the Law of Limitation Act sets sixty days as the time limit, should an applicant intend to set aside a dismissal order. That from the date the impugned ruling was delivered the applicant had sixty days to set aside the same. The impugned order was delivered, on 23rd March, 2022, whereas the relevant order was availed to the applicant on 3rd May, 2022, which means the applicant had 18 days out of sixty days to set aside the dismissal order. However, the same, instead of instituting an intended application, filed the application herein for extension of time. That the applicant was within time and had all necessary documents in his possession but he proceeded to file the application herein for no reason.

Further, the counsel charged that section 14(1) of the Law of Limitation Act is not applicable in the circumstances of this case and applying the same is

an abuse of the court process since the applicant was within time to file the impugned application. In supporting his argument, among others, he cited the case of **Dhirajlal Walji Ladwa and 2 Others vs. Jitesh Jayantilal Ladwa and Another**, Misc. Commercial Application No.62 of 2020, [2023] TZHCcomD. 63. Otherwise, the 3rd respondent's counsel opted to abandon the 2nd and 3rd preliminary objections mentioned herein above.

On the other hand, Mr. Masawe submitted that this application is brought under section 14 of the Law of Limitation Act. That the application to set aside dismissal order is supposed to be brought within 30 days. And section 14(1) of the Law of Limitation Act allows the application for the extension of time to be brought before or after the expiry of the period of limitation prescribed for such application.

Further, the counsel contended that Part III, item 21 is covered under section 14(1) of the Law of Limitation Act. The counsel has also asserted that the case cited by the 3rd respondent is distinguishable from this case as the case herein is brought under section 14(1) of the Law of Limitation Act.

In rejoinder, Mr. Nanyaro reiterated his submission in chief which I find it needless to replicate herein. It suffices to point out that the counsel charged that the applicant's counsel has not cited any provision of the law which set a time limitation of 30 days to set aside a dismissal order. On above accounts, the counsel prayed this application to be dismissed with costs.

The question before this court is whether the preliminary objection raised herein has substance.

The application at hand is brought under provisions of section 14 (1) of the Law of Limitation Act which enjoins this court with power to extend the period of limitation for filing an appeal and, or application, for any reasonable or sufficient cause. The 3rd respondent's counsel objected this application on the ground that the same was prematurely lodged. The counsel likewise charged that the applicant abused the court process on the ground that Part III, item 21 of the Law of Limitation Act sets the time limitation for lodging an application of like nature to be sixty days.

From the outset, I find it pertinent to go through the provision of Part III, item 21 of the Law of Limitation Act. The relevant provision of the law aptly provides:

"Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law - sixty days."

Based on the wording of the above-cited provision of the law, it is clear that when no specific time limitation is provided for in the Act, then the application ought to be lodged within 60 days from the date the order was entered.

As afore stated, the provision of section 14(1) of the law of limitation enjoins this court with power to extend time for the institution of an appeal or an application, beyond the period of limitation either. I am on all fours with the applicant's counsel in that, the law provides in no uncertain terms that the application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application. However, I refuse to purchase his assertion that the time limitation for filing an application for restoration of the application dismissed by this court is 30

days. As rightly observed by the 3rd respondent's counsel, the applicant's counsel didn't direct the mind of this court to any specific law to support his assertion.

To my understanding, Part III, item 4 of the Law of Limitation Act provides for 30 days limitation period for lodging the application setting aside dismissal order entered under the Civil Procedure Code or the Magistrates' Courts Act in respect of a suit. The term "suit" is defined under the interpretation section (section 2) of the act expressly to mean:

"... any proceeding of a civil nature instituted in any court but does not include an appeal or application."

Therefore, as the Civil Procedure Code and the Law of Limitation Act do not specifically provide for the time limitation within which to lodge an application for restoration of the application which has been dismissed, it follows that Part III, item 21 of the Law of Limitation Act should be resorted to. As pointed out earlier, Part III, item 21 of the Act provides the time limitation for lodging the application for restoration of the matters which no specific time limitation is provided for, to be 60 days from the date the order was delivered.

It is an uncontroverted fact that when the applicant was supplied with the impugned dismissal order, the time limitation for filing the intended application had not expired. Therefore, as rightly asserted by the 3rd respondent's counsel, the applicant had clear 18 days to lodge the application for setting aside the impugned dismissal order.

In view of the foregoing, I am of the settled view that since the applicant was in possession of the required court document, was obliged to lodge an application for setting aside the impugned dismissal order not the application for extension of time. For this reason, I find the defence made by the applicant's counsel in that the application for such extension may be made before the expiry of the period of limitation prescribed, patently misconceived in the circumstances of this case.

It has been alleged that the pendency of the matter herein amounts to abuse of the court process. The term "abuse of the court process" is assigned meaning as thus;

"....an improper use of the judicial process by a party in litigation to interfere with the due administration of justice...." See the case of **Starpeco Limited & 3**

Others vs. Azania Bank Ltd & Another,
Miscellaneous Commercial Application No. 11 of 2020
[2020] TZHC ComD 2077.

The term is likewise employed to mean:

"use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process." See the case of **Dhirajlal Walji Ladwa and 2 Others vs. Jitesh Jayantilal Ladwa and Another** (supra).

Based on the foregoing, I am convinced that the applicant's endeavour to lodge the application for extension of time within which to file an application for setting aside the dismissal order entered by this court whereas the same was within time to lodge the intended application was prompted by misconception rather than abuse of court process. There was no intention on part of the applicant to interfere with due administration of justice, as alleged herein. What is apparent is the fact that the application was brought prematurely out of misconception on part of the applicant's counsel.

In view of the foregoing, I find the preliminary objection raised by the 3rd respondent herein with substance in that the application herein is incompetent before this court. I sustain the preliminary objection. The application herein is hereby struck out. The 3rd respondent shall have her costs.

I so order.

DATED at **DAR ES SALAAM** this 29th September, 2023.




O.F. BWEGOGUE

JUDGE