

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 493 OF 2023

(Arising from the Civil Case No.287 of 2019 in the District Court of Kinondoni)

GEORGE AUGUST MINJA

(Administrator of the Estate

of the late **Vicent George Minja**)**APPLICANT**

VERSUS

ELIZABETH PRODENSIVUS MWEREKE.....**RESPONDENT**

RULING

27/04/2023 & 20/06/2023

BWEGOGGE, J.

The applicant above named has instituted an application in this court praying for extension of time within which he can file revision to this court. The application is brought under section 14(1) of the Law of Limitation Act [Cap. 89 R: E 2019] and supported by the affidavits of the applicant herein and his

court and the case was heard *ex parte*. The action succeeded. The trial court ordered 40% of the value of specific properties which were allegedly into the possession of the respondent to be paid to the respondent. The remaining proceeds of the specified properties were left into possession of the applicant, to form part of the deceased estate for the interest of the beneficiaries of the deceased estate. The applicant herein was aggrieved by the decision and orders entered by the trial court. Eventually, he lodged an application to set aside the said *ex parte* judgment in Misc. Civil Application No.226 of 2022 in the District Court of Kinondoni. The application was dismissed on the ground that it was filed beyond the time limitation. The applicant appealed against that decision to this court, by lodging the Civil Appeal No. 241 of 2021. Likewise, the appeal was dismissed on the same ground of time limitation. The applicant herein, in the guise of being the administrator of the estate of the late Vicent George Minja, now seeks revision of the impugned judgment of the trial court. Hence, this application.

The applicant was represented by Mr. Joseph Assenga, learned advocate, whereas the respondent enjoyed the services of Ms. Ndehorio Ndesamburo, the learned advocate. The preliminary objections were argued by way of written submissions.

Minja. The matter is *res judicata* and the applicant is barred to re-litigate the same matter again guised in the capacity of administrator of the estate, because the decisions of this Court and the lower Court had finally and conclusively decided on the matter [**Ester Ignas Luambano versus Adriano Gedam Kipalile**, Civil Appeal No. 91 of 2014, CA (unreported)]. That, even if it is assumed that George August Minja is now suing as administrator of the late Vicent Gorge Minja, he is still barred by the doctrine of *res-judicata* since he is privy to the decrees already entered against George August Minja. The cited the text book of Mulla; The Code of Civil Procedure 17th Edition, Butterworth's at pg. 231, to bring home her point. In the same vein, the counsel argued that all those acts of the applicant are nothing but an abuse of the court processes. The case of **Olga William Mwamyalla vs. Mogas Tanzania Limited & 2 Others**, Land Case No. 8 of 2020, HC (unreported) was cited to bolster the point.

Regarding the third point of preliminary objection, the learned counsel submitted that, the affidavits from applicant's side contained conclusion which is contrary to the law therefore the same should be expunged from the records [**Uganda vs. Commissioner of Prisons Ex parte Matovu**, (1966) E.A 514].

proceedings to which he was not a party. Hence, the only remedy is to seek revision in the proceedings to which he was not a party. The case of **Mohamed H. Nassor vs. Commercial Bank of Africa (T) Limited**, Civil Application No. 161 of 2014, CA (unreported), was cited to buttress the point.

He further submitted that suing or be sued in a representative capacity as an administrator of estates is distinct and different from suing or be sued on personal capacity by one's own name, therefore the applicant in the application for extension of time is new and he has no *locus standi* to appeal in case to which he was not a party in the original case. Hence, at any rate whatsoever, the applicant herein is not, and cannot be a privy to the previous proceedings.

In respect of the third objection, the applicant's counsel conceded to the allegation that there are paragraphs in affidavits, that contain conclusion and legal arguments which are to be expunged but rest of paragraphs contain facts of personal knowledge of the deponents which deponents can personally prove. The case of **Jamal S. Mkumba and another vs.**

Therefore, the respondent's counsel herein has prematurely argued the application before this court in guise of argument for, and against the preliminary objection. I therefore, opt to refrain from determining the matters raised, and instruct the counsel herein to reserve their argument until the hearing of the application herein commences.

Now, I proceed to determine the 3rd and the only valid preliminary objection before this court. That paragraph 10 (a), (b), (c)(i)(ii) and (iii) of the affidavit deposed by George August Minja and paragraph 5(a)(b) and (c) in the affidavit of Joseph Pius Asenga be expunged for they are conclusions, and legal argument contrary to order XIX rule 3 of the CPC.

As afore said, the counsel for the respondent conceded that paragraph 10 (c) (i) of the affidavit of George August Minja and Joseph Pius Assenga contains legal arguments and conclusion. Likewise, he admitted the fact that the paragraph 5 (a) of the affidavit suffers the same defect.

Upon scrutiny, I am on all fours with the counsel for the respondent in that the whole depositions in items (i) (ii) and (iii) of sub-paragraphs (c) of the paragraph 10 of the applicant's affidavit contains arguments and

**Mkumba ana Another vs A.G. & Phantom Modern Transport Ltd vs.
DT Dobie (supra)].**

That said, I find the 1st and 2nd limbs of preliminary objection misplaced. The same are hereby overruled. Otherwise, I find the 3rd limb of the preliminary of objection with substance. It is hereby sustained to the extent explained above.

I so rule.

DATED at DAR ES SALAAM this 20th June, 2023.



A handwritten signature in blue ink, consisting of a large, stylized 'B' followed by several horizontal strokes.

O. F. BWEGOGUE

JUDGE