

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 35070 OF 2023**

*(Arising from the Civil Case No.209 of 2023)*

**ABDULHASNEIN TAYABALI HASSANALI .....APPLICANT**

**VERSUS**

**MUZAFFER KADERBHAI .....RESPONDENT**

**RULING**

*12<sup>th</sup> April, & 19 April, 2024*

**BWEGOGGE, J.**

This is an application for enlargement of time within which the applicant herein may file submissions in support of the preliminary objections advanced in the defence filed by the same in Civil Case No. 209 of 2023 pursuant to the order of this court dated 22<sup>nd</sup> February, 2024. The application is brought under section 93 of the Civil Procedure Code [Cap. 33 R.E. 2019] and supported by the affidavit of Mr. Jerome Joseph Msemwa, the applicant's counsel.

The applicant herein was represented by Mr. Jerome Joseph Msemwa, learned advocate, whereas the respondent was represented by Mr. Carlos Cuthbert, learned advocate. The above-mentioned counsel argued the application herein by oral submissions.

Mr. Msemwa submitted that on the date scheduled for hearing of the objections in the main suit on 22/02/2024, this court was preoccupied with criminal sessions. He reported in court at 10:00 am for hearing of the case. However, he was informed by the respondent's counsel in that the case was adjourned until 04/04/2024 for hearing. That the respondent's counsel in his counter affidavit doesn't dispute the fact that he informed him that the case was scheduled on the next date for hearing of the objections he raised, contrary to the order entered by this court which obliged the parties herein to argue the objections by way of written submissions. That he expected the respondent's counsel to have informed him of the order to file written submissions and the schedule entered by this court. On the contrary, he was kept in the dark until he was served with the reply submission filed by the respondent. Hence, the applicant's counsel charged that the reply submission was filed contrary to the law, as no submission in chief had been filed.

Further, the counsel argued that the preliminary objections on points of law advanced in the main suit raised worthy issues for determination by this court. The counsel enlightened this court that they contest the extension of time to sue granted by the Minister of Constitution and Legal Affairs on the ground that it was made out of time. And he asserted that, among others, the objections are centred on the jurisdiction of this court to preside the suit which necessitates to be attended by this court in the interest of justice.

On the above grounds, the counsel prayed this court to allow the application herein.

Contrarywise, Mr. Cuthbert contended that he informed the senior counsel for the applicant the orders entered by this court and advised him to follow up on the case for further information pertaining to the schedule entered by this court. That the counsel herein being the officer of the court has a duty to diligently follow up on the case he instituted.

Otherwise, the counsel admitted that he filed the submission in reply in compliance of the order entered by this court. He opined that the allegation that they filed the reply submission contrary to the procedure for want of the submission in chief is patently misleading. Likewise, the counsel asserted

that the main suit was properly instituted taking into consideration the current status of the law. He registered his complaint that the application herein further delays the determination of the main suit to the detriment of the plaintiff.

Conclusively, the respondent's counsel prayed this court to consider their submission in reply and enter a ruling in respect of the preliminary objections advanced by the applicant herein.

In rejoinder, the applicant's counsel contended that the respondent's counsel herein has not disputed the fact that the main suit was called before the scheduled time on the ground that there were ongoing criminal sessions attended by this court. He reiterated that the respondent's counsel was required to enlighten him of the schedule entered by this court to file written submissions. That the respondent's counsel, in his counter affidavit, merely deposed that the applicant's counsel was obliged to follow up on the case. That he would have followed up on the case if the respondent's counsel had not misled him in that the case was scheduled for hearing on 04/04/2024. The counsel reiterated his prayer in that this application be allowed.

The question for determination is whether the application herein has substance.

*Ab initio*, I find it pertinent to state that the provision of section 93 of the CPC enjoins this court with power to enlarge any period fixed for doing any prescribed act; and in its discretion, this court may enlarge such period even though the period previously fixed elapsed. Likewise, it is the law of this land that in the application for extension of time, the applicant is obliged to furnish sufficient and, or good cause for failure to take the intended legal action within the prescribed period. See the cases; **Attorney General vs. Oysterbay Villas Limited & Another** (Civil Application 299 of 2016) [2017] TZCA 146; **Dar Es Salaam City Council vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987 (unreported); and **Tanga Cement Company Limited v Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (unreported) among others, in this respect.

Primarily, I find it pertinent to state the following matters; **first**, it is not disputed that the main suit was scheduled for hearing of preliminary objections advanced by the applicant herein on 22/02/2024 at 10:00hrs; **secondly**, it is likewise, uncontroverted fact that on the respective date the

suit was brought for hearing, this court was preoccupied with ongoing criminal sessions. Hence, the case was brought earlier than the scheduled time with a view of entering necessary orders whereas the respondent's counsel, who was present, appeared in court; **thirdly**, with a view to expedite the determination of the preliminary objections, this court entered an order for the parties to the suit to argue the preliminary objections by written submissions as per the schedule provided.

Now, it is the argument made by the applicant's counsel that he met the respondent's counsel who briefed him of the next date scheduled for hearing of the preliminary objections whereas he trusted him to the letter and leaned back awaiting for the scheduled date. Later on, he was served with submission in reply lodged by his adversary. Hence, he preferred this application.

As aforementioned, the respondent's counsel hit the sky denying to have misled the applicant's counsel, contending that he had communicated all details pertaining to the order entered by this court. Otherwise, the counsel contended that the applicant's counsel had a duty to follow up on the case as an officer of this court. The counter affidavit filed herein speaks volumes of what was submitted by the counsel herein.

I have anxiously attended the submissions made by the counsel herein and the facts deposed in their respective affidavits filed hereto. And I have the following observations to make. **One**, based on the contentions made by both counsel herein, I am not in the position to discredit any of them on what they deposed in their affidavit and, or submitted in this court. **Two**, it is noteworthy that on the respective date the main suit was brought before this court earlier than the scheduled time for the purpose of entering necessary orders to be complied by parties herein to expedite determinations of preliminary objections advanced by the applicant as this court could not hear the case. Hence, the applicant's counsel has justification for his non-appearance. It is in this regard that I accord him the benefit of doubt, lest I deny him his right to be heard. **Three**, among the objections advanced by the applicant in the main suit, is a plea that this court has no jurisdiction to preside the suit which was instituted beyond the statutory period. It is settled law that the jurisdiction of the court is the bedrock of the court's authority to entertain the case. See the cases; **Salim O. Kabora vs. TANESCO & 2 Others** (Civil Appeal No. 55 of 2014) [2020] TZCA 1812, **Commissioner General Tanzania Revenue Authority & Another vs. Milambo Limited** (Civil Appeal 62 of 2022) [2022] TZCA 348, **Fanuel Mantiri**

**Ng'unda vs. Herman Matiri Ng'unda** [1995] TLR 155 and **Tanga Cement Public Company LTD vs. Fair Competition Commission** (Civil Application No. 10 of 2018) [2021] TZCA 98. Hence, the jurisdiction to preside the suit is a pertinent issue to be determined earlier, lest the proceedings and decision of this court amount to nullity for want of jurisdiction.

Based on the foregoing observations, I am constrained to find the application herein with substance. I hereby grant the same. The extension of 7 clear days is hereby granted to the applicant to file the submission in chief.

I so order.

**DATED at DAR ES SALAAM** this 19<sup>th</sup> April, 2024.



O. F. BWEGOGÉ

**JUDGE**