

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.698 OF 2020
(Arising from Land Case No.124 of 2016)**

BEATRICE GREYSON MBAGA APPLICANT

VERSUS

ONGUJO WAKIBARA NYAMARWA1ST RESPONDENT

TEMEKE MUNICIPAL COUNCIL2ND RESPONDENT

REGISTRAR OF TITLES3RD RESPONDENT

COMMISSIONER FOR LANDS 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

Date of last Order: 06.07.2021

Date of Ruling 13.07.2021

A.Z.MGEYEKWA, J

The applicant has lodged an application which is brought under section 95 and Order IX Rule 6 (1) of the Civil Procedure Code Cap.33 [R.E 2019]. The Order sought is for setting aside the dismissal order by Honourable

Rumanyika, J dated 20th November, 2020 and to restore the Land Case No. 124 of 2016.

The application is supported by an affidavit deposed by Beatrice Greyson Mbagu, the applicant. The application has encountered formidable opposition from the 2nd, 3rd, 4th, and 5th respondents and has demonstrated his resistance by filing joined counter affidavit deposed by Baraka Nyambiti, learned State Attorney. The application stumbled upon a preliminary objection. Mr. Baraka Nyambiti, learned State Attorney for the 2nd, 3rd, 4th, and 5th respondents pooped up two points of preliminary objections as follows:-

- 1. The Application is time barred for contravening Order of the Court dated 20th November, 2020 dismissing the Land Case No. 124 of 2016.*

When the matter was called for mention before this court on 24th March, 2021, by the court order, the preliminary objection was argued by way of written submissions whereas, the learned State Attorney for the 2nd, 3rd, 4th and 5th respondents Advocate filed her submission in chief on 08th April, 2021 and the first and second respondents' Advocate filed his reply on 21st April, 2021 and the rejoinder was filed on 06th July, 2021 the day when the matter

was called for mention. The applicant had the legal service of Mr. Iddy Rashid, learned counsel whereas the 2nd, 3rd, 4th and 5th respondents had the legal service of Ms. Happiness Nyabunya, learned State Attorney. The ruling of the court was set on 13th July, 2021.

In his written submission Ms. Happiness argued that this court on 20th November, 2020 ordered the applicant to file an application for restoration of its suit on or before 25th November, 2020. She went on to state that the applicant did not comply with the court order. Instead the applicant wasted the time of the court. She argued that failure to comply with Court order the consequence is to dismiss the application. Ms. Happiness fortified her submission by referring this court to the case of **Yussuf Vuai Zyuma v Mkuu was Jeshi la Ulinzi TPDF and 2 others**, Civil Appeal No.15 of 2020 (unreported).

Ms. Happiness did not end there, she referred this court to the court order (Annexure A2) and argued that the applicant's time to re-file the instant application lapsed on 25th November, 2020. She went on to state that the fact that the application was filed thereafter means it was filed out of time, the same is hopeless time barred for being lodged after expiring the leave of this court. She added that the applicant delayed 10 days to file the instant

application as a result the application is as good as if it was never lodged in court.

On the strength of the above submission, Ms. Happiness beckoned upon this court to dismiss the application with costs for being instituted out of time.

Responding to Preliminary Objection, the applicant filed a written submission. She lamented that she did not contravene the order of the court dated 20th November, 2020. The applicant stated that she filed the instant application immediately after the issuance of the court order. The applicant went on to state that she also lodged another application which is interrelated with the instant application.

The applicant further stated that she was supplied with the court order on 26th November, 2020, and immediately instructed his Advocate to file an application for restoration the Land Case No.124 of 2016. She added that the time limitation to set aside the dismissal order is 30 days thus she complied with the statutory requirement of filing the same within 30 days. To support her argumentation she referred this court to the First Schedule Part III Item No.4 of the Law of Limitation Act, Cap.89 [R.E 2019]. The applicant strongly complained that she did not intend to waste the time of the court and the same is not a point of law. To support her position she cited the case of

Mukisa Biscuits Manufacturing Company Ltd v West end Distributors (1969) EA 696 and the case of **Board of Trustee of Good Neighbours Tanzania v Doreen Augustine Dominic T/A Dawson Water Point Drilling**, Commercial Case No. 69 of 2019, High Court – Commercial Division (unreported).

On the strength of the above submissions, the applicant beckoned upon his court to overrule the preliminary objection for being short of merit with costs.

In her rejoinder, Ms. Happiness reiterated her submission in chief. Insisting, she stated that the applicant was aware that this court issued an order in regard to Land Case No. 124 of 2016 delivered on 20th November, 2020. She insisted that this court ordered that for expedient and timely dispensation of justice the applicant if she felt prejudiced by the court decision had to make an application and lodge the same not later than 25th November, 2020. Ms. Happiness went on to state that the applicant did not comply with the court order thus she has nobody to blame.

On the strength of the above argumentation, the learned counsel for the respondent beckoned upon this court to dismiss the suit with costs.

Having heard the submission of both learned counsel for and against the preliminary objections, I have to say that the issue for determination is *whether the preliminary objections are meritorious.*

I have gone through the court records and without wasting the time of this court, I have to say from the outset that the preliminary objection raised by the learned State Attorney cannot stand. The order of this court dated 20th November, 2020 which was issued by my learned brother Hon. Rumanyika. J is very clear that the suit was dismissed for non-appearance on 20th November, 2020, and the applicant was ordered to restore Land Case not later than 25th November, 2020. However, the applicant filed the instant application for restoration on 09th December, 2020 a lapsed of approximately 16 days.

Therefore, I am in accord with the learned State Attorney that the instant application is lodged out of time and this by itself makes the current application incompetent before the court as it was filed out of the time set by this court and without leave. In the case of **Ivan Mankobrad V. Miroslav Katik and Another**, Civil Case No. 321 of 1997(unreported) at Dar es Salaam HC Registry, the court held that:-

"...court orders are made with the purpose which is to regulate proceedings".

The court went on to say that:-

"They are meant to command parties to act within a time frame fixed by the court. If the parties are to act in total disregard to those orders then court business will be rendered uncertain, and that will not be good for the efficient administration of justice."

Needless to say, it has been borne in mind that anything filed out of time ordered by the court and, without leave, is to be disregarded. This by itself makes this matter incompetent before the court.

In the circumstances and for the reasons advanced above, I uphold the preliminary objection and proceed to dismiss the instant application with costs.

Order accordingly.

DATED at Dar es Salaam this 13th July, 2021.


A.Z.MGEYEKWA
JUDGE
13.07.2021

Ruling delivered on this 13th July, 2021 whereby Ms. Happiness Nyabunya, learned State Attorney appeared for the 2nd, 3rd 4th and 5th respondents and Mr. Iddy Rashid, learned counsel appeared for the applicant.




A.Z.MGEYEKWA

JUDGE

13.07.2021