

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO.916 OF 2017**

**EQBAL EBRAHIM.....APPLICANT**

*Versus*

**ALEXANDER WAHYUNGI.....RESPONDENT**

**RULING**

*Date of Last Order: 06.04.2018*

*Date of Ruling: 18.05.2018*

**S.A.N.WAMBURA, J:**

The applicant **Eqbal Ebrahim** made this application under Section 78 and Order XLII Rule 1(1) (a) of the Civil Procedure Code for the following orders;

- (a) That the Land Case No. 81 of 2012 is res judicata because the case between the two parties on the same property was determined in the Civil Case No. 69A of 1999 on the 1<sup>st</sup> day of August 2000 before Hon. Mwakipesile RM.*
- (b) That the Respondents as the Plaintiff in Land Case No. 81 of 2012 who on the 26<sup>th</sup> day of August 2003 had filed a Chamber Summons accompanied with an affidavit at Ilala District Court seeking to set aside the Ex parte*

*judgment delivered in Civil Case No. 69A of 1999 which struck out on 15<sup>th</sup> day of May 2004 by a ruling delivered by Hon. Kabuta RM with Respondent (who was then the Applicant) being present in Court he lied to this Court by not revealing the truth.*

The applicant was represented by Capt. Bendera Advocate.

Before the hearing of the application, Mr. Isaac Nassor Tasinga Counsel for the respondent **Alexander Wahyungi** raised preliminary objections on a points of law to the effect that;

- i. That the application is filed out of time.*
- ii. That the application being filed out of time it is presented to this Honourable Court without due leave of the court.*
- iii. That this application is not fit for Review as envisaged by Order XLII Rule 1(b) of the Civil Procedure Code.*
- iv. That the judgment/ decree sought to be reviewed being made ex parte, the applicant has misdirected himself to resort for remedy of review.*

With leave of the court, the preliminary objections were argued by way of written submissions. Both parties filed their written

submissions as scheduled. I am thankful to them as the submissions have been helpful in the writing of this ruling.

Upon perusal of the preliminary objections raised by Mr. Tasinga, I find that it is prudent to first look on the first ground of objection as it touches the jurisdiction of this court which is whether this court has jurisdiction to entertain the application which is filed out of time.

Submitting on this ground of objection, Mr. Tasinga contended that the application was filed out of time as prescribed by the law under Part III Rule 3 of the Schedule of the Law of Limitation Act Cap. 89 R.E 2002. He was of the view that the applicant was supposed to file his application before the expiration of thirty days as the mandatory requirement of the law since the decision subject to this review was delivered on 19<sup>th</sup> June 2015 while this application was filed on 18<sup>th</sup> October 2017 which is almost 800 days. He therefore prayed to this court to dismiss the application with costs.

In response Capt. Bendera averred that the application was filed within the time. He contended that the applicant became aware of the announcement of the judgment on 19<sup>th</sup> September 2017 when he was attending to his property at Plot. No. 504 whereby he was informed that there was a matter in court and after making inquiries he was informed that the matter was delivered on 19<sup>th</sup> June 2015. Capt. Bendera was of the view that the period from the day the applicant received notification of the judgment up to the day he filed this application is within the period of thirty days as for stipulated by the Schedule under Part III Rule 3 of Cap. 89 R.E 2002.

The record shows that the instant application was filed in this Court on the 18/10/2017 whereas the decision sought to be reviewed was issued on the 19<sup>th</sup> June 2015.

Mr. Tasinga argued that Part III Rule 3 of the Schedule of the Law of Limitation Act Cap. 89 R.E 2002 has fixed thirty (30) days as the period within which to file an application for review. I entirely agree with him that the time limit for filing an application for

review is thirty (30) days from the date when the decision was delivered as provided under Part III Rule 3 of the Schedule of the Law of Limitation Act (supra).

I am of the considered view that at any rate after the expiry of such period of thirty days, an application for review could not automatically be filed, unless and otherwise a party intending to review the decision has first lodged an application for and has been granted with an extension of time within which to file an application out of time.

The reasons established by the learned counsel for the applicant that the computation of time limit starts from the period when the applicant received notification of the judgment on 19<sup>th</sup> September 2017 is misconceived and not be supported by any law.

It is my belief that the reasons adduced by the applicant to show why he was late to file this application in time could be useful to

him if he could establish them on the application of extension of time and not at this application.

This decision was followed in Civil Application No. 42 of 2000, **NBC Holding Corporation and Another v Agricultural & Industrial Lubricants Supplies Ltd. And two others** (unreported) by prescribing a time-limit of sixty (60) days within which an application for revision has to be instituted.

In the case of **Dominic Nkya & Another Vs Cecilia Mvungi & Others Civil Application No. 3 "A" of 2006** (unreported) the Court of Appeal held and, I quote;

*"This application was brought about five months after the delivery of the decision sought to be revised, **and the first applicant did not seek for and obtain an enlargement of time before instituting the application, it is clearly time-barred....."***

(Emphasis is mine).

For the foregoing reasons, the first ground of objection is sustained and disposes the whole application. I have no reason

to labour much on other grounds of the preliminary objection.

The application is accordingly struck out with costs.

It is so ordered.

  
**S.A.N WAMBURA**  
**JUDGE**

**18.05.2018**