

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 638 OF 2016

EVANS BUHIRE.....1ST APPLICANT
ANNE MOHAMED.....2ND APPLICANT
ROSE ROEZER.....3RD APPLICANT
ROBERT C. SHAURI.....4TH APPLICANT

VERSUS

NATIONAL INSURANCE OF TANZANIA.....1ST RESPONDENT
BARAZA LA KISWAHILI LA TAIFA.....2ND RESPONDENT

R U L I N G

P.M. Kente, J.

On 4th June, 2018 when this matter called for hearing the applicants through their counsel, Mr. Rwehumbiza and Mr. Luguwa prayed for leave to amend the application so that the same could tally with their prayers.

In reply counsel for the respondents, Mr. Nsimba objected the prayer made by the applicants' counsel and argued that the error was supposed to be identified and addressed soon after the application was filed. He added that it is now almost two years from the date when the application was filed in court and therefore the

applicant cannot correct an error at the time when the matter was set for hearing. He argued that parties are bound by their pleadings and therefore the prayers by the applicants' counsel to amend the application should not be granted. He supported his argument by making reference to the case of **Juma Jaffa Juma V. Manager BP2 Ltd & Others, Civil Appeal No. 7 of 2002(Unreported)**, CAT sitting at Zanzibar.

The question for determination is whether this court can at belated stage grant the applicant's prayer to amend the Chamber Summons so as to meet the applicants' prayers.

Upon considering the submission made by both parties, I am settled in my mind in the first place that the application before this court is vague as the substantive prayer sought in the chamber summons does not reflect the ultimate aim of the application itself. The application seeks interim orders restraining the respondents from evicting the applicants but the prayer **inter- partes** states otherwise in that it implores this court to grant orders for the applicants' eviction.

Needless to say, an error noted in this application was made by an advocate through either an over sight, negligence or lack of diligence. It is however, part our law that lack of diligence or negligence on the part of counsel is not an excuse. The present application is vague and meaningless in a sense that the prayer sought in the chamber summons does not reflect the aim for which the chamber summons was intended.

It is a fact that the matter was filed in court in 2016, and that the applicants' counsel for more than two years could not be able to discern the error and cure it or cause it to be cured at the earliest stage until when the application was set for hearing on 4th June, 2018. Counsel for the applicants are now seeking to amend the Chamber Summons but it is my opinion that the applicants' prayer is just an afterthought because on 28th May, 2018 when the matter was set for hearing, it was Mr. Nsimba learned counsel for the respondents who conceded (off the record) to the prayer sought in the chamber summons. That is when the applicants' counsel learnt that they had committed an error which they are now seeking to correct though belatedly.

According to **Part III Item 21 of the Law of Limitation Act, Cap 89 R.E. 2002** it is provided that:-

“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 the time limit is sixty days”

In the instant situation, counsel for the applicants have made this application after expiry of two years from the date when this case was lodged in court. They have neither sought nor obtained leave of the court to apply or make the application out of time. What is more counsel for the applicants have not cited to this court which law governs their prayer to amend the chamber summons.

For the above reasons, I am constrained to hold that no sufficient reason has been shown to move the court to allow the applicants to amend the chamber summons, at this stage. That said, the prayer sought is rejected. Consequently, the application is struck out for being vague. Costs to follow the event.

Dated at Dar es salaam this **18th** day of **June, 2018**.


P.M. KENTE,
JUDGE