

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.688 OF 2020
(Arising from Land Case No.124 of 2016)

ELIZABETH SALEHE SAIDI APPLICANT

VERSUS

ENTREPRENEURS FINANCIAL CENTRE1ST RESPONDENT

AHMAD ABDULRAHIM MABWE2ND RESPONDENT

**MEM AUCTIONEERS AND GENERAL
BROKERS LIMITED 3RD RESPONDENT**

HADIJA ALI MWALIMU 4TH RESPONDENT

CRECENSIA WASAMA MWITA 5TH RESPONDENT

RULING

Date of last Order: 05.08.2021

Date of Ruling 05.08.2021

A.Z.MGEYEKWA, J

The applicant has lodged an application which is brought under section Order XLII Rule 1 (b), 4 (2), and section 95 of the Civil Procedure Code Cap.33 [R.E 2019]. The Order sought is for setting aside the order of this

court by Honourable Wambura, J in Land Case No. 102 of 2013 dated 13th June, 2016.

The application is supported by an affidavit deponed by Elizabeth Salehe Saidi, the applicant. The application has encountered formidable opposition from the 1st respondents and has demonstrated his resistance by filing a counter affidavit deponed by Ahmed Hassan, the 1st respondent. The application stumbled upon a preliminary objection. Mr. Cleoplace, learned counsel for the 1st respondent pooped up a point of preliminary objection as follows:-

That the application is hopeless time barred.

When the appeal was placed before me for hearing on 11th March, 2021, both parties were aware that the matter was set for hearing, however, the applicant nor her Advocates did not enter appearance. In prosecuting this application Mr. Cleoplace James learned counsel represented the 1st respondent.

Following the prayer by the 1st respondent's Advocate to proceed *ex-parte* succeeding the absence of the applicant who was aware that the matter was called for hearing, this court granted the prayer for Mr. Cleoplace to proceed hearing the preliminary objection *ex-parte* against the applicant.

Mr. Cleophace started his onslaught by stating that the application is time barred. He claimed that the present application originates from Misc. Application No. 104 of 2019 dated 30th October, 2019 by Hon. Maige, J on which the applicant was granted 30 days to set aside the order of Hon, Wambura, J in respect to Civil Case No. 102 of 2013. He argued that the instant application was preferred by the applicant on 30th December, 2020 instead of being filed on or before 31st November, 2019. Mr. Cleophace contended that the instant application contravenes the order of this court. He complained that the law of limitation has no sympathy. Fortifying, his submission he referred this court to **Bibi Merick and another v Philimon Merick**, Probate Appeal No. 04 of 2020. He further contended that if the application is time barred the remedy is to dismiss the same. To buttress his position Mr. Cleophace referred this court to section 3 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019].

Insisting, he contended that the applicant has failed to comply with the order of this court. He cited the case of Tanzania Breweries Ltd v Edson Dhobe and 19 Others, Misc. Civil Application No. 96 of 2020. He added that the time stated to run from 30th October, 2020 when the Ruling was delivered and the dateline was 30 Novemebr, 2020, however, the applicant filed the instant application on 30th December, 2020 beyond time limit. Fortifying his submission, Mr. Cleophace referred this court to the

case of **Philip Tilya v Vedastina Bwogi**, Civil Application No. 546/01 of 2017.

On the strength of the above submission, Mr. Cleoplace beckoned upon this court to dismiss the application in accordance to section 3 (1) of the Law of Limitation Act with costs.

Having heard the submission of the learned counsel for the 1st respondent, I have to say that the issue for determination is *whether the preliminary objection is 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 counsel has merit. The order of this court dated 30th October, 2020 which was issued by my leaned brother Hon. Maige. J granted the applicant's application for extension of time and the applicant was ordered to file the same within 30 days. However, the applicant filed the instant application to set aside the order of this court dated 13th June, 2016 in respect to Civil Case No.02 of 2013 on 1st December, 2020, a lapsed of approximately 3 days.

Therefore, I am in accord with the learned counsel for the 1st respondent 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. 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."

The Court of Appeal of Tanzania in the case of Tanzania Breweries Ltd (supra) held that:-

“ Court orders should be respected and complied with. Court should not condone such failure. To do so is to set a bad precedent and invite chaos. This should not be allowed to occur....”

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 without costs.

Order accordingly.

DATED at Dar es Salaam this 5th August, 2021.


A.Z.MGEYEKWA

JUDGE

05.08.2021

Ruling delivered on this 5th August, 2021 in the presence of Mr. Cleoplace James, learned counsel for the 1st respondent.


A.Z.MGEYEKWA

JUDGE

05.08.2021

