

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

MISC. LAND APPLICATION NO. 182 OF 2021

(From the decision of High Court of Tanzania Land Division in Misc. Land Appeal No. 25 of 2017 dated 13th October, 2017)

ZEBRONE MUHUMHAAPPLICANT

VERSUS

SYBEGELE AYUBU RESPONDENT

Date of Last Order: 24/06/2021

Date of Ruling: 31/08/2021

R U L I N G

MANGO, J.

By way of Chamber Summons made under Section 93 of the Civil Procedure Code, [Cap. 33 R. E. 2019] the Applicant prays for the following orders: -

- 1. That this Honorable Court pleased to enlarge time within which the Applicant can file for leave to Appeal to the Court of Appeal of Tanzania;**
- 2. That this Honorable Court be pleased to enlarge time within which the Applicant can file Application for certificate certifying that there is a point of Law involved in the Appeal before the Court of Appeal of Tanzania;**
- 3. That costs to follow events.**

The Application is supported by an Affidavit sworn by Mr. Pascal G. Chuwa, Advocate for the Applicant.

The Respondent contests the grant of the Application. He filed a counter Affidavit sworn by his Advocate, Mr. Thadei Agothan Hyera. He also filed a Notice of Preliminary Objection on point of Law that, this Court has no jurisdiction to grant orders sought by the Applicant as the same are not prescribed or provided under the Civil Procedure Code [Cap. 33 R. E. 2019].

On 24th June, 2021 when this matter was called for hearing, Mr. Pascal Chuwa, learned counsel, appeared for the Applicant while Mr. Thadeus Hyera, learned advocate, appeared for the Respondent.

Submitting in support of the Preliminary Objection, Mr. Chuwa challenged the citation of Section 93 of the Civil Procedure Code as an enabling provision in this Application. He argued that, Application of Section 93 of the Civil Procedure Code is limited to orders granted under the Code itself and not orders granted under other Laws. The orders sought by the

Applicant, that is, extension of time to file an Application for leave and Certificate of Law are provided under the Appellate Jurisdiction Act and the Land Disputes Courts Act. They are not provided under the provision of the Code, Civil Procedure Code.

The Learned Counsel argued further that, even if the Applicant will be allowed to proceed with the Application by inserting proper provisions of the Law, the Application will be Res-Judicata to Application No. 659 of 2018 which was granted by this Court but the Applicant failed to act within time.

Mr. Chuwa, Learned Counsel for the Applicant conceded that the Applicant had already applied for extension of time to file an Application for Leave and Certificate of Law through Application No. 659 of 2018 which was made under Section 11(1) of the Appellate Jurisdiction Act. He submitted further that, the Applicant, for some good reasons, could not act within time. After his failure to act within time, the Applicant filed Misc. Land Application No. 155 of 2020 under the same provision, that is, Section 11(1) of the Appellate Jurisdiction Act. This Court held that, the fact that the High Court has conclusively determined the matter in Application No. 659 of 2018, it is barred by Res-judicata from determining Application No. 155 of 2020.

The Court struck out Application No. 155 of 2020 and advised the Applicant to apply for enlargement of time under Section 93 of Civil Procedure Code, hence the Application at hand.

Although the Applicant acted on the advice of the Court, the Applicant's counsel is of the view that Section 93 of Civil Procedure Code is not a

proper provision for this Application. He argued that, Section 93 of Civil Procedure Code refers to orders made by the Court under the Code. Thus, its Application is limited to orders made under the Code, that is, Civil Procedure Code and not any other Law.

He prayed that if the Preliminary Objection is sustained the Applicant should not be condemned to pay costs.

In his rejoinder Mr. Hyera shared the dilemma facing the Applicant in this Application and he did not press for costs.

According to submission made by both parties, the Preliminary Objection is based on Application of Section 93 of the Civil Procedure Code to enlarge time that was granted by the Court under other laws, the Appellate Jurisdiction Act and the Land Disputes Courts Act, as far as the Application at hand is concerned. For ease of reference, section 93 of the Civil Procedure Code is hereby reproduced.

Section 93.

"Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired".

It is not disputed that Misc. Land Application No.659 of 2018 was made under section 11(1) of the Appellate Jurisdiction Act and the Appellate Jurisdiction Act does not provide for enlargement of time fixed by the Court. The Land Disputes Courts Act which is the Applicable procedural law in land disputes also does not


provide for courts powers to enlarge time fixed by the Court. However, section 51(1) of the Land Disputes Courts Act provides that the High Court in the exercise of its jurisdictions, shall apply the Civil Procedure Code and Evidence Act. The section reads;

"In the exercise of its jurisdictions, the High Court shall apply the Civil Procedure Code and the Evidence Act and may, regardless of any other laws governing production and admissibility of evidence, accept such evidence and proof which appears worthy of belief."

Section 95 of the Civil Procedure Code provides that nothing in the Code shall be deemed to limit or otherwise affect inherent powers of the Court to make such orders as may be necessary for the ends of justice or prevent abuse process of the court.

It is not disputed that this Court can exercise its inherent powers to grant enlargement of time if the Applicant has advanced good and sufficient cause for his delay to act within time fixed by the Court. It is also in the interest of justice to have disputes determined on merits and parties exhaust all available remedies. In that regard, the construction of section 93 shall not be deemed to limit this Courts from exercising its inherent powers.

For that reason, I partially sustain the objection and order the Applicant to amend his Application by adding section 95 of the Civil Procedure Code, Cap. 33 R.E 2021 as an enabling provision for his Application. As the Respondent's counsel did not press for costs, I award no costs.


Z. D. MANGO
JUDGE
31/08/2021

ORDER

Hearing of the Application on 21/10/2021


Z.D.MANGO
JUDGE
31/08/2021

