

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

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 181 OF 2021

ALLY LAVIES MWALOKO.....1st APPLICANT

REHEMA SALEHE NDOMONDO.....2nd APPLICANT

VERSUS

**RAPHAEL SALEHE SHEMAGHEMBE
a.k.a HOZA.....1st RESPONDENT**

EMANUEL MWABULAMBO.....2nd RESPONDENT

RULING

26/07/2021 & 13/10/2021

Masoud, J.

With their chamber summons supported by a joint affidavit of Elly Lavies Mwakolo and Rehema Salehe Ndomondo, the applicants, namely, Ally Lavies Mwaloko, and Rehema Salehe Ndomondo, brought under section 14(1) of the Law of Limitation Act, cap. 89 R.E 2019 the present application seeking extension of time within which to apply for revision of consolidated Application No. 317/2014 and 318/2014 which was determined on 08/06/2018 by the District Land and Housing Tribunal of Kinondoni.

The applicants advanced the following reasons in support of his application: One, that earlier application for revision (Land Revision No. 18 of 20219) was struck out on 25/03/2020 by this court for reasons of being omnibus although it was filed within the prescribed time. Two, the applicants herein were not parties to the consolidated application before the District tribunal although the application touched their property Plot No. 325 Block 47 and 324Block 47, Kijitonyama Kinondoni Municipality. Three, there was no negligence on the part of the applicants which resulted into the delay in filing the revision. And four, there are issues relating to irregularity, incorrectness and a point of law which require to be determined by the court. The same involve the fact that the applicants were not parties to the Consolidated Application No. 317/2014 and 318/2014 which was as a result determined without affording the applicants right to be heard.

With their counter affidavits, the first and second respondents opposed the application. Whereas the counter affidavit of the second respondent essentially noted almost everything contained in the joint affidavit of the applicants, save for allegation as to the existence of illegality which was admitted, the counter affidavit of the first respondent disputed the application on a number of reasons. Firstly, that the joint affidavit was

deponed by Elly Lavies Mwakolo as one of the deponents who is not one of the applicants in the present application. Secondly, that the struck out revision was filed out of time. And thirdly, the applicants were negligent.

In addition to the foregoing, the first respondent raised two points of preliminary objection. They were to the effect that, one, the court was not properly moved for reason of citing wrong provision of law, and two, the affidavit supporting the application is deponed by a different person other than the applicants.

The matter was simultaneously argued by filing written submissions on both the preliminary points of objection and the application.

On the first point of objections, it was argued that the applicants wrongly cited section 14(1) of the Law of Limitation Act, cap. 89 R.E 2002 instead of section 41(2) of the Land Disputes Courts Act, cap. 216 R.E 2019 which is the relevant provision of the law. It was added that the wrong citation is also in respect of citing the Law of Limitation Act, cap. 89 R.E 2002 instead of the Law of Limitation Act, cap. 89 R.E 2019. In support, he referred the court to case law on the effect of non-citation or wrong

citation which is to render the application incompetent. The court was thus urged to so find and struck out the application.

Replying on the first point of objection, the applicant had it that section 41(2) of the Land Disputes Courts Act is not applicable for revision but appeals, hence the first respondent's argument is not meritorious. As to citing "R.E 2002" in respect of the Law of Limitation Act, it was argued that it was a mere slip of a pen and hence a mere technical defect which is curable for it did not prejudice the first respondent. Citing **Alliance One Tobacco and others vs Mwajuma Hamis and Another** Misc Civil Appeal No. 803 of 2018 where similar objection was overruled as the court had jurisdiction to grant the order sought, the applicants urged this court to overrule the objection.

On the second point of objection, it was argued that there was inconsistent between the first applicant who is Ally Lavies Mwaloko but did not depone the joint affidavit, and one Elly Mwakolo who deponed the joint affidavit. He added that the above individuals are two different persons. Buttressing the position, it was argued that the affidavit is thus defective and cannot be relied upon to support the application. A

number of authorities was cited. With the second point, the court was also invited to strike out the application with costs.

In reply the applicants admitted the mistake in the naming of the first applicant. However, it was pointed out that the applicant's name, Elly Mwakolo was properly used in the joint affidavit along with the name of the second applicant. The same names were used and reflected in the verification. The case of **Chang Qing International Investment Ltd v TOL Gas Ltd** Civil Application No. 292 of 2016 CAT DSM, where TOL Gases Ltd was wrongly written as TOL GAS Ltd was relied upon. In this case, the Court of Appeal overlooked the error and proceeded with the matter on its merits.

In view of the above, I examined the record against the backdrop of the objections. As to the first point of objection, the applicants admitted that there was an error in the citation of the Law of Limitation Act. In this respect, instead of citing it as Cap. 89 R.E 2019, it was mistakenly due to slip of the pen cited as Cap. 89 R.E 2002.

I have considered the above argument in the light of the arguments advanced by the first respondent. I would agree with the applicants that

the error is curable in as much as it did not occasion failure of justice to any party. As to the applicable provision of the law, the court was told that section 42(2) of the Land Disputes Courts Act (supra) was not the relevant provision. Likewise, I agree with the applicants' submission in that my reading of the provision left me in no doubt that the provision is only applicable to appeals and not application for revision. The point is not meritorious and it is accordingly dismissed.

As to the second point, the record is apparent that the name of first applicant in the chamber summons appear as ALLY LAVIES MWALOKO, while in the joint affidavit supporting the application, the name of the deponent is not ALLY LAVIES MWALOKO, the first applicant, but ELLY LAVIES MWAKOLO.

My further scrutiny made it clear that although the difference is portrayed by the applicants as trivial, it is in my view quite significant. The difference is not just in the first names which read as ALLY and ELLY but it is also in the third names which read as MWALOKO and MWAKOLO. It would imply that it is only the second applicant who deposed the joint affidavit whilst the first applicant did not. Yet, the

affidavit is purportedly couched in joint manner in its averments and verification clause.

It is instructive that although the applicants had opportunity to file a reply to the counter affidavit where they could have addressed and corrected the record, they did not do so but in the submissions from the bar. I am in this respect, mindful that the first respondent addressed the differences in such names in his counter affidavit, which could have been replied in a manner that would have corrected the error. I find the authorities cited including the case of **Chang Qing International Investment Ltd** (supra) distinguished on account of what I have explained above and the nature and circumstances of the present matter. The error can not be served by the fact that the other applicant duly and correctly deposed the affidavit. This is so because the affidavit was constructed in a manner that takes account of the first and second applicants in their respective joint averments.

When all is said and done, I am of the view that the error renders the affidavit incurably defective, and hence incompetent. As rightly submitted, there is nothing that supports the application.

In the end, the application is struck out with costs for being incompetent. It is so ordered.

Dated and Delivered at Dar es Salaam this 19th Day of October 2021.


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B. S. Masoud
Judge

