

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO.479 OF 2021

(Arising from Misc. Land Application No. 788 of 2017 which originate from Land
Case No.123 of 2013)

UTHMAAN MADATI (Administrator of the

Estate of the late **JUMA POSANYI MADATI** **APPLICANT**

VERSUS

TATU O. FARAHAANI **1ST RESPONDENT**

SALIM MADATI **2ND RESPONDENT**

RULING

Date of last Order: 06.04.2022

Date of Ruling 12.04.2022

A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under section 14 (1) of the Law of Limitation Act, Cap.89 [R.E 2019] and section 95 of the Civil Procedure Code Cap. 33 [R.E 2019]. The applicant urged this court to extend the time for filing an application for setting aside the

abatement order of the High Court of Tanzania Land Division at Dar es Salaam by Hon. Masabo, J dated 22nd March, 2019. In Misc. Land Application No.788 of 2017.

The application is supported by an affidavit deponed by Uthmaan Madati, the applicant. The 1st respondent resisted the application and demonstrated their resistance by filing a counter affidavit. The matter proceeded *ex parte* against the 2nd respondent. The 2nd respondent was summoned to appear in court by However, the respondent did not appear on the slated date and the case was fixed for hearing on 6th April, 2022. Having regard to the entire circumstances of this case, I am of the considered view that the 2nd respondent was duly being served therefore, I grant the appellant's prayer to proceed *ex parte* against the 2nd respondent.

When the matter was called for hearing on 6th April, 2022, the applicant enlisted the legal service of Ms. Loveness Denis, the applicant's Advocate while the respondent enjoyed the legal service of Mr. Shanyangi, learned counsel for the 1st respondent.

In his submission, the applicant submitted that the applicant has lodged an application for an extension of time to set aside the abatement order of this court dated 22nd March, 2019 in Misc. Land Application No. 788 of 2017. The

learned counsel for the applicant urged this court to adopt the applicant's affidavit to form part of her submission. She submitted that the abated Misc. Land Application No. 788 of 2017 was for an extension of time to file an application for setting aside an *ex parte* Judgment and Decree if this court dated 3rd April, 2017 in Land Case No. 123 of 2013. Ms. Loveness went on to submit that Land Case No. 123 of 2013 was instituted by the 1st respondent against the original applicant the late Juma Hassan Madati in respect of Plot No. 810 Block E then it was changed to Block No. 2009.

The learned counsel for the applicant continued to argue that the Plaintiff was never served to the original applicant thus the *ex parte* judgment was procured based on substitution of service by way of publication in Mwananchi Newspaper without being changed on the affidavit of proof of service. She added that the applicant has never seen the Newspaper until 20th June, 2017 when he was served with a Notice for mention before Hon. Deputy Registrar.

Ms. Loveness went on to submit that the applicant's application for an extension to set aside the *ex parte* judgment was abated on 11th July, 2019. She added that on 6th September, 2022 the court was informed that the original applicant passed away and on 16th August, 2019 the applicant was appointed to administer the estate of the late Juma. She further submitted that when the

abatement order was issued the appointment had commenced and was pending before Kawe Primary Court, no joinder of the applicant was prevented by the process of appointment of administrator pending before the Primary Court. Ms. Loveness continued to submit that there were irregularities/ illegalities in Land Case No. 123 of 2013 such as failure to serve the applicant with summons, the plot in dispute is not the same as which the High Court declared to be owned by the 1st respondent. She added that after the abatement order the applicant did not sleep since on 26th July, 2021, the applicant filed an application which was struck out, and the applicant applied for copies of Ruling on 1st August, 2021 and on 27th August, 2021, she obtained copies of ruling hence this application.

In conclusion, the learned counsel for the applicant urged this court to grant the applicant's application with no order to costs.

Objecting to the application, in his written submission, the respondent's Advocate furiously contended that the applicant's application is baseless. He contended that the applicant has failed to adduce sufficient reasons to move this court to exercise its discretionary power to extent time. He urged this court to adopt this court as the 1st respondent's Advocate to form part of his submission. He submitted that the issue of the time limit is a matter of law once a law is enacted it must be strictly followed. Fortifying his submission he cited

In my view, the raised illegality meets the requisite threshold for consideration as the basis for enlargement of time. I have also considered the fact that the administrator of the estate of the late Juma Posanyi Madati is appointed thus he is in a position to proceed with the case on merit.

In the upshot, I grant the applicant's application. The applicant is allowed to file an application to set aside the abatement order of this Court within thirty days from today.

Dated at Dar es Salaam this date 12th April, 2022.




A.Z.MGEYEKWA

JUDGE

12.04.2022

Ruling delivered on the 12th April, 2022 via audio teleconference whereas Ms. Loveness Denis, learned counsel for the applicant and Mr. Alfred Shanyangi, learned counsel for the 1st respondent were remotely present.




A.Z.MGEYEKWA

JUDGE

12.04.2022