

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

MISCELLANEOUS LAND CASE APPLICATION NO.802 OF 2022
(Originating from Land Case No.245 of 2022)

**JAMAL AMRI NASSORO(As Attorney of Asma Said
Salum).....APPLICANT**

VERSUS

JAMILA A MNEKA.....1ST RESPONDENT
ABDALLAH KHALFAN WANGOMO.....2ND RESPONDENT
JOHN HAMPHREY TEMBE.....3RD RESPONDENT
RAJABU MTOAYE SAID.....4TH RESPONDENT
HASSAN KADEWELE.....5TH RESPONDENT
MAIKO BONIFACE MATEWELE.....6TH RESPONDENT
MANZI ATHUMANI MATAWELE.....7TH RESPONDENT
HAMIS SHABAN JUMA.....8TH RESPONDENT

RULING

Date of Last Order: 17.03.2022

Date of Ruling: 27.03.2023

T.N. MWENEGOHA J.

The crux of this matter centres on an Application for Review of my own Ruling in respect to Land Case No. 245 of 2022 delivered on 24th November, 2022. In the said Ruling, I did dismiss the suit for being time barred. Aggrieved by the said decision, the applicant preferred this application based on the following grounds; (1) There was an error apparently on the face of records of the impugned decision. (2) The Court

was erroneously misled by the Plaintiff's counsel through his written submissions at page 2 and 3.

The application was heard by way of written submissions as ordered by this Court; Advocate Joseph Msengezi appeared for the applicant, while Bivery B. Lyabonga, learned counsel appeared for the 2nd to 8th respondents.

Submitting in support of the application, Mr. Msengezi stressed that, the Court erred in computing the time used to prosecute Land Application No. 119 of 2009. That, as per the Ruling, the Court stated that, the same came to an end on the 6th of August 2010, while in reality it ended on the 6th October, 2010. That, these dates were picked up from the submissions by the plaintiff's counsel at page 2 and 3 who appeared to admit that the suit was time barred and prayed for it to be exempted. That is to say, the Court was erroneously led by the plaintiff's submissions hence arrived at an erroneous decision which is the subject matter of this application. To support his position, he cited the case of **Tina and Company Limited and Others versus Eura Africa Bank (T) Limited**, Commercial Review No. 7 of 2018, High Court of Tanzania Commercial Division(unreported). In reply, thereto, Mr. Lyabonga was of the view that, the submissions by the applicant's counsel are devoid of merits. That, this Court did not error

in striking out the Land Case No. 245 of 2022, rather it was the plaintiff's counsel himself who addressed the Court on the said date and indeed admitted that the suit in question was time barred. Had this Court failed to adhere to the legal provisions of the law, this ought to have been an illegality warranting Review in the circumstances. He stated that, in their case, what pops up is negligence on the part of the applicant himself which necessitated for striking out of the said case.

Having gone through the submissions of the counsels for the parties hereof. The issue for determination is whether the application is meritorious or vice versa.

Let it be known, that, by review, I simply mean a closely re-examination of the decision made by the Court itself for the purposes of rectifying its errors which are seen apparently on the face of the Court's record. In other words, this Court is obliged to reconsider or look again at its decision given in Land Case No.245 of 2022 and not otherwise.

In deliberating this matter, I have discovered that from the arguments of the applicant's counsel, he faulted this Court in believing the submissions by the plaintiff as to the dates when the Land Application No. 119 of 2009 ended. That, with regard to the impugned Ruling, this Court stated that, the same came to an end on the 6th of August 2010, while in reality it ended on the 6th October, 2010.

In extenso, I find his arguments to be baseless and untenable in law. The said Ruling which is intended to be reviewed, the truth is, it resulted from a preliminary objection that the suit was time barred. Again, the counsel for the plaintiff admitted that the case was time barred, so he prayed for exclusion of the time used in prosecuting (Land Application No. 119 of 2009). He went on to provide the dates as shown on Court's case file. Therefore, if he deliberately misled this Court on the dates given through his submissions, frankly this Court cannot be faulted for his unethical behavior which as an officer of the Court need not to show.

Nevertheless, the centre of controversy which lead to the said Ruling was not on the dates as averred, rather the plaint itself which contravened the provisions of **Order VII Rule 6 of the Civil Procedure Code, Cap 33 R.E 2019**. That, the same should have contained a phrase, statement, or paragraph entailing the grounds of delay for the plaintiff so as to plead exemption. That being the case, I see nothing to Review as far as my decision in the Land Case No. 245 of 2022 is concerned as opting to do so will resolve nothing thereat as the claims leading to the raised objection in the said suit will remain unsettled.

Having said so, this application is hereby dismissed for want of merits before this Court. Each party to bear its own costs. It is so ordered.




T.N. MWENEGOHA
JUDGE
27/03/2023