

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

AT DAR ES SALAAM

LAND CASE NO. 308 OF 2022

MFAUME RAJABU GOME.....PLAINTIFF

VERSUS

SWAUMU SAIDI ABDALLAH.....1st DEFENDANT

MURIA TANGWESI.....2nd DEFENDANT

MARIA LANGEA.....3rd DEFENDANT

RULING

22/03/2023 & 29/03/2023

Masoud, J.

The defendants through Mr Faraji Mangula, learned Advocate, sought for an order of this court extending the time within which written statement of defence could be filed by the defendants. The provisions of sections 93 and 95 of the Civil Procedure Code, cap. 33 R.E 2019 were invoked to support the prayer for extension.

In the submissions made to support the prayer, it was quite clear that the learned Advocate for the defendants had no dispute that the defendants were duly served, and were required to file written statement

of defence within twenty one (21) days of service. However, his concern was that the defendants were entitled for the sought extension because firstly, there are two defendants who were not served in person, secondly, he was not so sure that there was proof of service on the record, and thirdly it was in the interest of justice that the matter is heard in the presence of sides.

Worth noting, however, is that the above reasons supporting the sought extension were only raised, as an afterthought in my considered view, after the submission by Mr Mlyambelele Ng'weli, learned Advocate for the plaintiff, objecting the granting of the sought extension and being in favour of having the court granting an ex parte order against the defendants for failure to file written statement of defence. The said objection by Mr Ng'weli was to the effect that, the defendants were duly served on 07/01/2023, that they were to file their written statement of defence by 28/1/203 but they did not, and that the law does not allow extension to be granted at this stage as the time within which the

application could have been sought had long expired, seemingly referring to the provisions of Order VIII, rule 1(3) and rule 14 of cap.33.

It was not hard on my part to find proof of service on the record as there were affidavits of proof of service sworn by one, Bahati Mwenegoha, a process server, supporting the submission by the learned Advocate for the plaintiff as to service to the defendants. The concern by the counsel for the defendants about there being any proof of service is thus unfounded despite also being an afterthought as already pointed out above.

My readings of the provisions of Order VIII, rule 1(3) and rule 14 of Cap. 33 left me in no doubt that the law sets a strict timeline within which defendant is entitled to file written statement of defence which is 21 days after service; a timeline within which the defendant may seek extension of time to file written statement if the said defendant finds himself outside the 21 days which is within just seven days after the expiry of the 21 days;

and in addition a requirement of assigning good cause for the failure to file written statement of defence within 21 days.

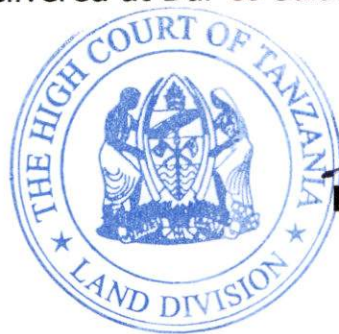
As there is no dispute that the defendants were duly served on 07/01/2023, it is obvious that the prayer for extension of time made before me on 22/03/2023 was time barred. There was no reason why such application was not made before and within the timeline envisioned under Order VIII, rule 1(3) of Cap.33.

Even if the instant application was made within the said timeline, there would still in the circumstances no good cause shown warranting this court to extend the time. In any event, given the regime regulating the extension of time in this respect, I think the provisions of sections 93 and 95 of cap. 33 were not relevant and therefore not applicable in the instant matter.

In the upshot of the foregoing, I find that the prayer for extension of time is baseless and without merit. It is accordingly dismissed. The

matter is accordingly ordered to proceed ex-parte pursuant to Order VIII,
rule 14 of cap. 33. It is so ordered.

Delivered at Dar es Salaam this 29th day of March, 2023.



B.S.
B. S. Masoud
Judge