

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

MISC. LAND CASE APPLICATION NO.772 OF 2022
(Arising from Land No. 748 of 2021 of the High Court of Tanzania, Land Division)

HAMIS KASELA.....1ST APPLICANT

ALLY KIWOPE.....2ND APPLICANT

IVAN REUBEN KIHIO.....3RD APPLICANT

MOHAMED SAID KILAWA.....4TH APPLICANT

VERSUS

TEMEKE MUNICIPAL COUNCIL.....RESPONDENT

R U L I N G

Date of Last Order: 25.01.2023

Date of Ruling: 23.02.2023

T. N. MWENEGOHA, J.

The applicants above named, sought to restore their case which was withdrawn in this Court, vide Misc. Application No. 748 of 2021. Their application was brought under Sections 95 and 97 of the Civil Procedure Code, Cap 33 R. E. 2019, supported by the Affidavit of their learned Advocate, Cresencia B. Rwechungura.

On the other hand, raised a preliminary objection against the Application that, the same is time barred. Victoria Mathew Mtui, learned State Attorney for the respondent maintained that, this Application was

supposed to be filed sixty days after the case was withdrawn. She insisted that, as per Schedule, part III, column one, item 21 of the Law of Limitations Act, Cap 89 R. E. 2019 that, the applicants have delayed for 30 days and they did not seek for leave of the Court before filling the instant Application.

In reply, Advocate Rwechungura was of the view that, after the withdraw of the Misc. Land Application 748 of 2021, the applicants in good faith filed a Misc. Land Application No. 602 of 2022, in September, 2022. Later, the applicants' Advocate discovered that, the withdrawal of Misc. Land Application 748 of 2021 was done erroneously, hence the instant case was preferred. She insisted that, this Court should invoke the provisions of **Section 21(2) of the Law of Limitations Act, Cap 89 R. E. 2019** and exclude the time used in prosecuting the Misc. Land Application No. 602 of 2022.

Having gone through the arguments of parties as presented by their learned advocates, the issue for determination is whether the objection has merits or not.

In the Application at hand, the learned State Attorney for the respondent pointed out that, the instant case offends the provisions of **Part III, of the Schedule, Column 1, Item 21 of the Law of Limitations Act, Cap 89 R. E. 2019**. That, the Application ought to have been brought within 60 days from the date the Misc. Land Application 748 of 2021. Her arguments were in fact not disputed by the applicant's counsel. However, she prayed for the Court to invoke the provisions of **Section 21(2) of the Law of Limitations Act, Cap 89 R. E. 2019**. That, after the said case was withdrawn, the applicants filed Misc. Land Application No. 602

of 2022. Later, they learned that, their former case was withdrawn by mistake hence this Application. Therefore, she prayed this Court to consider and exclude the time used in prosecuting the Misc. Land Application No. 602 of 2022.

I agree with the applicants' counsel, that the time used in prosecuting Misc. Land Application No. 602 of 2022, must be excluded in computing the period of limitation. However, bringing that prayer in the case at hand is not proper. The same should be included in an Application for leave to file the case out of time. At this point, I agree with the respondent's counsel that the Application is time barred. Therefore, I find the objection to have merits and the same is allowed accordingly.

This application is struck out. No order as to costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
23/02/2023