

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
LAND CASE NO. 252 OF 2022**

**BETWEEN**

**RASIA HARUBU SALUM** (Administratrix of the Estate of the late Harubu Salum Masamala) ..... **PLAINTIFF**

**VERSUS**

**HALIMA MSHINDO** (As Administratrix of the Estate of the late Mariam Mzee) ..... **1<sup>ST</sup> DEFENDANT**  
**HALIMA MSHINDO** ..... **2<sup>ND</sup> DEFENDANT**  
**KURUTHUM MSHINDO** ..... **3<sup>RD</sup> DEFENDANT**  
**HASHIM KAMBI** ..... **4<sup>TH</sup> DEFENDANT**  
**SALUM KINDAMBA** ..... **5<sup>TH</sup> DEFENDANT**  
**JAFRA INVESTMENT & SUPPLIES CO. LIMITED** ..... **6<sup>TH</sup> DEFENDANT**  
**FELIX NDAZI** ..... **7<sup>TH</sup> DEFENDANT**

**RULING**

*Date of last Order: 04/08/2023*

*Date of Ruling: 15/08/2023*

**A. MSAFIRI, J.**

The plaintiff herein above is suing the defendants jointly and severally claiming that she is the rightful owner of a farm land measuring thirty-seven (37) acres situated at Magambani – Mitimungi Kaole, Bagamoyo District, Pwani Region, and that the defendants are the trespassers in the said farm land.

*Adls.*

On 09 June 2023, the 1<sup>st</sup> to 6<sup>th</sup> defendants filed a Notice of Preliminary objection to the effect that;

- 1. That, the Plaintiff in this suit is bad in law for being filed beyond the order of this Honourable Court dated on 24<sup>th</sup> April 2023.*

The preliminary objection was argued orally whereas the plaintiff was represented by Mr. Abraham Senguji, with Mr. Benson Kubhoja, learned advocates. The 1<sup>st</sup> – 6<sup>th</sup> defendants were represented by Ms. Agnes Uisso, learned advocate. The 7<sup>th</sup> defendant was ex-parte.

Submitting in defence of the raised preliminary objection, Ms. Uisso stated that the amended plaintiff which has been filed in this Court was filed out of time contrary to the order of this Court issued on 24<sup>th</sup> April 2023. That the order of the Court required that the amended plaintiff to be filed on 27<sup>th</sup> April 2023, but unfortunately the same was filed on 28<sup>th</sup> April 2023, without leave of the Court. Ms. Uisso submitted further that, it is a clear position of law that late filing of documents in Court without leave of the Court renders the said documents to be as if they have never been filed.

She said that since the amended plaintiff has been filed out of time, it is as if there is no plaintiff in this case as the old one has also died naturally after the Court has granted leave to file the amended plaintiff.

*Alle.*

To cement her points, Ms. Uisso cited the case of **Michael B. Masinde vs. D.S. Izina Alias Dhahiri Said Izina & 3 others**, Land Case No. 3 of 2021, HC DSM (Unreported) at pages 2-3. She prayed for the Court to strike out the plaint with costs.

In response, Mr. Kubhoja submitted that the preliminary objection is misconceived and should be overruled. He said that as per the principle set in the case of **Mukisa Biscuits**, a preliminary objection must be on the point of law and should be based on the pleadings. That, the written statement of defence of the defendants which has raised the preliminary objection has no attachment of the Court Order of 24 April 2023. He said that, since the pleading is the only base of preliminary objection, and the said order is not attached, then the preliminary objection has no base.

Mr. Kubhoja argued that Order VI Rule 18 of the Civil Procedure Code, Cap 33 R.E 2019 (the CPC), provides for 14 days of filing if there is no limitation of time. That since the limitation of time is not clearly shown in the written statement of defence which is the pleading and since the plaint was filed on 28 April 2023, it therefore concludes that the plaint was filed on time.

Mr. Kubhoja submitted further that by filing the plaint on 28/4/2023, the defendants have not been prejudiced in anyway. *Alls.*

He argued that this case has been in Court since 2018, hence for the purpose of dispensation of justice, he is moving the Court to invoke the principle of overriding objective. He contended that the case cited by the counsel for the defendants is distinguishable from this case.

Mr. Senguji, subscribed to the submissions of Mr. Kubhoja and referred this Court to the case of **Leila Suleiman Yange vs. Rahma Mohamed Mabrouck, Probate Appeal No. 11 of 2022**, HC at Morogoro (Unreported), whereby the Court invoked overriding objective where the delay was for one day only. He prayed for the Court to overrule the preliminary objection.

In rejoinder, Ms. Uisso, reiterated her submissions in chief and prayers. She added that the preliminary objection is on point of law and is based on the pleading which is the plaint itself. On the principle of overriding objective, she argued that the principle is not a shield to defeat the spirit behind the enactment of procedural laws.

Having heard the submissions from both rival parties, the issue for my determination is whether the preliminary objection is tenable. First, it is my finding that this preliminary objection is on point of law. It is the laid down rule that the Court's orders has to be complied with, and that

*Alle.*

is why the procedures are firmly set and have to be obediently adhered to. The orders of the Court are mandatorily to be followed.

On 24 April 2023, the counsel for the plaintiff, prayed for the Court's leave to amend the plaint. The leave was granted and the Court ordered that the amendments prayed to be filed by 27 April 2023. However, the amended plaint was filed on 28 April 2023.

The plaintiff did not seek the leave of the Court to file the amended plaint beyond the time scheduled by the Court, and there was no any reasons advanced by the plaintiff until when the defendants raised a preliminary objection.

Responding on the raised objection, Mr. Kubhoja, argued that the written statement of defence is not attached with the order of the Court which is a base of the raised objection and that the written statement of defence is the pleading.

I find this argument to be deliberately misconceiving. This is for the reason that the pleading comprises both the plaint and the written statement of defence. Despite that, the raised preliminary objection emanates from the clear order of the Court which the plaintiff has failed to comply with. Mr. Kubhoja has referred this Court to the provisions of

*Ally.*



Order VI Rule 18 of the CPC. For clarification, I shall reproduce the said provisions herein below;

*Order VI Rule 18:-*

*Where a party has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, **or if no time is thereby limited** then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, **unless the time is extended by the Court**" (emphasis added).*

To my understanding of the above Rule, 14 days will be counted if there is no limitation of time. But in the present matter, the Court's order set the time limit, i.e. the amendment to be filed within two days (2) i.e. by 27/4/2023, the plaint was filed on 28/4/2023 and with no Court's leave for extension of time.

Mr. Kubhoja has averred that, this case has been in Court since 2018, and the amendment prayer was due to some development in the case, and the same was to help the Court to determine the real question in controversy between the parties.

*Adle.*

I am in total agreement that the intended amendment was done and would have assisted the Court in its determination of the matter. However, this does not preclude the plaintiff from complying with the Court's orders or from following the procedures set.

Mr. Kubhoja has moved the Court to decide in consideration that the delay was only eleven (11) hours. I don't know how the counsel has calculated the time, but the fact remains that the amended plaint was filed on 28/4/2023 instead of 27/4/23. It is a one day delay, but still, it contravenes the Court's Order. If this Court will condone the acts of contravention of its orders for the reason that it is just a short delay, then there will be no need to have rules and procedures guiding the proceedings in Court, which binds the parties.

On the principle of overriding objection, I admit that the Courts are bound to avoid technicalities and focus on dispensation of justice. But in the present matter, it was the Court's order which was ignored. The counsels for the plaintiff have not expressed or give out reasons for not filing his amended plaint on time.

It has been emphasized by various judicial decisions that the principle of overriding objective was not meant to be a refuge to each and every blunder committed by a party in civil proceedings. (See also the *Atls.*

Court of Appeal case of **Mondorosi Village Council and 2 others vs. Tanzania Breweries Limited and 4 others, Civil Appeal No. 66 of 2017**, CAT at Arusha (Unreported)

Mr. Senguji has referred the Court to the case of **Leila Suleiman Yange (supra)**. In that case, the appellant did not comply with the Court's order regarding filing of her written submission in chief. However, Hon. Ngwembe, J, decided to proceed with the judgment instead of dismissing the said appeal. Among the reasons for his decision was that, much as he admitted and associated himself with rules from precedents which rules that failure to file written submission within the time prescribed by the Court order amounts to failure to prosecute, Hon. Ngwembe, J was of the view that the above rules are from the precedents as opposed to statutory. The Court in the cited case observed that there is no any provision in the Civil Procedure Code governing the presentation of written submissions to the Court.


I wholly subscribe to the Court's observations and decision in the cited case. However, it is my view that the situation in the cited case is distinguishable from the situation in the case at my hand. There are numerous authorities cementing on the importance of parties' compliance with the Court's orders. But in addition, the position where the party has

*Alls*



failed to amend a pleading after an order is issued is provided under Order VI Rule 18 of the CPC as quoted herein above.

In this matter at hand, the Court has not extended the time for filing the amended pleadings as the plaintiff has not sought leave to do so, instead, the plaintiff went on to file the same out of time. It is for the foregoing reasons that I sustain the preliminary objection and proceed to strike out the case, with costs.



*A. Msafiri*

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**A. MSAFIRI**  
**JUDGE**  
**15/8/2023**