

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 181 OF 2023**

**REHEMA MOHAMED LWAMBO**

**(As an Administrator of the late Dunia Abdallah**

**Kivunja).....PLAINTIFF**

**VERSUS**

**BERNARD ROBERT MAGANGA.....DEFENDANT**

**RULING**

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

*Date of Judgment:18/09/2023*

**K. D. MHINA, J.**

This is the ruling in respect of the preliminary objection raised by Rehema Mohamed Lwambo (As an administrator of the late Dunia Abdallah Kivunja), the plaintiff, against the written statement of defence filed by Bernard Robert Maganga, the defendant.

The notice of the preliminary objection raised canvassed only one ground, namely;

- i. The written statement of defence is not maintainable for being lodged out of time, and no leave sought before filing the same".*

The preliminary objection was argued by way of written submissions. The plaintiff was represented by Mr. Sylvatus Mayenga, learned advocate, while the defendant by Mr. Sylvanus Mosha, also a learned advocate.

According to Mr. Mayenga, the defendant was supposed to file his defence on 10 July 2023, but instead, he filed on 24 July 2023, out of time and without the leave of the court.

Therefore, in essence, the ground of the preliminary objection is predicated on this Court's orders dated 8 June 2023.

Having read the submissions from both parties, this Court reverted to its records dated 8 June 2023. That day the Court ordered as follows;

- i. The defendant is to be served with the plaint within seven days from the date of this order.*
- ii. WSD be filed on or before 10 July 2023.*
- iii. Reply to WSD (if any) be filed on or before 17 July 2023.*

Flowing from the above, it is a settled legal principle that those who come into equity must come with clean hands. The principle requires the court to deny equitable relief to the party who has violated good faith concerning the subject matter of the claim.

In an American case of **Colby Furniture Company Inc vs. Belinda J. Overton**, 299 So. 3d-Ala: Court of Civil Appeals, 2019, the purpose of the principle was explained as;

*"is to prevent a party from obtaining relief when that party's own wrongful conduct has made it such that granting the relief would be against equity and good conscience".*

I started with the principle above because of the plaintiff's conduct. While she raised a P.O. that the defendant infringed this Court order by not filing the WSD on or before 10 July 2023, she violated this Court's order by failing to serve the defendant as the Court ordered it.

As alluded to earlier, the plaintiff was ordered to serve the defendant with the plaint within seven days from 8 June 2023.

According to the submission, Mr. Mayenga said they served the plaintiff on 16 June 2023. Absolutely, this was out of seven days ordered by the Court, as the seven days expired on 15 June 2023. Therefore, the plaintiff also served the defendant with the plaint out of time without the leave of the Court.

In such a circumstance, as the principle of equity requires, the plaintiff cannot obtain the relief prayed in the submission of striking out the WSD while she also served the defendant with the plaint out of time. Therefore, both parties were out of time, contrary to this Court's order.

On the way forward and for the interest of justice, the circumstances of this matter are fit for this Court to invoke the principle of overriding objective as per section 3A.-(1) of the CPC, which read that;

*"The overriding objective of this Act shall be to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes governed by this Act".*

Therefore, instead of striking out the plaint for the reason of the plaintiff's failure to serve the defendant within the time ordered by this Court and striking out the WSD for being filed out of the time ordered by this Court, I vacate this Court's order dated 8 June 2023. Further, I allow the date of service of the plaint and the filing of the WSD as the dates of service and filing of the pleadings.

In the upshot, the P.O. is dismissed, and I order the suit to proceed with the first Pre-Trial Conference. Costs are to be determined in the final disposal of the suit.

It is so ordered.



  
**K.D. MHINA**  
**JUDGE**  
**18/09/2023.**