

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO SUB -REGISTRY)
AT MOROGORO

MISC. CIVIL APPLICATION NO. 26 OF 2022

SCHOLASTICA JOHN MAKUNE (Administratrix of the Estate of the Late John Festus Makune) **1ST APPLICANT**

FESTO JOHN MAKUNE (Administrator of the Estate of the Late John Festus Makune) **2ND APPLICANT**

MARYAM JOHN MAKUNE (Administratrix of the Estate of the Late John Festus Makune) **3RD APPLICANT**

WILLIAM JOHN MAKUNE (Administrator of the Estate of the Late John Festus Makune) **4TH APPLICANT**

VERSUS

FRANK MUSHENDWA **1ST RESPONDENT**

CHRISTOPHER MUSHENDWA **2ND RESPONDENT**

THE LIQUIDATOR OF TANZANIA HOUSING BANK **3RD RESPONDENT**

RULING

13th & 30th Dec, 2022

Chaba, J.

The applicants through the service of Mr. Salim Gogo, learned advocate filed the instant Misc. Civil Application seeking for an extension of time to restore Revision Case No. 29 of 2018. The application has been preferred by way of Chamber Summons made under Section 14 (1) of the Law of Limitation Act [Cap. 89 R. E, 2019], Section 93 of the Civil

Procedure Code [Cap. 33 R. E, 2019] and any other enabling provisions of the law.

The application is supported by the affidavit sworn by Mr. Salim Gogo, learned advocate representing the 1st, 2nd, 3rd and 4th applicants. Basically, the applicants are praying this court to extend time within which to restore Civil Revision No. 29 of 2018 which this court dismissed it for want of prosecution on the 30th day of March, 2022.

During hearing of this application, the applicants were represented by Mr. Salim Gogo, learned advocate. Besides the fact that the respondents were duly served with the instant application and affidavit, but they failed to enter appearance in court to fend themselves. Therefore, the application was heard *ex-parte*.

Arguing in support of the instant application, Mr. Gogo, averred that the applicants are the joint administrators of the estate of the late John Festo Makune who passed away on 1st January, 2021. Following the demise of the deceased John Festo Makune, the applicants were jointly appointed as joint administrators of the deceased estate vide Letter of Administration dated 17th September, 2021, issued by Arusha Urban Primary Court in Arusha Region and the copies of death certificate attached as Annextures A1, bears the following numbers, i.e., 1003854577 dated 18/1/2021.

He submitted further that the applicants are requesting for an extension of time to restore the main case on the ground that they delayed to file an application to restore the main case due to uncertainty of proper jurisdiction to file such an application

He accentuated that for the first time, an application to restore the main case was filed on 2nd May, 2022 and registered as Misc. Civil Application No. 13 of 2022 and scheduled for mention on 6th May, 2022 where both parties were absent. As a result, the matter was adjourned to 27th May, 2022 where upon pre-session discussion (of record), it was deliberated that the High Court of Tanzania, Morogoro Sub Registry had no territorial jurisdiction to entertain Misc. Application No. 13 of 2022 on the ground that the alleged Civil Revision No. 29 of 2018 was filed and registered at Dar Es Salaam District Registry.

He continued that, after a brief discussion with his colleagues and for the interest of both parties, he decided to withdraw the said Misc. Civil Application No. 13 of 2022 for want of jurisdiction, and upon taking into account that Civil Revision No. 29 of 2018 already had been transferred to the High Court (T), at Dar Es Salaam District Registry from Morogoro Sub Registry.

Mr. Gogo highlighted that since the court record and court proceedings does not specifically show that the parties have moved from

Morogoro Region to Dar Es Salaam Region, to him that is a primary reason to ask this court to grant the applicants prayers. He further contended that before filing this application to the High Court of Tanzania, at Dar Es Salaam District Registry, he consulted to see if the proper registry is Dar Es Salaam Sub Registry or Morogoro Sub Registry and finally was satisfied that the High Court of Tanzania, Morogoro Sub Registry is a proper registry to file the instant application.

Another ground in his view is that the Civil Revision No. 29 of 2018 was determined by the High Court, Morogoro Sub Registry. In his view, the High Court (T), Morogoro Sub Registry is vested with the respective jurisdiction to entertain this application for extension of time to restore the main revision case. To reinforce his argument, Mr. Gogo cited the cases of **M/S Benandys Company Ltd v. Balozi Abubakari Ibrahim and Bibi Sophia Ibrahim**, Consolidated Civil Application No. 1 & 2 of 2012 at page 7; CAT – Arusha and **Vodacom Tanzania Limited v. Innocent Daniel Njau**, Civil Appeal No. 60 of 2019, at page 11.

He rounded up by stating that if the court will grant the prayers sought by the applicants, it would be easier for them to process the restoration of Civil Revision No. 29 of 2018.

Having considered the submission advanced by Mr. Gogo, the cases cited to persuade this court to grant the prayers sought, the court record

in respect of Civil Revision No. 29 of 2018 and upon considered the matter of jurisdiction, it is my considered view that the issue of jurisdiction is the matter of utmost importance.

It is undisputed that the Civil Revision No. 29 of 2018 was filed and registered at the High Court of Tanzania, Dar Es Salaam District Registry and by then, the High Court of Tanzania, Dar Es Salaam Zone had territorial jurisdiction over Morogoro Region. The question whether parties were coming from Morogoro or elsewhere, in my view, it is immaterial. Further it is undisputed fact that the High Court of Tanzania, Morogoro Sub-Registry was established through Government Notice No. 633 published on the 27th August, 2021 with effect from 1st November, 2021. **(See: High Court (Morogoro Sub-Registry Establishment) Order, 2021).**

This infers that when this sub registry commenced to operate, automatically the High Court of Tanzania, Dar Es Salaam Sub-Registry ceased to have territorial jurisdiction over Morogoro Region in which the so-called Morogoro Sub-Registry is now in existence. It follows therefore that, High Court of Tanzania, Morogoro Sub-Registry has no territorial jurisdiction over cases be it civil or criminal, originating from Dar Es Salaam District Registry. Equally, the High Court of Tanzania, Dar Es Salaam District Registry has no territorial jurisdiction over whatever cases

originating from Morogoro Sub-Registry with effect from 1st day of November, 2021.

Since the Civil Revision Case No. 29 of 2018 was filed in Dar Es Salaam District Registry and the respective case file is managed by the High Court of Tanzania, Dar Es Salaam District Registry, I am of the firm view that the applicants ought to have filed their application in a proper jurisdiction, to wit; the High Court of Tanzania, Dar Es Salaam District/Sub Registry.


In the upshot, this application for extension of time sought by the applicants has no merit for want of jurisdiction. Applicants are advised to channel their application in the appropriate and proper registry and evade wasting time seeking for court's sympathy.

That said and done, I hereby struck out the applicants' application for lack of jurisdiction with costs.

I so order.

DATED at MOROGORO this 30th day of December, 2022.




M. J. Chaba

Judge

30/12/2022