

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

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 43 OF 2019

(Arising from Land Case No. 131 of 2018)

HASHIM KAMBIAPPLICANT

VERSUS

**1. RASIA HARUBU SALUM (Administrator of the
Estate of the Late HARUBU SALUM MSAMALA)RESPONDENTS**
2. FELIX NDAZI
3. SALUM KINDAMBA

RULING

S.M. KALUNDE, J.:

This is an application for extension of time within which the applicant can file a Written Statement of Defence in relation to Land Case No. 131 of 2018. The application is preferred under the provisions of Order VIII Rule 1(2) and Order XLIII Rule 2 of **the Civil Procedure Code, Cap. 33 R.E 2019**; and supported by the affidavit of HASHIM KAMBI, the applicant.

The substance of his affidavit is that, on 15th December, 2018 he was served with summons and the plaint in relation to Land Case No. 131 of 2018. He contends that he could not engage an advocate to file his defence because of financial constraints. He added that it

was until 16th January, 2019 when he was informed by his advocate, Mr. Edwin Samoka Nkalani, that he was out of time and thus he was required to file the present application.

In reply, the 1st respondent filed a counter affidavit in which he alleged that the applicant has failed to demonstrate justifiable reasons for his delay in filing the defence.

The application was argued by way of written submissions, which were duly filed in accordance with Court orders. **Mr. Auni Chilamula**, learned advocate drafted and filed submissions for the applicant while submissions of the respondent were drafted and filed *gratis* by **Ms. Glory Sandewa**, learned advocate from Tanzania Women Lawyers Association.

In support of the application, Mr. Chilamula contented that he was served on 15th December, 2018 and therefore the 21 days in which to file his defence expired on 04th January, 2019. He cited **o. VIII r. 1(2)** and **o. XLIII r. 2** of the Code for the Courts mandate in extending time to file a written statement of defense.

He contended that at the time he was required to file his defence he was "**financial unstable**" to engage an advocate to prepare and file his defence. It was submitted that, by the time he

became “**financially stable**”, the limitation period had expired and hence the present application. In addition to that the applicant argued that the present application was brought promptly and therefore the applicants have demonstrated diligence and hence good reason for extension of time to file his defence. To support his argument he cited the decision of this Court in **Tanga Cement Company LTD vs. Jumanne Msangwa and Another**, Civil Application No. 6 of 2001, HCDSM (unreported) which was cited in **Assa Joseph Makole vs. Vijana Ukerewe Saccos Ltd**, Revision No. 34 of 2014

The respondent vehemently resisted the application. Ms. Sandewa argued that by 22nd January, 2019, when the application was filed, the applicant was late by approximately 18 days from the 21 days deadline fixed by law. He cited **o. VIII r. 1 (3)** of the Code to support an argument that the applicant was required to file the present application within 7 days from the expiry of the 21 days period.

She added that the applicant has failed to account for the all period of delay. In support of this argument she cited the case of **John Dongo & Others vs. Lepasi Mbokoso**, Civil Application No.

14/01 of 2018, CAT at Dar es Salaam (unreported). She concluded that the applicant has failed to demonstrate good cause and pleaded that the application be dismissed.

Having gone through the pleadings and the submissions for and against the application and the respective cited authorities, the issue for determination in this application is whether the circumstances presented befits this Court to condone the delay and allow the applicant to file his defence out of the limitation set by law.

The law regulating the time limits in filing the written statement of defence is provided for under **o. VIII r. 1** of the Code. The provision provides that:

"1.-(1) Where a summons to file a defence has been served in accordance with Order V and the defendant wishes to defend the suit, he shall within twenty-one days from the date of service of the summons, file to the court a written statement of defence and enter appearance on the date specified in the summons.

(2) The provisions of rule 1 of Order VII shall apply mutatis mutandis in respect to filing a written statement of defence.

(3) The court may, on application by the defendant before the expiry of the period provided for filing a written statement of defence or within seven (7) days after expiry of that period and upon the defendant showing good cause for failure to file such written statement of defence, extend time within which the

defence has to be filed for another ten days and the ruling to that effect shall be delivered within 21 days.

(4) The extended ten days under sub-rule (3) shall be counted from the date of the order of the court for extension of time."

The key takeaway from **o. VIII r. 1(1)** is that the defendant must file his defence "***within twenty-one days from the date of service of the summons***". However, the law has provided a safety valve for those who fail to comply with the 21 days period. **o. VIII r. 1(3)** requires the defendant who has failed to file his defence in time to file an application at any time before the expiration of 21 days or within 7 days after the expiration of the period. The Court has also been given a 21 days' timeline to deliver its decision on the application. Time may be extended for 10 days only.

The rationale for the comprehensive timeline under **o. VIII r. 1(3)** is to ensure timely disposal of suits before the courts. As soon as this timeline is tempered with or not respected there will be abuse of the court process which lead to endless litigations. I am not about to be part of that scheme.

In the present case the applicant has admitted being served on 15th December, 2018. In accordance with **o. VIII r. 1(1)** the 21 days' time limit expired on 06th January, 2019. The parties had

intimated that the period expired on 04th January, 2019. I do not think that is proper. In terms of **section 60(1)(b)** of the **Interpretation of Laws Act, Cap.1 R.E. 2019**, the calculation of 21 days excludes the date when the applicant was served; and as such, time started running from 16th December, 2018 and expired on 06th January, 2019.

In accordance with **o. VIII r. 1(3)** the applicant had 7 days, from 06th January, 2019, to file his application. The seven days expired on 13th January, 2019. The records of this Court are clear that the present application was filed on 22nd January, 2019, approximately 16 days from the expiry of the 21 days period; and 9 days from the expiry of the 7 days window provided by **o. VIII r. 1(3)**. From the above exposition, this application was, undoubtedly, filed in contravention of **o. VIII r. 1(3)**. I so find.

Even assuming that it was filed within the timeline prescribed by law, the only ground for delay advanced by the applicant is that he was **"financially unstable"** to engage an advocate to prepare and file his defence. Unfortunately, this is not a **"good cause"** envisaged under **o. VIII r. 1(3)**. I say so in view of the authority in

Yusufu Same & Another vs. Hadija Yusufu, Civil Appeal No. 1 of

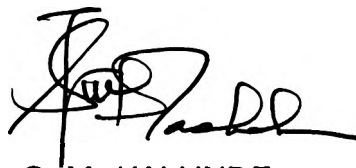
2002 where the Court stated as hereunder: -

"We are aware that financial constraint is not a sufficient ground for extension of time. See Zabitis Kawuka vs Abdul Karim, (EACA) Civil Appeal No. 18 of 1937. "

In the foregoing, I dismiss the application with costs for lack of merit. The case shall proceed *ex parte* against the applicant.

It is so ordered.

DATED at DAR ES SALAAM this 25th day of SEPTEMBER, 2020.



S. M. KALUNDE
JUDGE