

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

MISC. LAND CASE APPLICATION NO. 444 OF 2023
(Arising from Land Case No. 300 of 2008)

**ABLA ESTATE DEVELOPERS AND
AGENCY COMPANY.....APPLICANT**

VERSUS

TERRESTRIAL (T) LIMITED.....RESPONDENT

R U L I N G

Date of Last Order: 05.09.2023
Date of Ruling: 29.09.2023

T. N. MWENEGOHA, J.

The applicant is seeking for an order of extension of time so that he can lodge an Application for Review out of time, from the decision of this Court, vide Land Case No. 300 of 2008, dated 27th June, 2014, by Hon. Ndika J. This Application was brought under **Section 14(1) of the Law of Limitations Act, Cap 89 R. E. 2019** and was accompanied by the affidavit of Mr. Nassoro Khalifa Gharib, the Principal officer of the applicant.

Briefly, the factual setting leading to the case at hand are that, on March 13th, 2013, this Court delivered an Exparte Judgment in favour of the respondent, in land Case No. 300 of 2008. Dissatisfied with the said decision, the applicant sought an order for extension of time to set aside the exparte decision aforementioned. The Application was also registered as Land Case No. 300 of 2008. The same was struck out for being preferred under a wrong

provision of law. In 2022, upon consulting a new lawyer, the applicant came to know from his new lawyer that, both the main case and the Application for extension of time to set aside an *ex parte* Judgement, were registered as Land Case No. 300 of 2008. It is from that background; the applicant preferred this Application.

The same was heard by way of written submissions, Advocate Elly Musyangi appeared for the applicant while the respondent was represented by Advocate Job Kerario.

Mr. Musyangi, arguing in favour of the Application, was of the view that, the Ruling delivered on the 27th June 2014, was illegal owing to the mistakes on the registration of the case. The errors were apparent on the face of Court and can only be corrected through Review. That, the Application for Review can only be made after the extension of time has been allowed, subject to Article 107A (2) of the Constitution of Tanzania. He also cited the **LRM Investment Co. Ltd & 5 Others versus Diamond Trust Bank (T) Ltd, Misc. Commercial Application No. 182 of 2020, High Court of Tanzania, Commercial Division (unreported)** and the case of **Principal Secretary Ministry of Defense and National Service versus Devram Valambia {1991} TLR 387.**

In reply, Mr. Kerario for the respondent maintained that, the Application forming the basis of this case was struck out for being erroneously brought up. It was not decided on merits. Thereafter, the applicant lodged a Misc. Application No. 66B of 2014, which was dismissed before Ho. Mtungi J on the 30th October of 2014. Therefore, in this case, if allowed, the applicant will be seeking to review a case that was struck out. The law is clear, a struck-out case is a non-existence case. The applicant has already taken appropriate measures after the Ruling of Hon Ndika J, by of filling Misc.

Application No. 66B of 2014. Above all, the applicant has not given any sufficient reasons for his Application to be allowed as stated in **The Attorney General versus Twiga Paper Products Limited, Civil Application No. 108 of 2008, Court of Appeal of Tanzania at Dar es Salaam**. That, above all, the decree in question has already been partially executed, hence granting extension of time will prejudice the respondent.

In rejoinder, the applicant's counsel, reiterated his submissions in chief.

Having considered the submissions of the counsels for both parties, the affidavit in support of the Application and the counter affidavit against it, the issue for determination is whether the applicant has adduced sufficient reasons for his Application to be allowed or not. In the case of **Oswald Masatu Mwinzarubi versus Tanzania Fish Processors LTD, Court of Appeal of Tanzania, Civil Application No. 13 of 2010 (Mwanza Registry, (unreported)**, it was observed that, there are no rules in defining what constitutes a good cause for allowing an Application for extension of time, rather, Courts will look on the circumstances of each case.

In the present case, the reason for delay as advanced by the applicant's counsel is that, the existence of errors apparent on the records of Land Case No. 300 of 2008.

I agree that there was an error in naming the Application which forms the basis of instant case, vide Land Case No. 300 of 2008, before Hon. Ndika, J as then was (see annexure ABLA-2). It was an Application where several prayers were lumped up together. Among of the prayers were, (1) the applicant sought to stay the execution of Land Case No. 300 of 2008, heard and determined exparte by Hon. Nchimbi, J. (annexure ABLA-1) and (2) he sought for extension of time for him to file an application for setting aside

the exparte Judgement(annexure ABLA-2). The case before Hon. Ndika, J. was struck out for being incompetent as it was objected for being an omnibus Application and for being preferred under inapplicable provisions of law.

Looking at the affidavit and submissions by the counsel for the applicant, he is not disputing the decision by Hon. Ndika, J. to strike out the Land Case No 300 of 2008, for the reasons he gave in the Ruling in question. What he claims are the records on the register that, naming the said case as Land Case No. 300 of 2008 is illegal.

On my part, I disagree with what the applicant's counsel is trying to argue. To me, I see such errors constituting no illegality material on the case, to the extent that, it is capable of allowing an Application for extension of time. The said errors fall under clerical errors, capable of being corrected or rectified accordingly by the Court. The applicant has to file an appropriate Application for the same, not an Application for extension of time. Regardless of such clerical correction the substance of the case remains the same, that the Application was struck out.

Therefore, I find this Application to be devoid of merits and the same is dismissed with costs.

Ordered according.




T. N. MWENEGOHA

JUDGE

29/09/2023