

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB REGISTRY

AT ARUSHA

MISC. LAND APPLICATION NO. 49 OF 2023

(Originated from Land Case No. 4 of 2005 in the High Court of Tanzania at Arusha)

JULIUS HENRY DEWASI (Legal Representative

of the late Martin L. Dewasi) APPLICANT

VERSUS

M/S ERDEMANN COMPANY (T) LTD.....1ST RESPONDENT

ARUSHA MUNICIPAL COUNCIL.....2ND RESPONDENT

RULING

6/11/2023 & 5/02/2024

MWASEBA, J.

This application has been made under **Sections 93 and 95 of the Civil Procedure Code**, Cap 33 R.E 2019. The reliefs sought by the Applicant are that; -



- i. That, this Honourable High Court of United Republic of Tanzania at Arusha be pleased to grant Extension of time to file Application for execution out of time.*
- ii. Costs be in the course.*
- iii. Any other relief (s) this Honourable Court may deem fit and just to grant.*

The Applicant's application is supported by an affidavit deposed by the applicant himself. It was opposed by the 2nd respondent who filed his counter affidavit on 7/06/2023.

In this application, the Applicant appeared in person whereby Mr. Deusdedith Kweka, learned State Attorney appeared for the 2nd Respondent. The matter proceeded exparte against the 1st respondent as he never appeared in court although she was duly served.

Submitting in support of the application, the applicant stated that the late Martin L. Dewasi won the case in Land Case No. 4 of 2005 which was delivered on 10/12/2010. Unfortunately, on 28/3/2011 Mr. Martin L. Dewasi died. After his death, her wife Jane Dewasi was appointed as an administratrix of the estate of her late husband Martin L. Dewasi. On 2/9/2021 she filed an Execution case No. 7 of 2021 which was struck out on 23/2/2022 for being improperly filed. When this decision was given,



Ms. Jane Dewasi was already a deceased as she died on 29/12/2021. The applicant submitted further that after the death of Jane Dewasi, he was appointed as administrator of the estate of the late Martin L. Dewasi on 15/3/2023 via probate and Administration Cause No. 24 of 2022. Thus, now being the legal representative of the late Martin L. Dewasi, he is seeking for extension of time to file application for execution out of time as the time of 12 years to file execution had already lapsed due to the reasons elaborated herein. He supported his arguments by citing **Section 93 of the CPC** and the case of **Alliance Insurance Corporation Limited v. Arusha Art Limited**, Civil Application No. 33 of 2015 (CAT, Unreported).

Opposing the application, Mr. Kweka firstly prayed for his counter affidavit to form part and parcel of his submission. He further argued that it was a negligence of the applicant to be late to file an application for execution. He submitted further that the negligence started from the late Jane Dewasi who was appointed as administrator of the late Martin Dewasi on 30/9/2011 but she filed an application for execution on 02/09/2020 which is nine (9) years from the date of her appointment. It was his further submission that, the late Jane Dewasi died on 29/12/2021 before the ruling of execution No. 7 of 2021 being delivered.



So, the family meeting nominated another administrator on 13/8/2022. Further, the applicant was appointed by the court on 15/3/2023 but this application was filed on 18/4/2023 which is 34 days after the appointment.

He argued further that the applicant failed to meet the requirements set forth in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (CAT- Unreported) as they have shown negligence and sloppiness in pursuing their case. He supported his argument with several cases including the case of **Moto Matiko Mabanga v. Ophir Energy Plc, Ophir Services Pty Ltd and British Gas Tanzania Limited**, Civil Application No. 463/ 01 of 2017 (CAT- Unreported).

In brief rejoinder the applicant reiterated what was submitted in his submission in chief and added that they were late to file this application due to court process of filing a case before it and it was not the negligence of the applicant.

Having gone through the submission in support and against the application, this court will now determine the issue as to whether the application has merit.

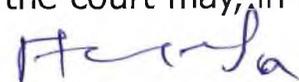


The applicant seems to be aware of the duration for making an application for execution of the decree to be within 12 years. However, he explained why it was not possible to do the same within the prescribed time. The record shows that 1st applicant who is now the deceased filed an execution in 2020 after the lapse of 9 years of her appointment as an administratrix and the same was struck out for being improperly filed. Thereafter, another administrator was appointed who is the applicant herein and he filed the present application on 18/4/2023. Still, he failed to explain why they were late to file the application for execution within twelve (12) years as required by the law. On his side, Mr. Kweka stated that the applicant did not show reasonable ground for delaying to file the same as required by the law.

It should be noted that the time limit for filing an application for execution of a decree, it is well provided under **Part III item 20 of the Law of Limitation Act**, Cap 89 R.E 2019 which stipulates that:

*"To enforce a judgment, decree or order of any court where the period of limitation is not provided for in this Act or any other written law -**twelve years.**"*(Emphasis added)

I am alive that where the period fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its



discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired. See **Section 93 of the Civil Procedure Code**. However, this is not the case when it comes to the application for execution of decree. The Law of Limitation Act which prescribed time limit for filing an application for execution to be 12 years, it further bars this court to extend time for filing application for execution. This is well provided under **Section 14 (1) of the Law of Limitation Act** that;

*"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, **other than an application for the execution of a decree**, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application". (Emphasis added)*

That being the legal position, it is crystal clear that this court's hands are tied up to exercise its discretion to extend time on this kind of application. The applicant ought to exercise his right to file the same within the prescribed period of 12 years.

In the premises this application is devoid of merits. It is hereby dismissed. Each party should bear own costs.



It is so ordered.

DATED at **ARUSHA** this 5th day of February, 2024.




N.R. MWASEBA

JUDGE