

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)**

AT MTWARA

MISC. LAND APPLICATION NO. 16 OF 2019

*(Arising from Land Case No. 1 of 2019 of the District Land and
Housing Tribunal for Mtwara at Mtwara)*

SHAKILA ISSA NAMATELEKA

**(Administratrix of the Estate of the late Hassan Issa
Namateleka).....APPLICANT**

VERSUS

IBRAHIM MOHAMED KISANGA.....1ST RESPONDENT

SALUM SELEMANI LILANGU.....2ND RESPONDENT

R U L I N G

29 Sept. & 19 Nov. 2020

DYANSOBERA, J.:

The applicant herein is the administratrix of the estates of the late Hassan Issa Namateleka who met his demise 2003 leaving behind some properties including a house located at Bomba la Bure, situated at Magomeni, Mtwara Municipality. Owing to the fact that at the time the deceased passed his four children were young, the house was allegedly left in the hands and care of 2nd respondent for supervision on behalf of the family and the beneficiaries. It was agreed that the house be under his custody until the children attained the age of majority whereby they could decide on the best

way to deal with the property. It is said that the 2nd respondent breached the trust and sold the property to the 1st respondent.

In a bid to recover the suit land, the applicant unsuccessfully filed Land Application No. 1 of 2019 before the District Land and Housing Tribunal for Mtwara at Mtwara in that the said application was dismissed on 28th June, 2019 on a point of law that the suit was time barred. The applicant was aggrieved but could not appeal as the appeal was time barred hence this application for extension of time.

In the application made by way of a Chamber Summons and supported with an affidavit sworn by the applicant, the court is being moved to extend time within which the applicant should appeal out of time. The application which has been preferred under section 14 (1) of the Law of Limitation Act, Cap. 89 R.E.2002 and any other enabling provisions of the law have been opposed by the two respondents who have filed a notice of preliminary objection. The said preliminary objection is pegged on the ground that the applicant's application is incompetent and prematurely before this Honourable Court for moving the court with wrong provision of the law for the matters originating from land dispute and therefore, bad in law and should be struck out.

The preliminary objection was heard in writing whereby parties filed written submissions.

Submitting in support of the preliminary objection, the 1st and 2nd respondents are arguing that the Parliament of the United Republic of Tanzania in its wisdom, in 2016, through the Written

Laws (Misc. Amendments) (No. 2) Act, 2016 amended section 41 by adding or inserting section 41 (2) of the Act to provide a remedy for a person who intends to challenge the decision of the District Land and Housing Tribunal for matters originated (sic) from District Land and Housing Tribunal. It is argued on part of the respondents that section 14 (1) of the Law of Limitation Act has been wrongly cited as this is not a normal civil suit but a land matter governed under the Land Disputes Act. On the consequences of citing wrong provision of law, it is submitted that it renders the application incompetent and subject to be dismissed. Reliance was placed on the cases **Abdallah Rashid Jalini v. Ahmad Asali Sili**, Civil Application No. 21 of 2018, **Hassan A. Shawa and John Ntingwa v. Jackson Ndesingo and two others**, Civil Appeals No. 77 of 2015 CAT (unreported), **Majura Magafu and Peter Swai v. the Managing Editor, Majira Newspaper and Business Times Ltd**, Civil Application No. 2013 of 2015 CAT (unreported) and in **Dr. Milcah Kalondu Mrema v. TIB Development Bank Ltd and Arusha Blooms Company Ltd**, Civil Application No. 14 of 2016 CAT (unreported).

Responding to this submission, the applicant admitted that this application which was made under section 14 (1) of the Law of Limitation Act and any other enabling provision but stated that the provision that the respondents have stated to be required to move the court is covered. She argues that this application has complied with all legal requirements and urges this court to invoke the overriding objectives introduced in our law in 2018 which requires the

court to avoid technicalities and determine merits to its finality. The applicant amplified her submission by contending that the applicant and her siblings are the heirs of the estate of the deceased and from 2003 to 2019 when the applicant filed land application as administratrix of the estate of the late Hassani Issa Namateleka claiming from the respondents the return of the house which is part of the estate of the deceased and after being sold without consent of the heirs by the 2nd respondent to the 1st respondent; that the first application was dismissed without hearing on merit which bars the right of the applicant and her fellow siblings to inherit the estate of the deceased father.

The applicant urges that the preliminary objection be dismissed and the court grant any other orders as it deems fit and just to grant.

I have considered the applicant's affidavit, the preliminary objection and the rival submissions by parties. I am inclined to overrule the preliminary objection.

There is no doubt that this application has been filed under section 14 (1) of the Law of Limitation Act [Cap.89 R.E.2002] and any other enabling provision of the law. Section 14 (1) provides that:-

14.-

(1) 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.

(2) For the purposes of this section "the court" means the court having jurisdiction to entertain the appeal or, as the case may be, the application.

There is no dispute that this court is, under sub-section (2) of section 14 of the Act, competent to entertain the application on hand. Equally, it cannot be gainsaid that failure to cite the enabling provisions of the law is not always fatal and the court can disregard that omission for the purpose of dispensation of substantial justice without being tied too much with technicalities. It is in that spirit that with the advent of the principle of Overriding Objective brought about by brought by the Written Laws (Miscellaneous Amendments) (No. 3) Act 2018 (Act No. 8 of 2018) courts now are required to deal with cases justly, and to have regard to substantive justice, the position which was emphasized by the Court of Appeal of Tanzania in the case of **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil App. No. 55 of 2017, CAT (unreported). In this matter there is no suggestion that if the preliminary objection is not sustained, the respondents will be prejudiced.

Besides, the respondents have not addressed the court on the obvious fact that the applicant, apart from citing section 14 (1) of the Law of Limitation Act, has also indicated on the chamber summons the phrase, '*and any other enabling provision of the law*'. Was that phrase not sufficient to encompass section 41(2) of the Land

Disputes Act as amended? The respondents were silent on this aspect.

For the purposes of this application, even if I take it that the preliminary objection has substance; I would be inclined to grant the application for the following reasons.

First, it is in the applicant's affidavit evidence that the late Hassan Issa Namateleka who died in 2003, left inter alia, the suit house in the hands of the 2nd respondent. Since the deceased's children were young the house was left in the care and supervision of the 2nd respondent on behalf of the family and the beneficiaries. It is further averred that it was agreed that the 2nd respondent looked after the house until the four heirs attained legal age at which they could make a rational decision on how to deal with the property. The 2nd respondent, however, seems to have abused the trust and sold the house to the 1st respondent. The applicant is struggling to assert her legal rights on behalf of the beneficiaries by pursuing legal action against the respondents. To attain substantive justice, the principle of overriding objective recently introduced into our legal system should be brought into play as I demonstrated hereinabove.

Second, the circumstances of the case and the interest of justice demands that this court should exercise its unfettered discretion and grant the extension of time as the denial will, as argued by the applicant, stifle her case. In the case of **Minister for Energy and the Attorney General and East African Gold Mines**

Ltd as Intervenor v. Mobrama Gold Corporation Ltd. [1998]


TLR No. 425, the Court held that;

'It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondent's delay does not constitute a case of procedural abuse or contemptuous fault and because the applicant will not suffer and prejudice, an extension should be granted'

The upshot of this is the preliminary objection by the respondents is overruled and it is ordered that this application should be heard on merit.

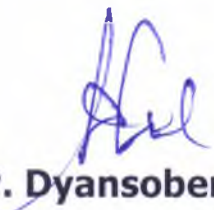
Order accordingly.




W. P. Dyansobera
Judge
19.11.2020

This ruling is delivered under my hand and the seal of this Court on this 19th day of November, 2020 in the presence of the applicant and both respondents.




W. P. Dyansobera
Judge