

**IN THE HIGH COURT OF TANZANIA**  
**(DISTRICT REGISTRY OF SUMBAWANGA)**  
**AT SUMBAWANGA**

**MISCELLANEOUS CIVIL APPLICATION NO. 29 OF 2018**

*(Originating Misc. Civil Cause No. 13/2017)*

**JILALA LUCHAGULA & 211 OTHERS ..... APPLICANTS**

**VERSUS**

<b>1.DISTRICT COMMISSIONER TANGANYIKA DISTRICT 2.ATTORNEY GENERAL KATAVI</b>	}	<b>..... 1<sup>ST</sup> RESPONDENTS</b>
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**RULING**

*09/07/2020 & 08/09/2020*

**W. R. Mashauri, J.:**

This is an application for extension of time filed by the applicants in this application on 20/12/2018. It is filed under S. 14(I) of the law of limitation Act Cap. 89.

In their intention, the Applicants are intending to reinstitute the application for judicial review out of time.

Upon service of summons and an affidavit served by the Applicants to the Respondents, the Respondents filed notice of preliminary objection to the effect that:-

1. The court is not properly moved for non-citation of proper provision of the law.
2. The Affidavit supporting the application is incurably defective for containing defective verification clause.
3. The affidavit in support of the application is bad in law for containing extraneous in the form of arguments, opinions and conclusions.

When the matter came up in court for hearing on 22/04/2020, counsel for both parties prayed for the court leave to dispose of the raised preliminary objection by filing written submissions and their prayer was blessed by the court.

In their joint submission in support of the notice of preliminary objection, counsel for the respondents submitted that, in filing their application under S. 14(I) of the law of limitation Act Cap. 89 the applicants did wrongly cited it as it does not confer jurisdiction to the court to grant the sought orders. It is equally true to say that, this court has not been properly moved by the applicants.

That, in the affidavit sworn by Mr. Chambi learned counsel for the applicants in paragraph 1 the learned counsel for the applicants stated that, Misc. Application No 9/2018 was struck out by this High Court on 07<sup>th</sup> December 2018 for being incompetent. The said application for orders of prohibition preferred under the law Reform [fatal Accidents and Miscellaneous Act] Cap. 310 RE: 2019.



That, Section 14(I) of the law of limitation Act Cap 89 does not confer jurisdiction to the High court. It is a general provision which does not confer jurisdiction to the High court to grant extension of time. So far as the applicants intend to reinstitute their application for prohibition, the relevant provision is found in the law Reform [Fatal Accidents Miscellaneous Provisions] Act S. 2 (3).

Having so submitted in respect of point one of the preliminary objection, he prayed the court to struck out the application.

For the 2<sup>nd</sup> point of preliminary objection that, the affidavit supporting the application is incurably defective for containing defective verification clause, counsel for the respondents submitted that, the attestation of affidavit is governed by the Oath and Statutory Declaration Act Cap. 12 RE: 2011 [The Act]. Section 8 of the Act makes it clear that, verification clause should show when, where and before what authority [whom] the affidavit was made.

In his sworn affidavit, the said Mr. Chambi counsel for the appellants did not state where the verification was taken. Instead it is written "Given at Sumbawanga on 18<sup>th</sup> day of December, 2018.

The defects in the applicant's affidavit extend even to the jurat of Attestation. He cited the case of **Commissioner General [TRA] V pan African Energy [T] Ltd** civil Application No. 227/2017 [unreported] Hon. LILA. JA where he held that,

*"We would also wish to underscore that, Section 10 of the oath and statutory declarations Act, Cap 34 RE: 2000 is relevant in attestation of an affidavit..."*

In respect of the 3<sup>rd</sup> point of preliminary objection that, the affidavit in support of the application is bad in law for containing extraneous matters in the form of argument opinion and conclusion, counsel for the Respondent's submitted that, affidavits are governed by order XIX Rule (2) of the CPC Cap. 33 RE: 2019. The law is clear that, affidavits must be confined to such facts as the deponent is able of his own knowledge to prove.

Finally counsel for the respondents submitted that, the grant of extension of time is the discretion of the court, but such discretion must be exercised judiciously. To back up his submission he referred this court to the case of **Lyamuya construction Company Ltd V/s Board of Registered of Young Women's Christian of Tanzania** Civil application No. 2 of 2010 [unreported] CAT Arusha Registry in which the Court of Appeal laid down the following guidance's to be contained in the affidavit to wit:-

- (a) The applicant must account for all the period of delay.
- (b) The delay should not be inordinate.
- (c) The applicant must show diligence and not apathy' negligence or sloppiness in the prosecution of the action that he intends to take.
- (d) That, if the court feels there are other sufficient reasons, such as the illegality of the decision sought to be challenged.

It is quite apparent in this record that, Misc. application No. 13 of 2017 was struck out by Hon. Mambi, J. on 4/12/2018 in presence of both parties,



but for no apparent reasons, this application for extension of time was filed on 10/06/2019 hardly after a lapse of six months and 5 days, the time of which was not counted for by counsel for the applicant's in their affidavit. By so doing, this application deserves to be dismissed with costs.

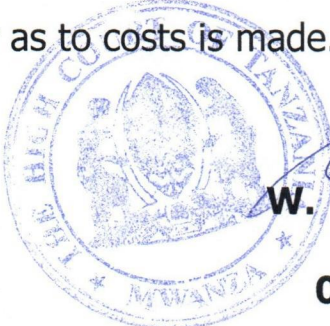
Upon served with the Respondents written submission in support of the points of preclusion, Mr. Chambi counsel for the applicants did not file reply. Instead, he wrote a letter to the Deputy Registrar High Court Sumbawanga dated 26/05/2020 requesting of extension of time to file the reply of submission from Misc. Civil Appl. No. 29/2018 originating from Misc. Cause No. 13/2017 because, on 22/04/2020 when the matter was called up for hearing, he was sick and his brief was held by Mr. Francis Rogers learned counsel. He was requested to file reply in 14 days but by that particular time his head was severely aching. Ultimately he was admitted to Sumbawanga Rukwa Hospital for hernia and was operated. He was admitted for treatment from 12/05/2020 up to 15/5/2020. He did not file his reply on 15/5/2020 because he was still sick and surgical thread was yet removed from the operated wound. The same were removed from the operated wound on 27/05/2020 and was released away. He attached to his letter the NHIF – HEALTH PROVIDER/OUT PATIENT CLAIM FORM serial No. 19/20 to substantiate his allegation of sickness.

It must be noted from this record of the application that, there are at present two applications which are yet to be settled. There is Misc. Civil Application No. 29 of 2018 originating from Misc. Civil Cause No. 13 of 2017 and a mere letter written by counsel for the applicants to the Deputy

Registrar High court Sumbawanga requesting for extension of time to file the reply of the submission made by counsel for the respondents in support of their preliminary objection they raised against the applicants main application.

Counsel for the applicants said he did not file reply upon being supplied with the written submission in support of the preliminary objection by the respondents because he got sick before filing the reply. Hence a mere written letter dated 22/05/2020 to the Deputy Registrar requesting for extension of time to file reply to the respondents written submission. The said letter is not even copied to the respondent's advocate. Mr. Chambi counsel for the applicant's has attached to his letter an unreadable and uncertified copy of the NHIF-HEALTH PROVIDER/OUT PAINT CLAIM FORM serial No. 19/20 which is in fact unknown from what hospital it was issued upon treated Mr. Chambi. This request for extension of time to file reply of the respondent's written submission is of no head or tail. It is hereby struck out.

No order as to costs is made.



**W. R. MASHAURI**  
**JUDGE**  
**03/09/2020**



Date: 08/09/2020

Coram: Hon. W. R. Mashauri, J


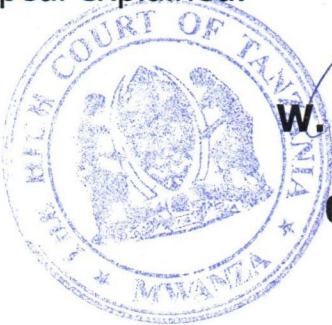
Applicant: 1<sup>st</sup> and 2<sup>nd</sup> – All absent

Respondent: 1<sup>st</sup> and 2<sup>nd</sup> – Mr. Joseph Tibaijuka for respondents

B/c: Felister, RMA

Ruling delivered in court in presence of Mr. Joseph Tibaijuka Advocate for the respondents and in absent of Mr. Chambi counsel for the applicants through video conference this 08/09/2020.

Right of appeal explained.

**W. R. MASHAURI**  
**JUDGE**  
**08/09/2020**