

TANZANIA / JUDGMENT

michael b masinde vs ds izina alias dhahiri said izina 3 others 2021 tzhclandd 6866 11 november 2021

COURT
TANZLIIDECIDED
11 November 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND CASE NO. 03 OF 2021 MICHAEL B. MASINDE.....
PLAINTIFF VERSUS D.S. IZINA alias DHAHIRI SAID IZINA..... 1stDEFENDA
FRANCIS ENDENI MSANGI..... 2nd DEFENDANT MINISTRY OF LANDS,
HOUSING AND HUMAN SETTLEMENT.....
3rdDEFENDA HONOURABLE ATTORNEY GENERAL..... 4thDEFENDA

RULING

OPIYO, J. The court ordered the plaintiff to file amended plaintiff by 02/08/2021. The plaintiff filed the same on 6th August, 2021. This means it was filed out of time. Counsels for the parties were asked to address court on the consequence of filing plaintiff out of time. In doing so, Mr. Cleophas Manyangu, counsel for the plaintiff submitted that filing this plaintiff out of time was a result of a mere overlook in that he heard that the same was to be filed on 9th August 2021 and not 2nd August 2021. He therefore argued that, according to provision of order VI Rule 18 amended plaintiff that was filed out of time ought to be struck out. That, after striking out the amended plaintiff the original plaintiff is revived, and the court may proceed to extend time for the plaintiff to file a fresh amendment plaintiff. i This contention was highly contended by both Mr. Thomas Mahushi, learned State Attorney representing the 3rd and 4th defendants and Ms. Juliana Momburi, learned advocate for 1st and 2nd defendants who contended that based on the case of Sungurwa Traders V. Equity Bank Ltd. Upon striking out of the amended plaintiff, the entire suit also collapses as there is no plaintiff to sustain it. The above submissions have been dully considered. The order VI rule 18 of the CPC, provision relied upon by Mr. Manyangu to pray for extension of time to file fresh amended plaintiff states that:- "Where a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the court." The above provision covers situation where the one expected to effect amendment is for some reason failed to do so within the time prescribed and may pray for further extension of time to comply with the order. It does not cover situations

where the amended pleading, plaint in this case, has already been filed out of time. After all, in amendment of pleadings upon filing the amended pleading the original one dies naturally. The cause for filing out of 2 time is immaterial in such cases. Therefore, the only plaint in our case, which sustains our suit. If it is struck out as conceded by Manyangu, the already dead former plaint cannot be revived. Therefore, upon the amended plaint is struck out, the entire suit is inevitably struck out too as it cannot stand without plaint, as a I hereby do. I make no order as to costs as the issue resulting to struck out may well be out of an oversight as argued by 3

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/michael-b-masinde-amendmentofpleadings-tanzlii-2021

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