IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

(CORAM: LUBUVA, J.A., MUNUO, J.A., And MSOFFE, J.A.)

CIVIL APPEAL NO. 171 OF 2004

SIMON MATAFU
As Liquidator of TANZANIA HOUSING BANK ..... APPELLANT

VERSUS

M/S CONCRETE STRUCTURES
BUILDING CONTRACTORS ..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Mbeya)

(Mackanja, J.)

dated the 23rd day of September, 2002
in
Civil Case No. 12 or 1995

JUDGMENT OF THE COURT

MSOFFE, J.A.:

On 17/4/2002 the respondent herein lodged an application at the High Court of Tanzania at Mbeya seeking to make clerical or arithmetical corrections in a garnishee order dated 20/8/1999. Before the application could be determined on merit the applicant raised a preliminary objection on the competency of the said application. The objection was basically that the application was time barred for being filed out of the sixty days period prescribed under item 21 of Part III of the First Schedule to the Law of Limitation Act, 1971. In a Ruling dated 23/9/2002 the High Court, Mackanja J,

dismissed the objection thereby holding that the application fell under item 20 of the schedule in which a period of 12 years is prescribed. Having held so, the learned judge went on to allow the application without hearing the parties any further.

This is an appeal against the above decision. There are two grounds of appeal which read as follows:-

1. That the learned Judge erred in law and fact in holding that the application by the applicant/ respondent was not time-barred.

2. That the learned Judge erred in law and fact in disposing of the application on a preliminary point.

In arguing the first ground Mr. Mwakilasa, learned advocate for the appellant, urged that in the absence of a specific period of limitation provided for under The Civil Procedure Code, 1966 and The Magistrates' Courts Act, 1984 to cover an application of the above nature, the application in question ought to have been filed within sixty days in line with the above schedule.

As for the second ground Mr. Mwakilasa's main complaint was that having ruled that the objection had no merit the judge erred in determining the application without hearing the parties.

On his part, Mr. Mwakolo, learned advocate for the respondent, maintained that the judge did not err. In his view, the garnishee order was a step in the execution process. Therefore, without effecting the envisaged corrections the execution of the decree could not proceed to a conclusive end. Thus, according to him, since what was at stake here was **execution**, item 20 of the schedule was relevant for purposes of computing time.

On the second ground, Mr. Mwakolo, learned counsel for the respondent, readily conceded that the judge erred in allowing the application without hearing the parties.

In order to appreciate the point canvassed in the first ground of appeal the following background information is essential. The judgment, the subject of the garnishee order, was delivered on 17/12/98. The garnishee order sought to be corrected was dated 20/8/99, as earlier stated. So, when the application was filed on 17/4/2002 a period of two years seven months and twenty eight days had passed from the date of the garnishee order.

Therefore, the crucial issue here is whether the application fell under item 20 or 21 for purposes of computation of time.

Items 20 and 21 read as follows:-

20.	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.*
21.	Application under the Civil Procedure Code, 1966, the Magistrates' Courts Act, 1963 *(read 1984)* or other written law for which no period of limitation is provided in this Act or any other written law	*sixty days.*

It will be noted that applications under items 20 and 21 are different. Whereas an application under item 20 relates to the enforcement of a judgment, decree or order, item 21 relates or deals with applications whose period of limitation is not covered by any of the above mentioned statutes or any other law. Bearing this distinction in mind we are of the considered view that in the instant case the period of limitation in respect of the application in issue fell under item 20. We say so because by its nature a **garnishee order** is a step in the execution process, as correctly argued by Mr. Mwakolo.

That is why a **garnishee** is defined in **Osborn's Concise Law Dictionary Sixth Edition** as follows:-

> "A debtor in whose hands a debt has been attached: *i.e.* he is warned not to pay his debt to anyone other than the third party who has obtained judgment against the debtor's own creditor. A garnishee order is the order served on a garnishee attaching a debt in his hands."
> (Emphasis supplied)

And in the same **dictionary** attachment of debts is defined, in part, as follows:-

> "A proceeding employed in actions ... where a judgment for the payment of money has been obtained against a judgment debtor to whom money is owing by another person (called the garnishee); in such a case the judgment creditor may obtain an order that all debts owing or accruing from the person (the garnishee) to the judgment debtor shall be attached to answer the judgment debt. The effect of this order is to bind the debt in the hands of the garnishee ....."
> (Emphasis supplied)

In effect, therefore, and in so far as this matter is concerned, once the garnishee order was applied for and signed on 20/8/99 execution or enforcement process was put into motion. In this light, we are increasingly of the view that the period of limitation to cover the application for correction of the garnishee order falls under item 20 because, as stated above, a garnishee order is a step in the enforcement or execution process. Thus, in our view, the judge did not err in holding that the application before him was not time barred because this was the sort of application which could be filed within a period of twelve years.

The complaint in the second ground of appeal arises from that portion of the Ruling which reads as follows:-

> "The application would therefore succeed.
> The application is allowed."

With due respect to the learned judge, he erred in proceeding to determine the application without hearing the parties. After dismissing the preliminary objection the logical thing for him to do was to hear the parties on the merits or otherwise of the application and then proceed to write and deliver a considered Ruling. We are,

therefore, in agreement with Messrs. Mwakilasa and Mwakolo that the judge erred in this respect.

In the end result, for the above reasons, we dismiss the appeal on the first ground. We allow the appeal on the second ground and accordingly quash and set aside the order by the judge to allow the application. The matter is remitted to the High Court with direction to determine the application for correction of errors in the garnishee order on merit.

Costs will be in the cause.

DATED at MBEYA this 5th day of May, 2005.

D. Z. LUBUVA
JUSTICE OF APPEAL

E. N. MUNUO
JUSTICE OF APPEAL

J. H. MSOFFE
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S. A. N. WAMBURA)
SENIOR DEPUTY REGISTRAR