IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAMJ

(CORAM: MUGASHA, J.A., NDIKA, J.A., And KWARIKO, J.A.)

CIVIL APPLICATION NO. 183 OF 2014

DR. MUZZAMMIL MUSSA KALOKOLA ..... APPLICANT

VERSUS

1.THE MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS
2. THE CONSTITUTIONAL REVIEW COMMISSION
3. THE HON. ATTORNEY GENERAL
..... RESPONDENTS

(Application for revision from the Proceedings and Ruling of the High Court of Tanzania at Tanga)

(Rugazia, Msuya and Wambali, JJ.)

dated the 3rd day of July, 2014

in

Miscellaneous Civil Application No. 2 of 2014

.....

RULING OF THE COURT

12th & 25th February, 2019

NDIKA, J.A.:

Dr. Muzzammil Mussa Kalokola, the applicant herein, appears to be a public-spirited citizen. He applied to the High Court of Tanzania sitting at Tanga in Miscellaneous Civil Application No. 2 of 2014 for the prerogative orders of certiorari, mandamus and prohibition against the respondents, namely, Minister of Justice and Constitutional Affairs, the Constitutional Review Commission and the Attorney General alleging

numerous violations of the Constitution of the United Republic of Tanzania of 1977. The alleged desecrations mostly related to or were connected with the process of constitutional review that was being carried out under the Constitutional Review Act, Cap. 83 RE 2014 aimed at attaining a new constitution for the nation. As it turned out, his quest did not come to fruition; it was struck out with costs at the pre-hearing stage, the High Court having sustained the respondents' preliminary objection that the petition was fatally defective for non-citation of proper enabling provisions of the law. Aggrieved, the applicant has now lodged this application under sections 4 (3) and (5) and 7 of the Appellate Jurisdiction Act, Cap. 141 RE 2002 and Rules 4, 65 (3) and (7) of the Tanzania Court of Appeal Rules, 2009 (the Rules) seeking revision of the proceedings and the ruling of the High Court.

In resisting the application, the respondents duly filed a preliminary objection containing two points thus:

1. *That the application is hopelessly time-barred in terms of Rule 65 (4) of the Tanzania Court of Appeal Rules, 2009.*
2. *That the application is incompetent as it does not fall within the provisions of section 4 (1),*

(2) and (3) of the Appellate Jurisdiction Act, Cap. 141 RE 2002.

At the hearing of the preliminary objection, the applicant appeared in person, unrepresented while the respondents had the services of Ms. Alicia Mbuya, learned Principal State Attorney, and Ms. Pauline Mdendemi, learned State Attorney.

Ms. Mbuya argued the first point of preliminary objection but abandoned the second point after a brief dialogue with the Court. She submits, in effect, that while the impugned ruling of the High Court was delivered on 21st July, 2014, the application before us was lodged on 22nd October, 2014, which was the 92nd day after the impugned decision was handed down. The said lodgment was, therefore, out of the sixty days' period prescribed by Rule 65 (4) of the Rules, which expired on 21st September, 2014. As no leave to file the matter out of time was sought and obtained by the applicant, Ms. Mbuya urges us to strike out the application with costs.

The applicant strongly disagrees with Ms. Mbuya. While conceding that the matter was lodged on 22nd October, 2014, he contends that it was timeous on the ground that it was filed just five days after he had collected from the High Court Registry a copy of the

proceedings on 17th October, 2014 for which he duly applied. He elaborates that in computing the sixty days' limitation period, the entire period necessary for the preparation and delivery of the copy of proceedings by the High Court Registry until 17th October, 2014 must be excluded. On this basis, he did not have to seek and obtain extension of time under Rule 10 of the Rules to lodge the matter. On this contention, he relies on Rule 2 of the Rules and sections 7, 18, 19 and 21 of the Law of Limitation Act, Cap. 89 RE 2002, whose effect, he says, was excluding the entire period necessary for the preparation and delivery of the record of proceedings from the reckoning of the sixty days prescribed limitation period.

Rejoining, Ms. Mbuya insists that the applicant, having failed to lodge the matter within the prescribed limitation period, ought to have applied for extension of time as the procedure for exclusion of the period for preparation and delivery of the copy of proceedings was inapplicable. That the provisions of Cap. 89 (*supra*) are inapplicable to the proceedings before this Court.

We have carefully examined the record before us and taken account of the arguments of the parties. It is common cause that the

impugned ruling was handed down on 21st July, 2014 and that, in terms of Rule 65 (4) of the Rules, the present matter ought to have been filed within sixty days thereafter. It is apposite to extract Rule 65 (4) hereunder:

> *"Where the revision is initiated by a party, the party seeking the revision shall lodge the application within sixty days (60) from the date of the decision sought to be revised."*

Reckoning the sixty days' limitation time from the date of delivery of the ruling, the said period expired on 21st September, 2014 but this matter was lodged on 22nd October, 2014, which was the 92nd day after the decision was handed down.

The applicant's contention, relying on the provisions of Cap. 89 (*supra*), is that the matter was still in time as he lodged it five days after he had been supplied by the High Court Registry with a copy of proceedings that he duly applied for and that the entire period he waited for that copy ought to be excluded from the computation of the limitation period. The point for consideration is, therefore, whether the period for preparation and delivery of the copy of proceedings could be legally excluded from the computation of the limitation period.

We are firm in our mind that the applicant's contention is based upon a clear misconception of the law. Although Cap. 89 (*supra*) contains provisions mandating exclusion of certain periods from the computation of the prescribed limitation, section 43 (b) of that law explicitly excludes the application of that law to *"applications and appeals to the Court of Appeal."* The time limitations and their computations for the purpose of the proceedings before this Court are stipulated and governed by the Rules. Looking at the entire text of the Rules, there is no provision for exclusion of the period for preparation and delivery of proceedings by the High Court for the purpose of institution of a revision in the Court. Once the prescribed limitation period has expired, a party intending to seek revision can only pursue the matter by applying, at first, for extension of time under Rule 10, which provides thus:

> *"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to*

any such time shall be construed as a reference to that time as so extended."

We would recall that in his frantic effort to save this application the applicant urged us to apply Rule 2 of the Rules, which enjoins the Court to have due regard to the need to achieve substantive justice in every single case. Certainly, this Court will not worship at the altar of legal technicalities; it will endeavour to attain substantive justice in every case. Nonetheless, in the instant case, the Court cannot ignore the trashing of the mandatory time limitation prescribed by Rule 65 (4) of the Rules. As rightly argued by Ms. Mbuya, the applicant ought to have preceded his present pursuit by applying for extension of time under Rule 10. If an illustration be needed of the consequences of flouting Rule 65 (4), we would readily recall what we held in **Kibong'oto Wanri Rural Cooperative Society Ltd. v. Koboko Rural Cooperative Society Ltd.,** Civil Application No. 3 of 2014 (unreported) that there was no better option than to hold an application for revision time-barred and liable to be struck out if lodged beyond the sixty days prescribed period.

All told, we sustain the preliminary objection on the first point and find the application time-barred. Accordingly, the matter is struck out with costs.

Ordered accordingly.

DATED at **DAR ES SALAAM** this 19th day of February, 2019.

S. E. A. MUGASHA
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

I certify that this is a true copy of the original

S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL