

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: WAMBALI, J.A., KOROSSO, J.A. And RUMANYIKA, J.A.)

CIVIL APPLICATION NO. 244/01 OF 2019

MUSE ZONGORI KISERE APPLICANT

VERSUS

RICHARD KISIKA MUGENDI.....1ST RESPONDENT

SOPHIA BHOKE MARYOGO.....2ND RESPONDENT

**SAID ALLY MPEMBENWE (as Administrator of the Estate
of the Late SEIF ALLY MPEMBENWE)3RD RESPONDENT**

**(Application for revision of the Judgment and Decree of the High
Court of Tanzania at Dar es Salaam)**

(Bubeshi, J.)

Dated the 20th day of December, 2002

in

Matrimonial Cause No. 2 of 1997

RULING OF THE COURT

15th July, & 18th October, 2022

RUMANYIKA, J.A.:

This is an application for revision of the proceedings, judgment and decree of the High Court (Bubeshi, J.) dated 20/12/2002. It has been preferred by Muse Zongori Kisere, the applicant, by way of a notice of motion predicated under section 4(3) of The Appellate Jurisdiction Act, Cap 141 R.E. 2002 (now R.E 2019) (the AJA) and Rule 65(1) of The Tanzania Court of Appeal Rules, 2009 (the Rules). It is

supported by an affidavit of Muse Zongori Kisere whose contents the applicant adopted at the hearing.

At the hearing of the application the applicant and Richard Kisika Mugendi, the 1st respondent appeared in person, unrepresented. The 2nd respondent had the services of Mrs. Nakazael Lukio Tenga assisted by Messrs Hamis Mfinanga and Greyson Laizer, all learned counsel. Mr. Said Ally Mpembenwe appeared in person as legal representative of the 3rd respondent, pursuant to an order of the Court dated 19/07/2022.

Before we heard the submissions for and against the application, we had to determine the preliminary point of objection which was formally raised on 12/07/2022 by the 2nd respondent concerning time limit. To support the objection, Mrs. Tenga briefly submitted that on 03/05/2019 the Court granted the applicant extension of time of sixty days to lodge the present application but he lodged it on 03/07/2019, which was one day beyond the time given without another extension of time being sought and granted. The learned counsel therefore prayed for dismissal of the time-barred application. However, she did not press for the costs.

In reply, though the applicant conceded out rightly that the application is time barred, she asked for the Court's indulgence and

urged us to ignore the limitation period and determine the application on merit.

The 3rd respondent concurred with Mrs. Tenga's submission and prayed for dismissal of the application with costs for being time barred.

On his part, the 1st respondent also agreed with Mrs. Tenga and the applicant that the application is only one-day time barred. However, he argued that considering the period of delay, this Court be pleased to invoke the Overriding Objective principle and ignore the point of law on time limit. He therefore supported the applicant's prayer to determine the application on merit regardless of the issue of time limit.

In her brief rejoinder, Mrs. Tenga submitted that the issue of time limit is not a mere legal technicality as it touches on the jurisdiction of the Court. Therefore, she argued that the Overriding Objective Principle is not applicable in the circumstances.

Having heard the parties' submissions, more so the applicant's concession, the issue for our determination is no longer whether or not the application is time barred, but whether a one-day delay is excusable.

As regards the magnitude and legal effects of the delay, this is not the first time the Court is confronted by the question. It is trite law that

a delay, even of a single day has to be accounted for. We have pronounced so in various decisions including in **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 and **Bharya Engineering and Contracting Co. Ltd v. James Alan Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (both unreported).

From the above settled legal position, with respect, we do not accept the applicant's prayer to ignore the delay and proceed to determine the application on merit. Equally, we don't subscribe to the 1st respondent's proposition and invitation to disregard the delay because the issue of time limit is not a legal technicality that entitles the applicant to amnesty under the Overriding Objective principle enshrined under the AJA. On the contrary, it is settled that once the issue of time limitation is established, it has the effect of causing the jurisdiction of the Court to cease. We have consistently held that stance in a number of cases including **Njake Enterprises Ltd v. Blue Rock, Ltd and another**, Civil Appeal No. 69 of 2017, **Mayira B. Mayira and 4 Others v. Kapunga Rice Project**, Civil Appeal No. 359, **Mondorosi Village Council and 2 Others v. Tanzania Breweries Ltd and 4 Others**, Civil Appeal No. 66 of 2017 and **Filon Felicion Kwesiga v.**

Board of Trustees of NSSF, Civil Appeal No. 136 of 2020 (all unreported).

Particularly, in **Mayira B. Mayira and 4 Others v. Kapunga Rice Project** (supra) we held as follows: -

"... where the issue is that the appeal is time barred it means that the Court cannot entertain it for lack of jurisdiction. Such an issue goes to the core of the determination of the case. For the foregoing reasons, we decline to accept the invitation to overlook such an issue of jurisdiction ... The overriding objective principle is under the circumstances inapplicable...

[Emphasis added].

The above settled position which concerns an appeal, equally applies to an application for revision. In the present application, there is no doubt as conceded by the applicant that she delayed to lodge it though she was given extension of time. Thus, as we said earlier, since the issue of time limit is an irregularity that touches on the court's jurisdiction it is not a mere technicality, we decline to accept the applicant's and the 1st respondent's prayer to ignore it as the Overriding Objective principle is not applicable in the circumstances.

Consequently, we are constrained to sustain the 2nd respondent's preliminary point of objection and hereby strike out the application with no order as to costs. It is so ordered.

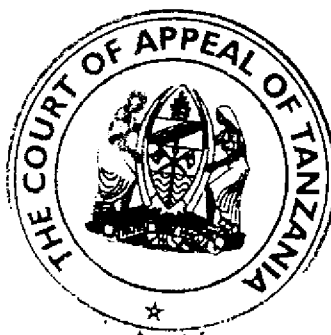
DATED at DAR ES SALAAM this 16th day of September, 2022.

F. L. K. WAMBALI
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

The ruling delivered this 18th day of October, 2022 in the presence of the applicant in person and Mr. Greyson Laizer, learned counsel for the 2nd respondent whereas Mr. Said Bakari appeared as the 3rd respondent, is representative, is hereby certified as a true copy of the original.




R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL