

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: NDIKA, J.A., KAIRO, J.A., And MURUKE, J.A.)

CIVIL APPLICATION NO. 467/17 OF 2022)

CATHOLIC ARCHDIOCESE OF DAR ES SALAAM 1ST APPLICANT

ST. ANTHONY SECONDARY SCHOOL 2ND APPLICANT

VERSUS

LATIFA SAIDI.....RESPONDENT

**(Appeal from the decision of the Ruling and Order of the High Court
of Tanzania Land Division, at Dar es Salaam)**

(Mgeyekwa, J)

dated the 22nd July, 2021

in

Land Revision No. 37 of 2020

.....

RULING OF THE COURT

31st October & 28th November, 2023

MURUKE, J.A.:

This is the second time the applicants are seeking leave to appeal to this Court, following refusal by the High Court Land Division in Misc. Land Application no 37 of 2020.

Initially, the respondent filed application No. 18 of 2020 before the District Land and Housing Tribunal of Temeke. Upon being served, the applicants raised preliminary objections, that the application was time barred and that the respondent's right to sue had extinguished. After hearing of preliminary objections, the chairman overruled the objections and ordered amendment of the pleadings. Being dissatisfied, the

applicants filed revision application No. 37 2020. Upon being served, the respondents raised an objection that the application was misconceived for being based on interlocutory order contrary to section 79 of the Civil Procedure Code. The High Court upheld the respondent's objection and it thus struck out the application for revision.

The applicants filed an application for leave to appeal to Court that was dismissed by Honourable Arufani J, in June 2022. After delivery of the ruling refusing to grant leave to appeal by the High Court, the applicants through their advocate wrote a letter requesting to be supplied with copies of the ruling and drawn order. It took some time before being supplied with the same, that necessitated issuance of certificate of delay by the Registrar. Ultimately the present application was filed on 10th August, 2022.

On the hearing date, Mr. Robert Rutaihwa and Mohamed Mkali, both learned counsel represented applicants and respondent respectively. Before hearing of the application on merits, Mr. Mkali raised preliminary objection orally that, the application before the Court is time barred. Upon being given floor to address the Court on the objection raised, he briefly submitted that decision sought to be challenged was delivered on 22/06/2022. That the application ought to have been filled within 14 days from the date of refusal of the first application. At page 92 of the records

of the application, the registrar has excluded 38 days from 22/06/2022 to 28/07/2022, and the instant the application was filed on 10/08/2022, being a period of 54 days. According to the certificate of delay the Registrar has excluded 38 days. By simple calculations, $54 - 38 = 16$, the application is out of time for two days.

The applicant's counsel Mr. Rutaiwa replying to the preliminary objection, submitted that the objection by the respondent's counsel is misconceived in terms of rule 45 (1) (b) of the Tanzania Court of Appeal Rules, 2009 ("the Rules"). From when the applicant requested for the copies to the time when they were supplied is 38 days. The application was filed within 14 days counting from the date of certificate of delay because on 8th and 9th was a Saturday and Sunday which are not working days. Mr. Rutaiwa prayed for dismissal of the preliminary objection. Moreover, he alerted the Court that preliminary objection was raised orally as a surprise in the cause of hearing of the application. Should the Court uphold the objections, he requested that the applicant be spared costs.

In rejoinder, Mr. Mkali insisted that rule 45 (b) of the Rules provide for 14 days from the date of the refusal by the High Court. Time excluded is only mentioned by Registrar. So, the application for leave to appeal to the Court is out of time for two days.

Having heard both counsel on the preliminary objection and gone

through the records, issue for determination is whether present application was filed within the time prescribed by rule 45 (b) of the Rules which states;

"Where an appeal lies with the leave of the Court, application for leave shall be made in the manner prescribed in rules 49 and 50 and within fourteen days of the decision against which it is desired to appeal or, where the application for leave to appeal has been made to the High Court and refused, within fourteen days of that refusal; Provided that, in computing the time within which to lodge an application for leave in the Court under paragraph (b), there shall be excluded such time as may be certified by the Registrar of the High Court as having been required for preparation of a copy of the decision subject to the provisions of rule 49 (3)".

It is not disputed that ruling refusing leave to appeal at the High Court was delivered on 17/06/2022. The letter by applicant seeking to be supplied with the copy of ruling and drawn order was written by the applicant counsel on 22nd June, 2022. The Registrar's letter informing the applicant to collect requested document is dated 28th day of July, 2022. The certificate of delay issued by the Registrar dated 28th day of July, 2022 excluded period from 22nd June, 2022, when the applicant requested for requisite documents to 28th July, 2022, when certificate of delay issued

it excluded a total of 38 days. The present application was filed on 10th day of August, 2022. From 22nd June, 2022, when first application for leave was refused by the High Court to 10/08/2022 when this application was filed is a period of 54 days.

Thus 54-38 days excluded by registrar we are left with 16 days while Rule 45 (b) of the Rules provides for 14 days.

Mr. Rutaihwa has submitted that on 8th and 9th August, 2022, last days of filing application were Saturday and Sunday respectively, thus not working days. With respect, 2022 calendar year proves that on 8th and 9th of August, were not Saturday and Sunday as claimed. To the contrary, the two days fell on Monday and Tuesday, working days, thus, the applicant's argument falls short of the truth.

It is worth noting that time limit set to take an action in litigation is aimed at setting parameters for an opened litigation. If limitation period is not observed, the Court will have little patience for claimants who have missed the window in which to bring a claim. Claims which are not brought before the relevant deadline will be time barred and cannot be pursued, however strong the underlying merits may be. The statute of limitation is not concerned with merits and it has been described as a tyrant's axe. Once it falls, it falls and a person on whose side it falls, must suffer the consequences.

It is settled as stated earlier that once the issue of time limitation is established, it has the effect of causing the jurisdiction of the court to cease. This stance has been pronounced by the Court in a number of cases, including, **Mose Zongori Kisere vs Richard Kisika Mugendi & Another**, (Civil Application No. 244/01 of 2019) [2022] TZCA 640 (18 October 2022 TANZLII) and **Njake Enterprises Ltd v. Blue Rock Ltd and another**, (Civil Appeal No. 69 of 2017) [2018] TZCA 304 (03 December 2018 TANZLII), among others. Moreover, in the case of **Fanuel Mantiri Ng'unda v, Herman Mantiri Ng'unda and 20 Others**, [1995] T.L.R 155 as referred by the Court in **Commissioner General of Tanzania Revenue Authority v. Milambo Ltd**, (Civil Appeal No. 62 of 2022) [2022] TZCA 348 (14 June 2022 TANZLII) it was stated:

"The question of jurisdiction for any court is basic it goes to the very root of the authority of the court to adjudicate upon cases of different nature... The question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position and the commencement of the trial....it is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case."

As a way forward, the application having been filed out of time, deserves to be struck out. Accordingly, we uphold the respondent's counsel objection and strike out the application.

Each party to bear own costs.

It is so ordered.

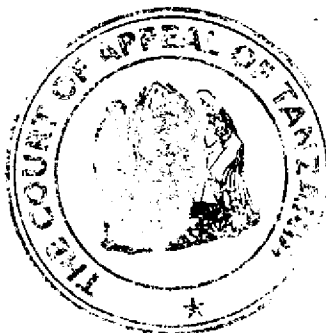
DATED at **DAR ES SALAAM** this 27th day of November, 2023.

G. A. M. NDIKA
JUSTICE OF APPEAL

L. G. KAIRO
JUSTICE OF APPEAL

Z. G. MURUKE
JUSTICE OF APPEAL

The ruling delivered this 28th day of November, 2023 in the presence of Mr. Theodori Primusi, learned counsel for the applicants who is also holding brief for Mr. Mohamed Mkali, learned counsel for the respondent, is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL