

**IN THE HIGH COURT OF TANZANIA  
AT ARUSHA**  
**APPLICATION**  
**MISC. CIVIL REVISION NO. 14 OF 2003**  
**(Originating from P/C Civil Appeal No. 34 of 2001)**

**AZIZI ABDALLAH .....APPELLANT**

**VERSUS**

**JUMA ISMAIL IBRAHIM.....RESPONDENT**

**R U L I N G**

**R. SHEIKH, J.**

This is an application in which the applicant one AZIZI ABDALLAH is seeking an order for the restoration of (PC) Civil Appeal No 34 of 2001 which was dismissed on 21/11/2002 for want of appearance by the appellant's counsel. The application is brought under Rule 17 of the Civil Procedure (Appeals in Proceedings originating in Primary Courts) Rules, 1964, and is supported by an affidavit sworn by John J. Lundu, Learned Counsel acting for the applicant in this application, who is also the counsel whose default in appearance in the appeal sought to be restored, led to its dismissal as aforesaid.

The respondent resisted the application by filing a counter-affidavit. The respondent also filed a notice of objection on a point of law on the following ground:-

**“That this application is hopelessly time-barred and ought to be dismissed with costs.”**

In his written submissions on the ground of objection Mr. Mwaluko Learned Counsel for the respondent submitted that since the Civil Procedure (Appeals in Proceedings originating in Primary Courts) Rules, 1964 do not provide for the period of limitation within which an application for restoration of a dismissed appeal is to be made, then this application falls within the ambits of the provisions of the Law of Limitation Act 1971; as it is not excluded by section 43 of the Law of Limitation Act, 1971. It was counsel's contention that this application ought to have been made within sixty (60) days from the date of the dismissal of (PC) Civil Appeal No. 34 of 2001 (i.e. from 21/11/2002), as provided in paragraph or item 21 of columns one and two of Part III of the First Schedule to the Law of Limitation Act No 10 of 1971. Rule 17 of the Civil Procedure (Appeals in Proceedings originating in Primary Courts) Rules, 1964, under which this application is brought states:-

**“Rule 17. Where an appeal has been dismissed under Rule 13 (2) in default of appearance by the appellant, he or his agent may apply to the appellate court for the readmission of the appeal, and if the court is satisfied that he was prevented by any sufficient cause from appearing either personally or by agent when the appeal was**

**called on for hearing it may re-admit the appeal on such terms as to costs or otherwise as it thinks fit."**

Item 21 of the First Schedule to the Law of Limitation Act cited by Counsel for the respondent provides:-

**"21. Application under the Civil Procedure Code, 1966, the Magistrates' Courts Act 1963 Or other Written Law for which no period of Limitation is provided in this Act or any other Written Law -----sixty days"**

In other words, the period of limitation for making applications under this item is sixty days.

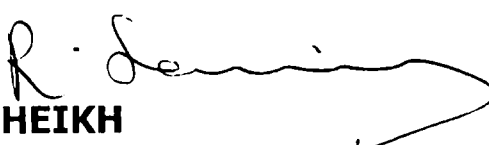
The application having been filed on 4/2/2003, according to Mr. Mwaluko, this was a delay of 15 days, as it was not filed within sixty days as the Law requires.

Mr. Lundu Learned Counsel for the applicant, apparently conceding to the preliminary objection taken on behalf of the respondent has filed no submissions in reply to Mr. Mwaluko's arguments.

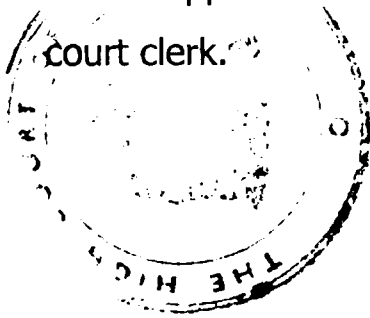
Upon careful consideration of the submissions made in support of the Preliminary Objection, I cannot but agree with Mr. Mwaluko's submissions, that (a), item 21 of the First Schedule to the Law of Limitation Act 1971 is applicable in the instant application, and hence the application to re-admit the appeal dismissed on 21/11/2002 ought to have been filed within sixty days. In this case there was undisputedly a delay of 15 days. The application was filed when it was hopelessly time-barred, and apparently there was no extension of time sought. (See the case of the Executive Secretary Wakf Zanzibar Versus Saide Salmin (by her Attorney Ali Awadhi Tamin, Court of Appeal Civil Appeal No 104 of 1998 (unreported)). This application is hopelessly time barred and incompetent.

Accordingly, the preliminary Objection is sustained and the application is dismissed with costs.

Dated at Arusha this 18<sup>th</sup> day of January 2005.

  
**R. SHEIKH**  
**JUDGE**

Ruling read in Chambers this 4/2/2005 in the presence of Mr. Materu for the applicant and Mr. Mwaluko for the respondent, and Mariam



  
**R. SHEIKH**

**JUDGE**

**04/02/2005**

**RS/hjm.**