

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

**MISCELLANEOUS CIVIL APPLICATION NO. 891 OF 2016
(Arising from the decision of the District Court of Ilala in Civil
Appeal No. 41 of 2012. Originating from the decision of Ilala
Primary Court in Probate Cause No. 13 of 2012)**

ISSA OMARY RAMADHANI.....APPLICANT

Versus

HAMADI JUMANNE.....RESPONDENT

RULING

B.R. MUTUNGI, J:

The applicant herein has filed an application seeking for extension of time to lodge an appeal out of time against the decision of Ilala District Court in Civil Appeal No. 41 of 2012. The application is made by a chamber summons under **section 14 (1) of the Law of Limitation Act [Cap. 89 R.E 2002]**, supported by an Affidavit affirmed by the applicant.

The respondent apart from opposing the instant application in his affirmed counter affidavit, but through the

legal services of J.W. Kayombo Advocate has raised a preliminary objection on three points of laws. The said points are as follows. **One;** the application is incompetent for having been made under a wrong law. **Two;** the application is incompetent for having no copy of the intended appeal attached to the application and **Three;** the matter is res judicata.

On 6/3/2018 when the matter came up for hearing, Mr. Mohamed Tibanyendera, learned Advocate appeared for the applicant while Mr. Kayombo, learned Advocate appeared for the respondent. Starting with the first point of law, Mr. Kayombo submitted that, the applicable law is section 7 of the Rules of Appeal for cases originating from the primary court. He further invited this Honourable court to the case of **Habiba Jakobo Versus Kassim Saidi, Miscellaneous Civil Application No. 98 of 2003** and Rule 3 of GN 312 of 1964. He insisted that wrong citation of the law

renders the entire application incompetent hence should be struck out. He cited the case of **EDWARD BACHWA AND OTHERS VERSUS THE ATTORNEY GENERAL AND ANOTHER, CIVIL APPLICATION NO. 128 OF 2006 (CAT-DSM) (UNREPORTED)** to back up his position.

In response thereto, Mr. Tibanyendera submitted GN 312 of 1964 and the case of Habiba Yakobo (supra) as suggested by the respondent's counsel are not enabling provisions of the law in the given situation. He prayed the court finds it has been properly moved.

In rejoinder Mr. Kayombo insisted the cited enabling provision of the law is misconceived.

In view of the foregoing, the issue is whether the applicant has properly moved the court in the instant application.

Upon my thorough scrutiny of the entire court record, I find the matter at hand had originated from the Primary Court of Ilala in Probate Cause No. 13 of 2012. The applicant had appealed and is dissatisfied with the decision of Ilala District Court in Civil Appeal No. 41 of 2012 sitting as the first appellate court. He has now come through the window of appeal herein. However, since the time limit to appeal herein had already expired, the applicant has preferred this application in order to pray for extension of time to file his intended appeal.

In view of the above undisputed facts and the circumstances surrounding the matter at hand, in my respective view, the law governing the application is provided for under **section 25 (1) (b) of the Magistrates' Courts Act [Cap. 11 R.E 2002]** and not otherwise. The respondent's counsel despite submitting very strongly on the wrong and inappropriate law did not provide the court with

the proper provision but concentrated on the procedure to be followed. It could seem the counsel was not sure of the exact enabling provision of the law. Be as it may, so long as there is wrong citation of the law as reflected in the record, the court cannot turn a blind eye on this fact.

For the sake of clarity, **Section 25 (1) (b)** states as follows;

25 (1) Save as hereinafter provided

(b) In any other proceedings any party,

If aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired. [Emphasis is mine]

The provision speaks for itself, hence one need not have to window-shop for the proper enabling provision of law. It was thus wrong for the applicant to invoke the provisions of section 14 (1) of the Law of Limitation Act, Cap 89 RE: 2002 (*supra*).

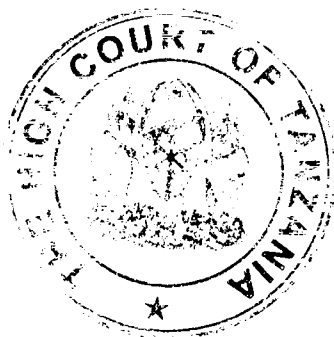
The question will be what is the legal effect of citing a wrong provision of the law. On this the law is well settled. As correctly submitted by Mr. Kayombo the same renders the entire application incompetent hence it ought to be struck out. In **EDWARD BACHWA's case (*supra*)** the Court of Appeal of Tanzania at page 7 held as follows;

'...wrong citation of the law, section, sub-sections and/ or paragraphs of the law or non-citation of the law will not move the court to do what it is asked and renders the application incompetent.' [Emphasis is mine]

In the event, I find the first point of law meritorious. Since the applicant has improperly moved the court on a wrong provision of law, I hereby find it inappropriate to proceed to determine the remaining points of law. This will only serve as an academic exercise.

In the end, the application at hand is hereby struck out with costs.

It is so ordered.




B.R. MUTUNGI

JUDGE

30/4/2018

Right of Appeal Explained.




B.R. MUTUNGI

JUDGE

30/4/2018

Read this day of 30/4/2018 in presence of Applicant and Respondent in person.




B.R. MUTUNGI

JUDGE

30/4/2018