

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

**CIVIL REVISION NO. 51 OF 2016**

*(Arising from Civii Appeal No. 12 of 2016 in the District Court of Morogoro by Hon. R. Futakamba – RM delivered on 22<sup>nd</sup> June 2016 Originated from Civil Case No. 30 of 2015 from Chamwino Primary Court)*

**CHRISTINA MANAGE ..... APPLICANT**

**VERSUS**

**JOSEPH SANA ..... RESPONDENT**

**RULING**

*09<sup>th</sup> May, 2018*

**DYANSOBERA, J**

The Respondent through the services of Mr. Chundu, learned advocate has raised a preliminary objection on three grounds namely:-

1. That, the application is hopelessly time barred.
2. That, the applicant is incompetent for wrong citation of the law.
3. That, the affidavit accompanying the application is incurably defective for containing legal grounds.

On these grounds it is prayed for the Respondent that the application be dismissed in its entirety with costs.

The application against which the preliminary objection is pegged for revision of the decision of the District Court of Morogoro in Civil Appeal No. 12 of 2016 originating from the primary Court of Morogoro District at Chamwino in Civil Case No. 30 of 2015.

At the hearing of the preliminary objection Mr. Chundu, learned advocate for the Respondent dropped the third ground of preliminary objection and argued on the first two.

On the first ground, counsel for the Respondent submitted that the application is time barred according to him, the decision sought to be revised was delivered on 22<sup>nd</sup> June, 2016 and this application was filed on 28<sup>th</sup> December, 2016 which means it was filed beyond the prescribed limitation period. He pointed out that under item 21 parts III of the schedule to the law of limitation Act [Cap 89 R.E 2002] the limitation period is sixty (60) days and this application was filed after almost five months. He said that the application deserves to be dismissed under section 3 (1) of the law of limitation Act.

As to the second ground of preliminary objection, counsel for the Respondent contended that the application is incompetent for being brought under wrong provisions of law.

He said that the provisions under which this application has been made that is sections 79 and 95 of the Civil Procedure Code [Cap 33 R.E 2002] are not applicable in matters Originating from a Primary Court counsel for the Respondent supported his legal argument by citing the case **of Agness Simbambili Gabba Vs. David Samson Gabba: Civil Appeal No. 26 of 2006 (CA – unreported)** he maintained that since the cited provisions were not enabling provisions, then this application is incompetent and should be dismissed.

The applicant defaulted appearance I have considered the preliminary objection and the submissions by Mr. Chundu, learned counsel for the Respondent it is true that the judgment sought to be impugned by way of revision was delivered on 22<sup>nd</sup> June, 2016 and this application was filed on 28<sup>th</sup> December, 2016 under item 21 parts III of the schedule to the law of

Limitation Act [Cap 89 R.E 2002] the limitation period for applications of this nature is sixty (60) days from the date the decision was given.

This application was filed more than sixty days beyond the prescribed limitation period more worse, the application was filed without leave of the court granting extension of time clearly, the application must fail and should be dismissed under section 3(1) of the law of Limitation Act.

Besides, as correctly submitted by learned counsel for the Respondent, this application was brought under wrong and in applicable provisions of the law.

Sections 79 and 95 of the Civil Procedure Code were not proper enabling provisions of law. The Court of **Appeal in Civil Appeal No. 26 of 2008 between Agness Simbambili Gabba Vs. David Samson Gabba at P6** of the typed judgment clearly stated that the Civil Procedure Code does not apply in matters arising from Primary Courts.

The Civil Procedure Code [Cap 33 R.E 2002] particularly section 2 is clear on this and provides that:-

*"...subject to the express provisions of our written law, the provisions of this code shall apply to all proceedings in the High Court of the United Republic, Courts of resident Magistrates and District Courts"*

The Primary Court is clearly excepted this means that the applicant by citing the provisions of sections 79 and 95 of the Civil Procedure Code did not properly move the court to grant what he was seeking. The application was therefore incompetent for those reasons I hold that the application for revision was not only incompetent but also was filed out of the prescribed time limit.

I uphold the preliminary objection and dismiss the application, each part to bear its own costs. Order accordingly.



  
**W.P. DYANSOBERA**

**JUDGE**

**09/05/2018**