

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

CIVIL REVISION No. 20 OF 2018

JOHN ROBERT.....APPELLANT

Versus

GETRUDE ALLEN MWANDEMELE.....RESPONDENT

RULING

11th December - 17th December, 2019.

J. A. DE-MELLO J;

This Ruling is in respect of the **Preliminary Objections** raised by **Godwin Muganyizi** Counsel for the Respondent, lodging two Points of Objection as hereunder;

1. That, this Application is Time Barred

2. That, the copy of Ruling is not attached to this Application.

On the **8th October, 2019** the Objection was ordered to heard by way of written submissions and, both have complied accordingly.

Abandoning the second point of Preliminary Objection, Counsel addressed only one point that of **Time barred**, considering the fact that the Ruling was prompted on the **14th November, 2017** whereas; this Application was lodged on **12th June, 2018, six months** later and, without Leave of the Court. This, it is his further contention that, and, in accordance to **Schedule 111 Item 21 of the Law of Limitation Act Cap. 89**, where

there is no specific time scale provided in the **Civil Procedure Code, the Magistrate Court Act** or any other **written law**, the (60) sixty days rule comes in aid to fill the lacuna. He hence prayed this Court to dismiss the Application with costs.

Represented by **Hamis Katundu**, learned Advocate, opposes the point that, the Application is **Time Barred**, claiming it to be misconceived. He further asserts that, the Applicant's application is not merely against the order granting an extension of time without hearing the parties, but, for the Court's intervention of the proceedings in **Civil Revision No. 21 of 2017**, tainted with irregularities which prompted the Applicant to apply for this Court to invoke its revisionary powers vested under **section 44 (1)** of the **Magistrate Court Act Cap 11**. Hence condemning the said objection, with a view of obstructing justice. In quest of mercy he implores the Court to invokes **section 3A (1) & (2) of Cap. 33** as amended by **Written Laws Misc. Amendment No. 3 of 2018** craving for substantive justice. The respective section states as follows;

"The overriding objective of this Act shall be to facilitate the Just, expeditious proportionate and affordable resolution of civil disputes governed by The court shall in the exercise of its power under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objectives specified in the subsection".

He therefore prays this Court to overrule the preliminary objection with costs.

In the absence of the record from lower Court, it becomes impossible for this Court to, at this juncture, address the prayers lodged in the Applicants Camber Application. **Revisional powers** can only be exercised for Court vested with the same as stipulated under **section 79(1) of Cap. 33**. Appropriate circumstances must be in place as laid down by several and many other cases like the **Moses Mwakibete vs. The Editor Uhuru, Shirika la Magazeti ya Chama & Nasiona Printing Co. Ltd [1995] TLR 134, Transport Equipment Ltd vs. D.P Valambhia [1995] TLR 161 and Halais Pro Chemie vs. Wella AG [1996] TLR 269**

However, and, on a higher gear the Respondent has raised a valid pure point of law with regard to **Time Limit** upon which this Application can be entertained. His line of contention is simply that, in absence of specific provision then **Schedule 111 Item 21 of the Law of Limitation Act Cap** from the **14th of November 2017**, when Ruling was delivered until **June 2018** the **12th** the Application and without leave has exceeded the sixty days provided by law. The Applicant has deliberately or negligently avoided to address this one and instead relied on his Revision Application and avoiding technicalities. It is trite law that, objections of such nature, and in this case, drawn from **limitation** are of paramount importance, lest abuse prevails. This being one of those which the case of **Karata Ernest & Others vs. AG, Civil Revision No. 10 of 2010** had ascertain to be of example to include **jurisdiction, non or wrong citation** etc.

This being the position and, facts clear as it seems, before going into merits of the case, the Application and without **Leave** to **Extend Time** is hopelessly **Out of Time**. It is **Struck Out** as opposed to **Dismissal** and, with costs.

It is so ordered.


J. A. DE-MELLO

JUDGE

17th December, 2019.