

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 189 OF 2019

**(Arising from Revision No. 21 of 2010 Resident Magistrate's Court of Dar es Salaam
at Kinondoni (Before Hon. Kiwonde, RM))**

MOHAMED CHAMBUSO ----- 1ST APPLICANT

DOTO CHAMBUSO ----- 2ND APPLICANT

REHEMA CHAMBUSO ----- 3RD APPLICANT

VERSUS

SAID MWINYIMKUU ----- RESPONDENT

RULING

The applicants have made an application for extension of time to file review. The genesis of their application as it could be gathered from the affidavit in support of the chamber application as well as the submissions made by the counsel for the applicants is that Hon. Muruke, J. dismissed the pending appeal, Appeal No. 57 of 2012 for want of prosecution whilst at least the applicants had already filed their submission as ordered by the court.

The application has been preferred under Order 42 and S. 95 of the Civil Procedure Code and any other provisions of the law.

Upon going through the prayers therein, I asked the parties to address the court as to whether the application has been brought under the correct provision of the law. Advocate William much as she admitted that she cited Order 42 and Section 95 of the Civil Procedure Code only in moving the court; she was adamant that they have also stated “any other enabling provision of the law”. Hence the said words could cover any mischief present.


Advocate Njama on the other hand in seeking court's directives posed a question as to whether the objective of the overriding principles under The Written Laws (Miscellaneous Amendment) Act, No. 3/2018 could be extended where another statute has been preferred all together instead of the relevant statute, i.e. Civil Procedure Code instead of Law of Limitation Act, Cap. 89 in this instant matter.

I must state on the out set that the assertion by Madame William that the words “any other enabling provisions of the law” could cure the present mischief is a misconception. Again, I am also of the strong views that the overriding principles cannot be of any assistance in this situation. I am saying so because, it is firstly the principles of the law that where a written law has specifically provided for a mandatory procedure, rule or principle of moving the court, there is no room of invoking the provisions of §.95 of the Civil Procedure Code alone or a term any other provisions of the law. Leave alone the fact that the applicants have preferred the provision for seeking for review instead of extension of time.

Court of Appeal has in several occasions insisted that the overriding principles cannot be used to abrogate the mandatory provisions of the law. It would therefore be absurd for this court to extend time by an application which has been preferred under the provision for review i.e. Order XLII of the Civil Procedure Code and the application did not cite the provisions of the Law of Limitation Act.

It is on that background, I find that this application has been brought under the wrong provisions of the Law and it

cannot be savoured by the objectives of the overriding principles. I accordingly struck it. Given the fact that the issue was raised by the Court Suo motto. I give no order as to costs.

A handwritten signature in black ink, appearing to read 'R. A. Ebrahim', written in a cursive style.

R. A. Ebrahim

JUDGE

18/10/2019