

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF MBEYA  
AT MBEYA  
MISC. CIVIL APPLICATION NO. 12 OF 2020**

*(Arising from Civil Appeal No. 06 of 2018, in the High Court of Tanzania at Mbeya)*

**CICO COMPANY LIMITED.....APPLICANT  
VERSUS  
HERMAN S/O SHAYO.....RESPONDENT**

**R U L I N G**

***Date of last order:***           15/05/2020

***Date of Ruling:***           26/05/2020

**NDUNGURU, J.**

The applicant one CICO Company Limited filed this application praying for the following orders:

**EXPARTE**

- (a) That this honourable court be pleased to dispense with notice requirement to the respondent and issue an exparte order to maintain the status quo ante pending hearing and determination of this application.

## **INTERPARTIES**

- (a) That the Honourable court be pleased to stay execution of the decree of this court in its appellate jurisdiction pending hearing and determination of this application.
- (b) That this honourable court be pleased to interpret the decision of this court in Civil Appeal No. 06 of 2018 and appoint an authorized personal to test the motor vehicle of the respondent after being repaired by the applicant herein to its original state.
- (c) That this honourable court be pleased to order the respondent to take his motor vehicle lying at CHINA GARAGE after being repaired by the applicant to its original state before the accident.
- (d) Costs of the application be born by the Respondent.

The application was brought under Section 2 (3) of the Judicature and Application of Laws Act, Cap 358 Revised Edition 2019 and Section 68 (e) and 95 of the Civil Procedure Code, Cap 33 Revised Edition 2019 and supported with the affidavit duly sworn by Renfei Liu, the Principal Officer of the applicant.

The application being served to the respondent, he resisted it by filing counter affidavit duly sworn by the respondent.

Upon service of Chamber application, the respondent filed notice of preliminary objection.

When the matter was called for hearing, Mr. Abubakar Salim learned advocate appeared for the applicant while Ms. Jenipher Silomba represented the respondent. Before the preliminary objection was heard, the court prompted the counsel to address on the limitation of time as to whether the application was on time or not. Then to proceed with hearing of preliminary objection and the main application all together due to the nature of the application and taking into account that the application was filed under certificate of urgency.

Submitting on the question of limitation Mr. Abubakar was of the argument that the application is on time as it is filed under Section 3 (2) of JALA. It is the law which empowers the court to practice its inherent power.

He submitted that even though the sixty rule applied still the application is on time because it was brought following the order issued by the Deputy Registrar. The counsel concluded that the application is on time.

Ms. Jenipher Silomba was of the contention that the application is time barred due to the fact that one of the prayers contained in the

application is for stay of execution of the decree of this court (Ngwala, J) issued on 28/08/2018, the stay of execution is governed by XXXIX Rule 5 of the Civil Procedure Code, thus the application could have been filed under Civil Procedure Code and not JALA.

The counsel went further saying the Law of Limitation Act Part III item 21 provides for time limit when no law has provided, that is 60 days. Thus counting from the date the decree was issued to the time this application was brought to this court it is more than sixty days thus the application is out of time.

Mr. Abubakar, the learned counsel rejoined to the effect that the applicant does not challenge the decision of this court. That Order XXXIX Rule 5 (2) of the Civil Procedure Code applied when the stay of execution is of the original decree if the applicant could have been challenging the decree of this court could have filed an appeal to the Court of Appeal. The application has prompted following the order used by the Deputy Registrar; his ruling is not the judgment of this court.

The counsel said there is an application to this court to interpret its judgment to satisfy if it is in line with the order of the Deputy Registrar. It was the contention of the counsel that if the issue is on the prayer of stay prayed the court to remove the prayer of stay and proceed with the

rest of the application, saying the court has inherent powers to entertain this application.

I have keenly gone through the application and counter application and the submission of the counsels.

I am at one with the applicant's submission that Section 2 (3) of Judicature and Application of Laws Act, Cap 358 Revised Edition 2019) (JALA) gives this court inherent power to entertain any matter which the laws of the land have not covered. The fact that this court can entertain this application is not at issue.

The question is whether the said application has no time limit. The applicant is moving this Court among others to interpret its judgment delivered on 31/08/2018 almost two years back. Again there was no reason given why he had to present his application on 9<sup>th</sup> day of April 2020 that is two years later.

Always any step in which a party to any proceedings intends to take, must be taken within a prescribed time so that litigation should come to an end hence, the latin maxim-interested *reipublicaeut sit finis litium*. See the case of **Bank of Tanzania Versus Said A. Marinda& 30 others**, Civil Reference No. 3 of 2014, Court of Appeal of Tanzania (unreported).

Since there is no period of limitation provided for making such application in the Civil Procedure Code (supra) hence, the Law of Limitation Act (Cap 89 R.E. 2019) will be relevant law.

Item 21 Part III to the Schedule to the Law of Limitation Act (Cap 89 R.E. 2019) provides that:

*"Application under the Civil Procedure Code, the Magistrate' Court Act or other written law for which no period of limitation is provided in this Act or any other written law.....period of limitation sixty days."*

From the above provision, the fact that the application is brought under Section 2 (3) of Judicature of Application of Laws Act (Cap 358 R.E. 2002) cannot be time free. The Law of Limitation Act come into play. In the case of **Israel Solomon Kivuyo Versus Wayani Langoi Naishooki Wayani (1989) T.L.R 140** the Court of Appeal of Tanzania held:

*"(ii) an application under Written Law for which no period of limitation is provided under the Limitation Act,1971 or any other Written Law has to be made within the period of sixty days".*

That position was restated by the Court of Appeal of Tanzania in the case of **James Masanja Kasuka vs. George Humba, TBR** Civil Application No. 2 of 1997, Court of Appeal of Tanzania (unreported) the

Court of Appeal having found no time-scale was set for revision, it imposed a time limit of sixty days within to make such application from the date of the decision. The Court did not end there, it went on and said:

*"We accordingly set the time limit of sixty days in **civil applications** as we have for criminal applications for review" (Emphasis ours).*

Also see the case of **Suleman Ally Nyamalegi & 2 others vs. Mwanza Engineering Works Ltd, Mwanza**, Civil Application No. 9 of 2002, Court of Appeal of Tanzania (unreported).

From the authorities cited above, having said judgment which the applicant applied be interpreted by this Court was passed in 2018 likewise the rest of the prayers like appointing the authorized personnel to test the motor vehicle of the respondent and the prayer of ordering the respondent to take the motor vehicle from the Garage after repair being the outcome after the Court has interpreted the said judgment, the application ought to have been filed within sixty days from the delivered of judgment.


So, it is clear therefore that when there is no specific time scale imposed in any application, the sixty days rule should come into play.

I have no hesitation in holding that this application was filed out of time in this Court. This application being filed out of time, the only remedy available is to dismiss this application as per Section 3 (1) of the Law of Limitation Act (Cap 89 R.E. 2019). I hereby dismiss the application for being time barred. No order as to costs.

The fact that the question of limitation suffice to dispose the application, I will not labour to the preliminary objections and the application.

It is so ordered.



  
**D. B. NDUNGURU**  
**JUDGE**  
26/05/2020



**Date: 26/05/2020**

**Coram:** D. B. Ndunguru, J

**For the Applicant:** Mr. Abubakar Salim – Advocate

**Respondent:**

**For the Respondent:** Ms. Jenipher Silomba – Advocate

**B/C:** M. Mihayo

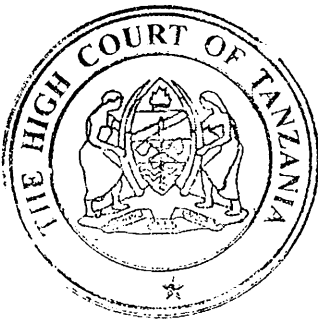
**Mr. Abubakar Salim – Advocate:**


The matter is for ruling, we are ready to receive the ruling.

**Ms. Jenipher Silomba – Advocate:**

We are ready for ruling.

**Court:** Ruling is delivered today through Video conference in the presence of Mr. Abubakar Salim Advocate for the applicant and Ms. Silomba for the respondent.



  
**D. B. NDUNGURU**  
**JUDGE**  
26/05/2020