

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**(ORIGINAL JURISDICTION)**

**ELECTION REFERENCE NO 1 OF 2020**

**BAKEMA S/O SAID RASHID..... APPLICANT**

**VERSUS**

**NASHON S/O WILLIAM BIDYANGUZE.....1<sup>ST</sup> RESPONDENT**

**THE RETURNING OFFICER FOR KIGOMA**

**KUSINI PARLIAMENTARY CONSTITUENCY.....2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**R U L I N G**

11<sup>th</sup> & 14<sup>th</sup> December, 2020

**I.C. MUGETA, J**

On 30/11/2020, at 19.21 hours, the applicant filed electronically a petition for avoidance of election results for Kigoma Kusini Constituency in the 2020 general election held on 28/10/2020. According to paragraph 3 of the affidavit supporting the application sworn by the applicant, the 2<sup>nd</sup> respondent declared the results on 30/10/2020 where the applicant and the 1<sup>st</sup> respondent garnered 17,222 and 36,493 votes, respectively.

As the petition was filed after office closed at 15.30 hours, the Deputy Registrar attended it on 1/12/2020 where he made the following remarks



*'... Considering that your petition was lodged online on 30/11/2020 at 19.21 hours after working hours when no bill could be generated and paid in time, your petition is rejected for being filed out of time'*

The applicant is challenging the petition rejection remarks in terms of rule 9 (3) of the Election Rules which provides:-

*'Any person aggrieved by the decision of the Registrar rejecting the petition under this rule may refer the matter to a judge for an ex parte determination which shall be made within four days of filing'*

Jally Mongo, learned advocate, appeared and argued the application for the applicant. He challenged the decision of the Registrar on three fronts. Firstly, that according to rule 21 (1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 (the Election Filing Rules), a day is considered ended, for purposes of electronic filing of documents, at midnight. Therefore, an application filed at 19.21 hours was filed in time. To buttress his argument, the learned counsel cited the case of **Mohamed Hashil v. NMB**, Revision No. 106/2020, High Court, Labour Division. In that case it

was held that a case is deemed filed in time electronically if it is filed before midnight of the last date of limitation.

Secondly, that the Registrar acted ultra vires for rejecting the petition for reason of being time barred without jurisdiction. The learned counsel submitted that according to rule 9 (1) of the Election Rules the powers of the Registrar is limited to rejecting applications not drawn up in the manner prescribed by the Election Rules. Time Limitation, the learned counsel argued is not one of such manners.

Thirdly, that on the same date (30/11/2020), the petitioner had presented the petition manually at about 12.00 hours but the registry officer required him to file it electronically as deponed at paragraph 5 of the affidavit.

After his submissions, I asked the learned counsel to address the real point on which the decision of the Deputy Registrar is based which is that filing includes payment of fees which the applicant had not paid up to 1/12/2020 when the Deputy Registrar rejected the petitions for failure to pay the court fees in time. Responding to this issue, the learned counsel submitted that the practice to deem the document filed upon payment of court fees is not

applicable when the document is filed electronically under the Electronic Filing Rules.

The issue for my determination is whether the Registrar erred to reject the petition on ground of being time barred.

There is no dispute that according to rule 21 of the Electronic filing Rules, the last time for filing a document in a day is before midnight of that day.

The rule provides:-

*'A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless specific time is set by the court or it is rejected'.*

It is a fact that the results were declared on 30/10/2020. Thirty days expired on 28/11/2020. By the above rule, read together with 8 (1) of the Election Rules, the petition filed on 30/11/2020 at 19.21 hours was filed out of time for two days. Rule 8(1) of the Election Rules reads:-

*'A petition shall be presented within thirty days from the date of declaration of the*

*results by lodging it with the Registrar **and**  
by paying the prescribed fee'.*

Therefore, by remarking that the cause for the petition being declared time barred was failure to pay court fees on 30/11/2020, both the learned counsel for the applicant and the Deputy Registrar acted under a wrong impression that the last date to file the petition was the 30<sup>th</sup> November, 2020 instead of 28<sup>th</sup> November, 2020.

The foregoing notwithstanding, in the light of rule 8 (1) of the Election Rules, the argument of the learned counsel that filing of the documents electronically does not include payment of fees is untenable. In view of the finding that the time expired on 28/11/2020, this argument is no longer necessary. It no longer matters whether fees were paid timely or not. However, it is compelling to deal with it due to its jurisprudential value.

I am of a settled view that the Electronic Filing Rules has not misapplied any rule of procedure including rule 8 (1) of the Election Rules which provides that filing includes payment of fees and the general practice as found in case law. The rule of Practice that a document is deemed filed upon payment of court fees was settled in the case of **John Chuwa v.**

**Antony Ciza** [1992] TLR 233 where it was held that the date of filing is the date of payment of the fees and not that of receipt of the relevant documents in the registry.

To my knowledge, the registry practice on filing documents is that even when documents are filed electronically, they are attended during office hours where the Deputy Registrar approves them for payment of fees. Then a bill is generated at the registry office and sent to the client for payment in form of a control number. This mode of payment and practice is still in practice as the Chief Justice has not prescribed new mode of payment under rule 34 of the Electronic Filing Rules for purposes of the electronic filing of documents. Therefore, when a party files a case electronically on the last date of the limitation period, he/she must file it within office hours and pay for court fees. This notwithstanding, the petition in this case was filed not on the last date of limitation, but two days later, as I have, hereinabove, demonstrated. The decision in **Mohamed Hashil** (supra) is distinguishable because it did not consider the electronic filing of documents time in relation to payment of court fees.

The foregoing takes me to the allegation in paragraph 5 of the affidavit of the applicant that he filed the petition manually during office hours but

the same was returned by a registry officer for the petitioner to file it electronically. If it really so happened, it was an unfortunate situation. This is because the Electronic Filing Rules has not completely substituted the manual filing of documents despite its compulsory nature for advocates. I understand under rule 29 (1) of the Electronic Filing Rules, all advocates must register as user's of the court's electronic filing system. There is no evidence that advocate for the applicant is exempted. Therefore, in terms of rule 8 of the said Rules, he was supposed to file documents electronically. However, it is not upon the registry officers to return clients, including advocates, summarily without seeking opinion of the Deputy Registrar or Magistrate incharge who, under Rule 10 (3) of Electronic Filing Rules, are the officers mandated to decide whether documents compulsorily be registered by the electronic filing system or otherwise. It follows, therefore, that if this allegation is proved but for the finding that the limitation period ended on 28/11/2020, the appellant has a remedy. Nevertheless, the same is unproved. Where a party alleges that a conduct of any Judiciary Employee has caused him/her injury, the practice has been for such employee to take an affidavit to support the allegation. In the case of **John Chuwa (Supra)**, the issue of delay to



pay court fees was associated with the absence of the cashier from the station hence no receipt could be obtained although the money was paid on the date the relevant documents were submitted. The said cashier did not file an affidavit to explain the applicant's delay. The court referred to its decision **in Kighoma Ali Malima v. Abas Yusuph Mwangano**, Civil Application No. 5/1987 (unreported) and held that '*an affidavit of a person so material, as the cashier, in this case, has to be filed*'. I hold that the registry officer who returned the petition presented manually is a person so material to the alleged fact, therefore, his/her affidavit ought to have been filed. Lack of it makes the allegation unproved.

Did the Deputy Registrar act ultra vires? Power to reject petitions are granted to Deputy Registrars under rule 9 (1) of the Election Rules. Counsel for the applicant has argued that powers under this rule are limited to defects in form only. The rule provides:-

*'Where a petition is drawn up in the manner hereinabove prescribed, it may be rejected and returned to the petitioner for the purpose of being amended within the time to be fixed by the Registrar'.*



I am live to the fact that powers of Deputy Registrars to reject documents under rule 9 (1) of the Election Rules must be read together with powers of Deputy Registrars under Order XLIII of the Civil Procedure Code [Cap. 33 R.E. 2019]. However, in that Order, there is no powers to reject documents on reasons of limitation. The same applies to power granted under rule 9 (1), of Election Rules above cited. As submitted by the learned counsel for the applicant, powers therein are limited to rejection which enables the party to do amendment and refile the petition. It is my view that, rejection on ground of the document being time barred is not among them because it closes completely the right of the party to access the court. Since such powers are not expressly provided in the list of the powers exercisable by Deputy Registrars under the stated two laws, then those are powers reserved for judges. However, Deputy Registrars manage the registries. What should they do in situations where documents are filed being apparently time barred? The best practice is to put the issue to the attention of the Judge Incharge who shall decide to reject the document summarily or to hear the concerned party first.

In this case, from the above discussion, the Deputy Registrar, indeed, acted ultra vires. Consequently, in terms of rules 9 (5) of the Election

Rules, I am supposed to order him to admit the petition. Is that a fit order where I have held that the petition was, indeed, filed out of time? This question has seriously exercised my mind. I have held that in ideal situation and for proper registry management, the Deputy Registrar would have referred the issue to the judge incharge for his consideration including hearing the concerned party. In this case, the concerned party is the applicant who has taken an affidavit that results were declared on 30/10/2020. I have held that counting from 30/10/2020 thirty days expired on 28/11/2020. As the judge incharge of this station, it is my view that the process towards determination of this application is deemed to be a reference by the Deputy Registrar and it constitutes enough fair hearing of the applicant/petitioner on the competency of the petition as far as time limitation is concerned. In that regard, I consider ordering the Deputy Registrar to admit the petition while, based on evidence of the petitioner himself, it was filed out of time, serves no useful purpose except for academic intention as the result is already known. Since the petition was, indeed, filed out of time, I reverse the rejection order of the Deputy Registrar for being ultra vires but I refrain from making direction that the

petition be refiled. To do so, under the herein above explained facts, is to condone illegality.



*Mugeta*  
**I.C. Mugeta**

**Judge**

**14/12/2020**

**Court:** Ruling delivered in the absence of the applicant. It was to be delivered by Video Conference but connection between this court and High Court-Iringa Registry where counsel for the applicant by consent was order to appear, has failed.

**Sgd: I.C. Mugeta**

**Judge**

**14/12/2020**

**Order:** A copy of this ruling to be sent to the counsel for the applicant by email or WhatsApp not later than today.

**Sgd: I.C. Mugeta**

**Judge**

**14/12/2020**