

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 223 OF 2019

*(Arising from the Order of Honourable Justice **B. R. Mutungi** in Misc. Civil Application No. 851 of 2016, dated 17/04/2016)*

JUMA RASHID SILAHA APPLICANT

VERSUS

MOROGORO CENTRAL MARKET SACCOS LTD ...1st RESPONDENT

WILLIAM OMOGI 2nd RESPONDENT

BAKARI MBEGA 3rd RESPONDENT

RULING

25th March, 2020.

E. E. KAKOLAKI J

Before this court, the applicant has filed a Chamber Summons supported by affidavits of **Juma Rashid Silaha** the applicant and one **Mbarala A. Maharagande**. The application has been preferred under Order IX Rule 3 of the Civil Procedure Code [Cap. 33 R.E. 2002], praying for the following reliefs:-

1. That, the Honourable Court be pleased to set aside dismissal order dated 13th December, 2016 by Honourable **B. R. Mutungi**, J in respect of Misc. Civil Application No. 851 of 2016.

2. That costs of the Application to follow events.
3. Any other order(s) and/or relief(s) as the Honourable Court may deem just and fit to grant.

In opposing the application the respondents filed the counter affidavit sworn by **Mr. Tumaini Mfinanga** learned Advocate for the 1st, 2nd and 3rd respondents strongly challenging the merits of the application. Further to that the respondents filed a notice of preliminary objection raising four grounds in that:

1. The Application before this Honourable Court is hopelessly time barred.
2. The applicant in this matter was not the applicant in the matter sought to be restored.
3. The Application has been brought under wrong provision of the laws.
4. The Application contain defective verification clause.

Following that notice of preliminary objection parties agreed to have them disposed of first before going into merits of the application. The matter was therefore scheduled for hearing on 25/03/2020.

On 20th March, 2020 when the application was called for hearing before me both parties appeared represented. The applicant was represented by Ms. **Zainabu Mwatawala** learned advocate while the respondents enjoyed the services of Mr. **Tumaini Mfinanga** learned Advocate. Both parties were heard viva voce.

Mr. Mfinanga learned counsel for the respondent informed the court that respondents were abandoning the forth ground of objection and therefore remained with the first three grounds. Starting with the first ground Mr. Mfinanga contended that the application before this court is

hopelessly time barred. He was of the submission that the dismissal order in Misc. Civil Application No. 851 of 2016 sought to be set aside by the applicant was issued on 17/4/2018. That, this application was filed in court on 30/4/2019, almost one year and 13 days from the date of dismissal of Misc. Civil Application No. 851 of 2016. And that as per item 21 part III to the schedule of the Law of Limitation Act, [Cap. 89 R.E 2002] the applications of this nature are to be filed within 60 days. He was of the view that since the present application was file one year and 13 days after the dismissal order the same is time barred. He mentioned the effect of filing the application out of time to be dismissal of the same under section 3 of the Law of Limitation Act, [Cap. 89 R.E 2002] and invited this court to apply it by dismissing this application with costs.

On the other side Ms. Zainabu Mwatawala learned counsel for the applicant, after hearing the submission from the counsel for the respondents conceded to this ground of preliminary objection. Otherwise she left the matter in the court's hand to decide.

I have considered the submission by the respondents' counsel as well as the concession by the applicant's counsel and I agree with them that this matter is time barred. The law as cited by Mr. Mfinananga in item 21 part III to the schedule of the Law of Limitation Act, [Cap. 89 R.E 2002] is very clear that the time limitation for filing the application of this nature is 60 days. Now what is the consequence of filing it out of prescribed period of time? As rightly submitted by Mr. Mfinanga section 3(1) of the Law of Limitation Act,[Cap. 89 R.E 2002] provides the answer. The section reads:

3. (1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and

which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence.

(2) For the purposes of this section a proceeding is instituted—

(a) ...NA.

(b) ...NA.

(c) in the case of an application, when the application is made.

Basing on that provision every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed. The proceeding is instituted when the application is made in court. Since the time limitation for institution of this application is also prescribe under the first column of the schedule and since the application was instituted one year and 13 days passed then the application cannot be spared from the consequences thereof which is dismissal of the matter.

The first ground of preliminary objection having dissolved the application, I see no reason to proceed with the remaining two grounds.

In the circumstances and for the foregoing reasons, I am inclined to hold that this application is hopelessly time barred and is hereby dismissed in its entirety with costs.

It is so ordered.

DATED at DAR ES SALAAM this 25th day of March, 2020.



E. E. KAKOLAKI

JUDGE

25/03/2020

Delivered at Dar es Salaam today on 25/03/2020 in the presence of the applicant, **Ms. Zainabu Mwatawala** advocate for the Applicant and **Mr. Tumaini Mfinanga** advocate for the respondent.



E. E. Kakolaki

JUDGE

25/03/2020