

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

**(DAR-ES-SALAAM DISTRICT REGISTRY)**

**AT DAR-ES-SALAAM**

**CIVIL REFERENCE NO. 12 OF 2021**

(Arising from Bill of Costs No. 131 of 2020)

**AXA INSURANCE LIMITED ..... APPLICANT**

**VERSUS**

**ALLIED TRANSPORT AGENT ..... RESPONDENT**

**RULING**

Date: 13 & 13/03/2023

**NKWABI, J.:**

The reference filed by the applicant against the taxation order of the taxing master met a preliminary objection on points of law as follows:

1. That the reference was filed outside the prescribed time as required by Order 7(2) of the Advocates' Remuneration Order, 2015.
2. That the reference was served upon the respondent outside the prescribed time as required by Order 7(3) of the Advocates' Remuneration Order, 2015.

When the preliminary objection was scheduled for hearing, Dr. Onesmo Kioki, learned counsel appeared for the applicant while the respondent was

represented by Mr. Patrick Malewo, also learned counsel. The hearing proceeded by way of oral submissions.

It was Mr. Malewo's contention that the reference was filed outside the prescribed time because the ruling was delivered on 27/10/2021. The reference was filed on 18<sup>th</sup> November, 2021 while the 21 days for filing the reference lapsed on 17<sup>th</sup> November 2021. He maintained that for that reason, the reference is incompetent and has to be struck out.

On this ground of objection, Dr. Onesmo differed with his learned brother. In his opinion, the Court has a system for lodging for admission in the system and once the document is admitted, then one can file it officially. He added, once one lodges a document in the system is as good as filing the document. He further contended that in the system, the document was lodged within time on 17<sup>th</sup> November, 2021. It was admitted at 03:33 pm. The office is closed at 04:00pm. They do not accept payment after 3:30 pm. He concluded that the application (reference) was lodged on time and that the applicant cannot be blamed for lodging on 18<sup>th</sup> November, 2021.

In rejoinder submission, Mr. Malewo maintained that in filing, cases have ruled that filing in JSDS is not reckon to but the date of payment of the filing fees.

I have passionately considered the submissions of both counsel, I am of the considered view that the reference was filed outside the prescribed time, thus it is time barred. This is because, the filing process was completed on 18<sup>th</sup> November, 2021 after payment of the necessary filing fee while time for filing the reference expired on 17<sup>th</sup> November, 2021. My view is supported by decisions in the cases of **Inter-export Ltd v Customs** [1970] E.A. 648, **Gregory Raphael v Pastory Rwehabula** [2005] TLR 99 and **John Chua v Anthony Siza** [1992] TLR 233. In **Gregory's** case (supra) it was held by this Court, Luanda, J., as he then was, inter alia:

*"... and the filing process is complete when the petition of appeal is filed upon payment of the requisite court fees."*

The argument by Dr. Onesmo that the applicant is not to blame does not find purchase with me because there is nothing in the record (pleadings) to suggest his argument that the registry office does not accept payments after 03:30 pm. There ought to be an affidavit to that effect duly sworn by the

Deputy Registrar of the High Court. I sought guidance from **Jacqueline Ntuyabaliwe Mengi & 2 Others v. Abdiel Reginald Mengi & 5 Others**, Civil Application No. 332/01 of 2021, (unreported) where the Court stated:

*"We note that paragraphs 8 and 14 of the 1<sup>st</sup> applicant's affidavit and paragraph 10 and 11 of Kahendaguza's affidavit contain hearsay not supported by evidence. For instance, in paragraphs 14 and 11 of the respective deponents affidavits they have averred an information obtained from the DR Fovo regarding how best they could deal with the so-called defective decree while the said DR has not sworn any affidavit to that effect."* [Emphasis mine].

What happens to an incompetent case was clearly stated in **MIC Tanzania Ltd v. Minister for Labour and Youth Development and Attorney General Civil Appeal No. 103/2004**, (CAT at DSM):

*The nothingness of incompetent proceedings was underscored by this Court in the case LEONSI SILAYO NGALAI V HON. JUSTINE ALFRED SALAKAMA AND THE ATTORNEY GENERAL, CIVIL APPEAL NO 38 OF 1996 (unreported) This court said:*

*... The second aspect is whether this Court may adjourn an appeal which is incompetent, in order to allow the appellant to take necessary steps to cure the incompetency. This court has said it before that **an incompetent appeal amounts to no appeal**. It follows therefore that the court cannot adjourn what it does not have. Under such circumstances, what the court does is to strike the purported appeal off the register (emphasis is ours).*

In the circumstances, I am left with no other option but to strike out this reference application off the register of this Court because it is incompetent as it was filed outside the prescribed time. The preliminary objection is sustained on the first limb. There is no any need to deliberate on the 2<sup>nd</sup> limb of the preliminary objection. I make no orders as to costs.

It is so ordered.

**DATED** at **DAR-ES-SALAAM** this 13<sup>th</sup> day of March, 2023.



A handwritten signature in blue ink, appearing to read "J. F. Nkwabi".

J. F. NKWABI

**JUDGE**