

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

HC: CIVIL REVIEW NO. 03 OF 2020

(Arising from Civil Reference No.8 of 2020 of High Court at Mwanza)

RESPICIUS MATUNGWA BAMWENZAKI APPLICANT

VERSUS

1. BIHARAMULO WOMEN SACCOS

2. RUGUMBA JOSEPH

3. ST. SEVERINE & PRIMARY SCHOOL

} **RESPONDENTS**

RULING

Date of last Order: 11.02.2021

Date of Ruling: 11.02.2021

A.Z.MGEYEKWA, J

The applicant filed the Memorandum of Review 25th September, 2020 in respect to Civil Reference No. 08 of 2020. The applicant was aggrieved by the Order of this Court dated 31st August, 2020. The Applicant was aggrieved with the said Order hence lodged the application for Review pursuant to Order XLII Rule (1),(a) of the Civil Procedure Code Act, Cap 33. The

applicant's Advocate prayer was such that the orders of this court in Civil Reference No. 08 of 2020 be set aside and the matter be heard on merit and order any other reliefs as this court may deem fit and just to grant. The ground for Review was as follows:-

- 1. That, the Hounrable Judge of the High Court exercised its jurisdiction with material error on the face of record when determining Civil Reference No. 08 of 2020 by striking it out on the ground that it was out of time while it was within the prescribed time limit.*

On 11th February, 2021 when the matter came for hearing before me, Mr. Majid, learned counsel represented the applicant while the respondent were unrepresented.

The learned counsel for the appellant was the first to kick the ball rolling. He testified that the review is in relation to the Ruling of this court in Civil Reference No.08 of 2020 dated 31st August, 2020, whereby, this court ruled that the applicant has filed his application out of time. Mr. Majid went on to submit that it was their view that the Civil Reference No. 08 of 2020 was lodged before this court within time. He added that in accordance to the Advocate Remuneration Order 7 (2) the days starts to run from the date when the judgment was delivered and not the date when the judgment was

prepared. Mr. Majid continued to submit that the District Land and Housing Tribunal delivered its judgment on 21st April, 2020 and the same was read on 23rd April, 2020.

On the strength of the above submission, Mr. Majid beckoned upon this court to grant their application since the Civil Reference No. 08 of 2020 was lodged before this court within time.

In reply, the respondents had not much to say rather leave it upon this court to decide.

I have given the contending submissions made by the learned counsel for the applicant the due consideration they deserve. Having done so, it should be now opportune to determine ground of review raised by the applicant's Advocate and the main issue for determination is ***whether the review is meritorious.***

I have gone through the proceedings in Civil Reference No. 08 of 2020 dated 31st August, 2020, and realized that the days started to run from the date of when the decision was pronounced on 23rd April, 2020. Therefore, I am in accord with the learned counsel for the applicant that this court went into an error whereas the judgment was prepared on 21st April, 2020, and was pronounced before the parties on 23rd April, 2020. In accordance with the

Interpretation of Laws Act, Cap. 1 [R.E 2019] the applicant's application was filed within time. Section 60 (1) (b) of the Interpretation of Laws Act, Cap. 1 [R.E 2019] provides that:-

" 60 (1) (b) where a period of time is expressed to be reckoned from, or after, a specified day, that day shall not be included in the period."

Applying the above provision of law, it is vivid that the applicant's application was filed within time. Therefore, I proceed to grant the applicant's application for review and vacate the first order of this court dated 31st August, 2020 and order the Civil Reference No. 08 of 2020 which was dismissed be restored and the matter to proceed on merit. No Order as to costs.

Order accordingly.

Dated at Mwanza on this 11th February, 2021.




A.Z.MGEYEKWA

JUDGE

12.02.2021

Ruling delivered in Chamber on 11th February, 2021 in the presence of both parties.


A.Z.MGEYEKWA

JUDGE

11.02.2021