

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. CIVIL APPLICATION No. 33 OF 2020

**(Arising from the Dismissal Order of this High Court in DC Appeal No. 09
of 2018)**

GGN CONSTRUCTION LTD.....APPLICANT

VERSUS

GEORGE JOHANSEN T/I MAGEFA TIMBER SUPPLY....RESPONDENT

RULING

25/3/2020 & 23/4/2020

MKWIZU J.

By a chamber summons supported by an affidavit, **GGN Construction Ltd** filed an application for setting aside a dismissal order of this court dated 30th April, 2020. It was brought under **Order XXXIX Rule 19** and **section 95 of the Civil Procedure (Cap 33 R.E 2002)**¹⁹. The application was attacked by a preliminary objection by the respondent that *"the application is incurably defective for being filed out of time"*.

As usual, the preliminary objection was determined first. Mr. Deus Richard, Advocate appeared for the applicant while the respondent was in person unrepresented. Arguing the preliminary objection, the respondent submitted that the application was filed out of time. He however suggested that the

P/O should be dismissed in case it is found that the application is not time barred.

In response to the preliminary objection, Mr. Deus submitted that, this court on 15/10/2020 struck out the applicant's application No 13 of 2020 with leave to refile and that the said order gave applicant 30 days within which to file this application. On 12/11/2020 at 17.33.12 hours, applicant filed this application three days before the expiration of the 30 days period \the application which was admitted by the Deputy Registrar on 13/11/2020. He presented the electronic filing notification print out arguing that the application was timely filed. Mr. Deus relied on Rule 21 of the Judicature and Application of Laws (Electronic filing) Rules and prayed for the dismissal of the Preliminary objection with costs.

In rejoinder, respondent invited the court to look on when exactly the document filed. To him the chamber summons was filed on 23/11/2020 and therefore out of time.

Having considered the preliminary objection and parties submissions, the projecting issue for determination is whether the preliminary objection is merited or not. Though, the hard copy of the chamber summons shows that

it was presented for filing on 23/11/ 2020, the Electronic filing notification of 12th November, 2020 shows that the electronic filing was affected on 12th November, 2020. at 17:33:12 hours and admissions were done on 13/11/2020 13:01:47 hours.

Initially, this court had difficulties in ascertain whether indeed the applicant was given leave to refile the application as stated. However, guided by the provisions of section 59 (1) of the law of Evidence Act (Cap 6 R: E 2019), the court decided to revisit the court records in proceedings of DC Appeal No. 9 of 2018. It is evident from the records that after the striking out of the said Appeal for want of prosecution, applicant filed Misc. Application No. 13 of 2020 for re-admission of the same. Respondent raised an objection which was conceded to by the applicant. In striking out the application, this court in addition granted leave to the applicant to file similar application within 30 days. This as correctly stated by the counsel for the applicant, was on 15/10/2020. Meaning that the 30 days were expiring on 15/11/2020.

Rule 21 (1) of The Judicature and Application of Laws (Electronic Filing) Rules, GN No. 148 of 2018 provides specifically that:


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

It is therefore the position of the law above that E-filing, a document is considered to have been filed on the day when it is submitted through the electronic filing system unless a specific time is set by the court or the document is rejected. The submissions by the parties are to the effect that applicant was to file the application within 30 days from 15/10/2020. Now that this application was filed on 12/11/2020 as substantiated by the electronic filling notification brought before the court. It without doubt that the application is within time.

The preliminary objection is, for the above reason overruled and the application is ordered to proceed on merit. Costs to be in the course.

Order accordingly.

Dated at Shinyanga this **23th** day of **APRIL**, 2021


E.Y. MKWIZU
JUDGE
23/4/2020

