

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

LAND REFERENCE NO. 07 OF 2020

(From the decision of the Taxing Officer in District Land and Housing Tribunal for Mbeya in Bill of Costs No. 245 of 2017. Originating from Land Case No. 245 of 2017 in the District Land and Housing Tribunal for Mbeya)

NTUTA WAILES.....APPLICANT

VERSUS

JAMES ELIAS NZUNDA.....1ST RESPONDENT
ELINA JAMES MTELA.....2ND RESPONDENT
CHRISTA ELIAS NZUNDA.....3RD RESPONDENT
YONA YISAMBI.....4TH RESPONDENT

RULING

Date of Last Order: 18/03/2021
Date of Ruling : 21/05/2021

MONGELLA, J.

The applicant filed an application for reference challenging the decision of the Taxing Officer in Bill of Costs No. 245 of 2017 in the District Land and Housing Tribunal for Mbeya. When replying to the counter affidavit, the respondent filed a notice of preliminary objection containing two points of law to wit:

- i. *That the applicant's application is time barred.*

- ii. *That the applicant's application is incompetent for having a defective affidavit.*

Both parties were unrepresented and the preliminary objection was argued by written submissions. Submitting on the first point of preliminary objection, the respondents argued that this court (Hon. Mambi, J.) made orders on 19th November 2020 that the applicant was to file his application within fourteen days from the date of that order. They argued that instead, the applicant filed this application on 3rd December 2020 and made payment of court fees on 8th December 2020, thereby delaying for 8 days. For this delay the respondents prayed for the court to struck out this application as the applicant has failed to account for the delayed days as required under the law. In support of their argument they referred to the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (CAT, unreported).

On the second point, the respondents argued that the affidavit is defective for lacking the name of the person taking the oath. They submitted that the applicant did not introduce himself by saying that he is an adult thus competent to depone to the facts in the affidavit in accordance with the law. They added that the applicant as well did not reveal his faith when taking the oath. They contended that the applicant started with paragraph 1 by saying that he was the applicant in Application No. 245 of 2017. Considering these defects they argued that the affidavit is rendered incurably defective and cannot support the application. They prayed for the application to be dismissed with costs.

Replying to the first point, the applicant was of the view that the respondents' point of preliminary objection is misconceived. He argued briefly that he filed this application on 3rd December 2020 thus in compliance with the order of this court.

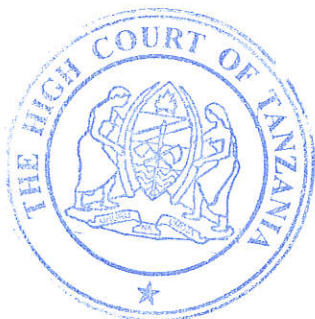
With regard to the second point of preliminary objection, the applicant first conceded to the defect. However, he sought to rescue the defect under the overriding objective principle enshrined under section 3A and 3B of the Civil Procedure Code, Cap 33 R.E. 2019. He contended that the overriding objective principle is geared towards facilitating just and expeditious determination of disputes in courts of law, thus courts are required to dispense with stringent legal technicalities. He thus prayed for the court to allow him to file a supplementary affidavit. In support of his argument he referred the court to the case of **Alliance One Tobacco Tanzania Limited & Hamisi Shoni v. Mwajuma Hamisi & Heritage Insurance Company (T) Limited**, Misc. Civil Application No. 803 of 2018 (HC at DSM, unreported).

After considering the arguments of both parties, I wish first to start with the second point of preliminary objection. Going through the applicant's affidavit I find it containing the defects pointed out by the respondents and conceded by the applicant. However, I agree with the applicant that such defects are curable under the overriding objective principle by allowing the applicant to file an amended affidavit so that the matter can proceed to hearing on merits. See: **Sanyou Services Station Ltd. v. BP Tanzania Ltd. (Now PUMA Energy (T) Ltd.)**, Civil Application No. 185/17 of 2018 (CAT at DSM, unreported).

With regard to the first point of preliminary objection, the applicant claimed to have filed his application within time, that is, on 3rd December 2020. However, the gist of this point of preliminary objection as argued by the respondents does not lie with the date written on the affidavit, but on the court fees receipt, which indicates that the filing fees were paid on 8th December 2020. The applicant in fact did not make any reply on this argument. The question to be asked is therefore "at which point in time can a document be said to have been duly filed in court?" In my considered opinion a document becomes duly filed in court when the filing fees have been paid, unless filing fees are waived in that respect. This position was also settled in the case of **John Chuwa v. Anthony Ciza** [1992] TLR 233 whereby it was held that the date of filing is the date of payment of fees and not that of receipt of the relevant documents in the court registry. See also: **Bakema Said Rashid v. Nashon William Bidyanguze & 2 Others**, Election Reference No. 1 of 2020 (HC at Kigoma, unreported).

In the matter at hand, the filing fees were paid on 8th December 2020 which was on the fourth day from the day the application became time barred. Under the circumstances therefore, I agree with the respondents that the matter is time barred for not adhering to the order of this court to file the same within 14 days from 19th November 2020. The application is therefore incompetent before this court and is dismissed with costs.

Dated at Mbeya on this 21st day of May 2021.




L. M. MONGELLA
JUDGE

Date: 21/05/2021

Coram: Z.D. Laizer – Ag. DR

Applicant: Present

1st Respondent: Present

2nd Respondent: Absent

3rd Respondent: Present

4th Respondent: Present

B/C: Mapunda

Court: Delivered in the present of the applicant and the 1st, 3rd and 4th respondent only.



Z.D. Laizer
Ag. DEPUTY REGISTRAR
21/05/2021

Order: Right of appeal explained.



Z.D. Laizer
Ag. DEPUTY REGISTRAR
21/05/2021