

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

**MISC. CIVIL APPLICATION NO. 158 OF 2020**

(From Misc. Civil Application No. 119 of 2020 of the High Court of Tanzania at  
Mwanza)

**1. MAPESA SAID MATAMBO**  
**2. MARIJANI SAID MATAMBO** } ..... **APPLICANTS**

**VERSUS**

**ROSE ALLY NYABANGE..... RESPONDENT**

**RULING**

*Date of the last order: 26.05.2021*

*Date of the Ruling: 26.05.2021*

**A.Z.MGEYEKWA, J**

This is a ruling on a preliminary objection, taken at the instance of the respondent's learned counsel, contending that the application for extension of time to file a bill of costs is misconceived. The application against which the preliminary objection has been raised seeks to move the Court to exercise its discretion under section 14 (1) of the Law of

Limitation Act, Cap. 89 [R.E 2019] to extend time to file a bill of costs out of time in respect to Misc. Civil Application No.13 of 2018. The application is supported by an affidavit deposed by Mapesa Said Matambo and Marijan, the applicants. The respondent has demonstrated his resistance by filing a counter affidavit deposed by Rose Ally Nyabange, the respondent and he lodged a preliminary objection as hereunder:-

- 1. That since Misc. Application No.31 of 2019 was dismissed the applicant's application is incompetent as he ought to appeal against the dismissal order.*

When the matter was called for hearing on 26<sup>th</sup> May, 2021, the respondent enjoyed the legal service of Mr. Emmanuel, learned counsel, and the applicant appeared in person, unrepresented.

It was Emmanuel, learned counsel for the appellant who kicked the ball rolling. In supporting the preliminary objections, he was brief and straight to the point. He argued that the Misc. Civil Application No. 31 of 2019 dated 10.09.2020 between the parties was dismissed. It was his view that after the dismissal order the remedy is to file an appeal. To support his submission he referred this court to the case of **Hashim Madongo & 3 others v Minister for Industry & Trade**, Civil Application No.27 of 2003.



In conclusion, the learned counsel for the respondent urged this court to dismiss the applicant's application with costs.

In reply, the first applicant was brief and straight to the point. He stated that he was not able to file the appeal within 60 days, however, the court allowed them to file an application for extension of time in case they have a sufficient cause. He went on to state that unfortunately, they could not file an appeal against this court's ruling. He urged this court to proceed to determine their application for extension of time.

In conclusion, the applicant argued that the preliminary objection is baseless to support his submission, he cited the case of **CRDB Ltd v Serengeti**, Civil Application No.12 of 2009.

In his brief rejoinder, the learned counsel for the respondent reiterated his submission in chief. Insisting, he stated that after the issuance of the dismissal order no application for extension of time can be lodged in court. To support his position he cited section 3 of the Law of Limitation Act Cap. 89 [R.E 2019].

On the strength of the above argumentation, he beckoned upon this court to sustain the preliminary objection and struck out the applicant's application with costs.

Having heard the submissions of both parties for and against the preliminary objection, I proceeded to give my findings that the respondents filed a Misc. Application No. 13 of 2018. The applicant filed a leave to appeal to the Court of Appeal of Tanzania. This court determined the matter and dismissed the application. In 2019, the applicant filed an application for a bill of costs in Misc. Civil Application No.31 of 2019. The respondent opposed the application by filing a preliminary objection that the application was time-barred. The Taxing Officer determined the preliminary objection and ended dismissing the application for costs.

For the sake of clarity, I have read the case of **CRDB Ltd v Serengeti** (supra). In **CRDB's** case the issue for discussion was based on good cause to move the court to extend time. In my view this cited case is distinguishable from the instant application. In the instant application, unlike the cited case of **CRDS Ltd v Serengeti** (supra), the raised point of objection is related to dismissal order of the Taxing Officer thus, the same cannot be applied at this juncture.

From the record, it is clearly that after the dismissal order in Misc. Civil Application No. 31 of 2019 the applicant was supposed to appeal against the decision which was delivered on 10<sup>th</sup> September, 2021. Therefore this court cannot proceed to determine the instant application.

In the upshot, I sustain the preliminary objection and proceed to dismiss the applicant's application for being incompetent. Each party to shoulder his own costs.

Order accordingly.

Dated at Mwanza this date 26<sup>th</sup> May, 2021.

  
A.Z.MGEYEKWA

**JUDGE**

26.05.2021

Ruling delivered on 26<sup>th</sup> May, 2021 in the presence of Mr. Emmanuel, learned counsel for the respondent and the applicant.

  
A.Z.MGEYEKWA

**JUDGE**

26.05.2021

