

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 1 OF 2021**

(Arising from Civil Case No. 155 Of 2017)

**NCBA BANK TANZANIA LIMITED.....PLAINTIFF**

**VERSUS**

**TACAS LIMITED.....1<sup>ST</sup> DEFENDANT**

**CLARA ZAKARIA MAMBYA.....2<sup>ND</sup> DEFENDANT**

**ANSELME BIJWIGI.....3<sup>RD</sup> DEFENDANT**

**RULING**

Date of Last Order: 28/5/2021

Date of Ruling: 1/6/2021

**MASABO, J.:**

On 16<sup>th</sup> February 2021, NCBA Bank Tanzania Limited, filed a memorandum for review against the decree of this court in Civil Case No: 155 of 2017. Upon being served, the respondent raised three points of preliminary objection two of which were later abandoned. The ruling, therefore determines only one point of preliminary objection, to wit, *the review is time barred for having being filed after the expiry of the duration of 30 days within which to file a review.*

In a *viva voce* hearing, Mr. Kennedy Sangawe for the respondent argued that, according to item 3 Part III of the Schedule to the Law of Limitation Act, Cap 89 RE 2019, a memorandum for review is filed within 30 days from the date of the decree. Since the decree sought to be reviewed was delivered on 28<sup>th</sup> December 2020, the memorandum ought to have been filed on or before 27<sup>th</sup> January 2021. Filing the memorandum on 16<sup>th</sup> February 2021 has rendered the review unmaintainable and due for dismissal.

On his part, Mr. Dickson Majaliwa, while admitting that the application was filed after the expiry of 30 days, implored upon me to invoke the provision of section 19(2) of the Law of Limitation Act which exempts from computation of time all the duration spent by a party while waiting to be furnished with the copy of judgment and decree. He argued that on 15/1/2021 he applied to be supplied with copies of judgment and decree but the same was not supplied to him until 5/2/2021. Having obtained them, the applicant acted diligently by filing this application on 16/2/2021 which was only 11 days after being furnished with the said copies.

In rejoinder, Mr. Sangawe argued that the applicant has no one but herself to blame for the delay to obtain the judgment as it was ready for collection on the date of judgment. He told the court that, the 1<sup>st</sup> respondent obtained his copy on the same date on 28<sup>th</sup> December 2020.

To unveil the truth, the parties consulted the records from the Court Register which indicated that, the certified copies of the judgment and decree were

transmitted to the front desk on 31<sup>st</sup> December 2020. Further, it revealed that on 15/1/2021 the applicant wrote a letter requesting to be furnished with the copies of the judgment and decree and on 5/2/2021 he collected them. The record as to when the respondent collected his copies was missing.

I have carefully considered the submissions made by the parties. The main question for consideration is *whether the application is time barred and due for dismissal*. As submitted by both parties, the law is fairly settled that the available remedy for an application/suit filed out of time is dismissal as per section 3 of the Law of Limitation Act. Since in the present case it is undisputable that the memorandum for review was filed after the expiry of 30 days, there is a rebuttable presumption that it is time barred as argued by the respondent. Therefore, at this stage, it is crucial to consider whether the applicant has successfully rebutted the presumption and the review is, consequently, saved by the provision of section 19(2) of the Law of Limitation Act.

The provision states thus;

19 (2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.

This provision has been extensively litigated and it is now settled that, the provision has the effect of excluding from the computation of time all the period within which a party was waiting to be supplied with the copy of judgment and decree (see The **Registered Trustees of the Marian Faith Healing Centre@ Wanamaombi vs. The Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No 64 of 2007, CAT (unreported). Applying the principle in this case, the Court of Appeal had this to say:

“in view of what we have endeavored to show above, and in the light of section 19(2) (supra) it follows that the period between 2/5/2003 and 15/12/2003 when the appellants eventually obtained a copy of the decree ought to have been excluded from in computing time. Once that was excluded, it would again follow that when the appeal was lodged on 19/12/2003 it was in fact and in law not time barred” [emphasis added]

The respondent herein has implored upon me not to permit the applicant to benefit from his own negligence and laxity in pursuit of right. He has argued that, the applicant acted with negligence by failure to collect the judgment timely.

From the outset, let me state that I entirely subscribe to the view that a litigant should not be allowed to benefit from his own negligence. As held in **Daudi Robert Mapuga & 417 Others versus Tanzania Hotels Investment Ltd& 4 others**, Civil Application No. 462/18 of 2018, CAT

(unreported), whereas there is no specific provision of the law requiring that after lodging a request for copies of judgment and decree the party should send reminders to the Registrar or frequent the Registry so as to find out if the copies are ready for collection, it is practical and realistic that, having lodged the request, the applicant will follow up on his outstanding request. Inaction on the part of the applicant may prejudice his application if it occasioned an inordinate delay.

In view of this, the point raised by the 1<sup>st</sup> respondent is squarely relevant in determining whether or not the apply is saved by section 19(2) of the Law of Limitation Act. As held in the above case and in **Rozenda Ayres Ribeiro vs Olivia DA Ritta Siquera E. Facho and Another** (1936) 3 EACA 1 cited with approval in **Mohamed Salimini versus Jumanne Omary Mapesa**, Civil Appeal No. 345 of 2019, Court of Appeal of Tanzania (unreported), in such cases the duty of the applicant in procuring the decree or judgment timely is not a far-fetched factor.

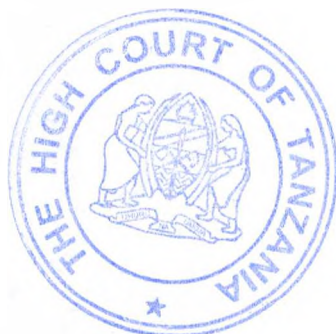
The applicant in this case had a duty to procure the proper decree within reasonable time while mindful of the duration of 30 days prescribed for lodging the review. This entails, among other things, moving the court to obtain the said copies at the earliest possible time so as to meet the timeline of 30 days.

Under the premises, since the record reveal that the applicant lodged her request for copies of decree and judgment on 15<sup>th</sup> January 2021 after the

expiry of 17 days since the date of the judgment and 15 days after the judgment became ready for collection, a certain degree of negligence can be imputed on him. He cannot in my humble view, entirely escape the blame. Although the respondent's claim that the copies were ready for collection on 28/12/2020 could not be substantiated, the records from the Court Register vividly show that, as of 30<sup>th</sup> December, 2020, the copies were ready collection. It would appear that having lodged the request the applicant went home and waited to be summoned by the Registrar. This is unquestionably inconsistent with the quest for expeditiousness in dispensation of justice to which the courts and parties strive to attain.

This notwithstanding, since the delay occasioned is for 18 days only hence not inordinate, I will accept the excuse and apply the provision of section 19(2) of the Law of Limitation Act to the period between 28<sup>th</sup> December 2018 and 5<sup>th</sup> February 2021. Having excluded this period, it follows that, when the memorandum of review was lodged on 16/2/2021, it was well within time. To that extent, I overrule the objection.

DATED at DAR ES SALAAM this 1<sup>st</sup> June 2021



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**J.L. MASABO**

**JUDGE**