

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CIVIL APPLICATION NO. 17 OF 2020

**(Arising from Misc. Civil Application No. 3 of 2019 from the District Court of
Mtwara)**

EMMA MOHAMED NAMPEMBE.....1ST APPLICANT

SADIKI ISAYA MNUDUMA.....2ND APPLICANT

HAWA MASUDI NAMENYE.....3RD APPLICANT

HAMIS AHMAD NAMBONDOLA.....4TH APPLICANT

ZAKIA ADAM NAMENYE.....5TH APPLICANT

LATIFA HEMED NANJAMA.....6TH APPLICANT

HAWA ABDALLAH PEMBE.....7TH APPLICANT

SHILAZI HAMIS CHONYO.....8TH APPLICANT

JEMA ALLY.....9TH APPLICANT

ATHUMAN A. CHILUMA.....10TH APPLICANT

ALLY SWALEHE.....11TH APPLICANT

DANFORD NDAMBALILO.....12TH APPLICANT

SHAIBU HAMIS BOMBEI.....13TH APPLICANT

SAIDI HAMIS BOMBEI.....14TH APPLICANT

HAMZA HAMIS ADINANI.....15TH APPLICANT

HAMIDA RAPHAEL RASHA.....16TH APPLICANT

VERSUS

FATUMA MACHINGA.....RESPONDENT

R U L I N G

27 April & 1 June, 2021

DYANSOBERA, J.:

This ruling is on an application for extension of time to file an application for revision in respect of Civil Application No. 3 of 2019 dated 28th day of October, 2019. As usual, the 16 applicants herein, have filed an affidavit in support of the application. The application has, however, been resisted by the respondent.

The applicants' case as can be gathered from the affidavit in support of the application and from the applicants' oral submissions is that they were claimants in civil suit registered as Civil Case No. 28 of 2019 before the Primary Court of Mtwara District at Mikindani in which they were claiming a total of Tshs. 8, 200,000/= as a refund of purchase price for the breach of the contract between them and the respondent. When the respondent was

summoned at the trial Primary Court, he prayed for adjournment as she was intending to engage an advocate. She then applied to have the suit transferred from the Primary Court to the District Court. The application was granted and the case was transferred to the District Court. A negotiation to settle the matter out of court was processed. On 11th September, 2019 in the absence of the respondent and without notice, the applicants informed the court on the negotiation with the respondent and his advocate which proved futile. The matter was adjourned to 28th October, 2019 but the applicants were required to go back to the Primary Court. .

Before the Primary Court, the Primary Court Magistrate inquired from the Magistrate at the District Court on the applicants' case being transferred back to the Primary Court. To the surprise of the applicants, the case went on being mentioned before the Primary Court and the applicants were making appearance while the respondent was not.

Seeing this, the applicants reported their grievances to the Area Commissioner who summoned the Resident Magistrate in charge of the District. To their surprise again, the Resident Magistrate in charge of the District produced a copy ruling indicating that the applicants had withdrawn their case.

The applicants came to learn that there was no any order returning the case from the District Court back to the Primary Court they are of the view that there are legal points to be determined by this court. In support of their averments, the applicants annexed a copy of the proceedings to their affidavit which they marked as Annexure **EAO-1**.

The respondent has averred under paragraphs 6 and 7 of her counter affidavit as follows:

6. That the contents of paragraph 4 of the affidavit are partly noted and the respondent states that there was no any ruling delivered to transfer the said case but the parties agreed to settle the matter before the Honourable Magistrate at the District Court of Mtwara
7. That the contents of paragraph 5 of the affidavit are noted and the respondent further states that the intended settlement failed due to applicants themselves.

I have given deserving consideration to the applicants' averments in their joint affidavit and an attached copy of proceedings before the District

Court-Annexure EAO-1. I have equally, considered the respondent's counter affidavit.

This application for extension of time within which to apply for extension of time to file an application for revision has been preferred under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E.2002]. Admittedly, a grant of extension of time under the said section 14 (1) depends on reasonable or sufficient cause being shown. The section provides as hereunder:

"14.

(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

(2) For the purposes of this section "the court" means the court having jurisdiction to entertain the appeal or, as the case may be, the application.

The issue for determination is whether the applicants have demonstrated sufficient cause for enabling this court exercise its discretion to grant the extension of time. The Court of Appeal had occasion to elaborate on what constitutes sufficient cause in the case of **Regional Manager, TANROADS v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (unreported) where it observed:

"What constitutes "sufficient reason cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules"

It has been sufficiently demonstrated that the applicants filed their suit against the respondent before the Primary Court of Mtwara District at Mikindani which suit was registered as Civil Case No. 28 of 2019. There is no dispute that the said suit was not heard as the respondent successfully applied to be transferred to the District Court. This is clearly stated in the proceedings whereby the Resident Magistrate in charge of the District is recorded to have said:

'Court: Ruling: Civil Case No. 28 of 2019 is hereby transferred from Mikindani Primary Court to Mtwara District Court

Sgd: H.R. Mareng' DRMA

4.7.2019'

There is no dispute that the law sanctions such a transfer. This is clearly spelt out under section 47 (1) (b) of the Magistrate's Courts Act [Cap. 11 R.E.2019]. However, such transfer is not automatic. It must comply with parameters set out under either of the paragraphs (i) to (iv) of sub-section (1) of section 47 of the Act. Even then, the court is duty bound record its reasons for making or ordering such transfer. For clarity and ease of reference, the said law runs as follows:-

47.-

(1) Where any proceeding has been instituted in a primary court, it shall be lawful, at any time before judgment, for—

(a)(not relevant)

(b) the district court or a court of a resident magistrate within any part of the local jurisdiction of which the primary court is established, to order the transfer of the proceedings to itself or to another magistrates' court; or

(c)(not relevant)

in any case where—

(i) it appears that the circumstances or gravity of the proceeding make it desirable that the same should be transferred;

(ii) there is reasonable cause to believe that there would be a failure of justice were the proceeding to be heard in the primary court;

(iii) the subject matter of the proceeding arose outside the local limits of the primary court's jurisdiction or is not within its jurisdiction, or in any case in which the law applicable is a customary law which is not a customary law prevailing within such first-mentioned primary court's local jurisdiction; or

(iv) the proceeding seeks to establish or enforce a right or remedy under customary law or Islamic law, or is an application for the appointment of an administrator of the estate of a deceased person, and the court is satisfied that the law applicable is neither customary law nor Islamic law or that the question whether or not customary law or Islamic law is applicable cannot be determined without hearing or determining the proceedings,

and the court shall record its reasons for making or ordering such transfer:

Provided that nothing in this subsection shall authorise—

(a) the transfer by a magistrates' court of any proceeding which is required by law to be commenced in a primary court except to another primary court; or

(b) the transfer of any proceeding to a court which, however constituted, has no jurisdiction in respect of the subject matter thereof.

49. Additional provisions

(1) Where any proceeding or matter is transferred from one court to another under the provisions of section 47 or 48—

(a) the court from which the same is transferred may, subject, in the case of a magistrates' court, to any directions in that behalf given by the superior court ordering the transfer, make such order as to the costs of the proceedings to date as it shall think fit;

(b) upon payment of any necessary fees additional to those paid in the court from which the case is transferred, the court shall commence the hearing de novo and proceed with the conduct and trial thereof in the same manner as if, in criminal proceedings, a complaint of facts constituting an offence had been duly made to the court and, in civil proceedings, a plaint or other appropriate statement of claim therein had been duly filed, in such court, and the proceeding, and any appeal from the decision thereof, shall be regulated in the same manner as if the proceeding had been commenced in the court to which the same have been transferred.

(3) No appeal shall lie against the making of, or any refusal to make, an order under the provisions of section 47 or 48.

(4) The jurisdiction of a court under this Part may be exercised of its own motion or on the application of any party.

Despite that transfer order, the record is silent on the reasons for the transfer and it is not clear that a trial de novo was commenced as required under section 49 (1) per the law required. In that respect, I align myself with

the argument by the applicants that there is an illegality calling for consideration by this court on revision.

For the reasons stated, I am satisfied that the applicants have shown good and sufficient reason to warrant his court extent the time. The application is granted, time is extended and the applicants should file their revision within fourteen days from the date of this ruling.



Costs to be in the intended application.

Order accordingly.

W. P. Dyansobera,

JUDGE

1.6.2021

This ruling is delivered at Mtwara under my hand and the seal of this Court on this 1st day of June, 2021 in the presence of all the applicants and Ms Lightness Kikao, learned advocate holding brief for Mr. Mbaraka Katela, learned counsel for the respondent.



W.P.Dyansobera

JUDGE