IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

CIVIL REVISION NO. 09 OF 2021

(Arising from decision in Civ. Appeal No. 28/2020 at Geita District Court and originating from the decision of Nyankumbu P/court of Geita Civ. Case No. 86/2020)

JORAS INVESTIMENT CO. LTD.....APPLICANT

versus

DAFFA MOHAMED DAFFA.....RESPONDENT

RULING

20th & 30th July, 2021

RUMANYIKA, J.:

The application for revision is with respect to ex-parte judgment and decree dated 16/03/2021 of the district court of Geita at Geita, the latter having had reversed judgment and decree of Nyankumbu Primary Court dated 02/10/2020. It is supported by affidavit of John Kishomba (whose contents Mr. Kabugushi learned counsel for JORAS INVESTIMENT CO. LTD (the applicant) adopted). The application therefore was brought under Sections 43(3) and 44(1)(a)(b) of the Magistrate's Court Act Cap. 11 RE. 2019. Mr. S.M. Kwikima learned counsel appeared for Daffa Mohamed

Daffa (the respondent). By way of audio teleconference I heard them through mobile numbers 0752365559 and 0753214717 respectively.

However, when the application was called on for hearing on 20/07/2021, I had to hear the learned counsel on the time-bar and competency based preliminary points of objection in formerly raised and now taken by Mr. S.M. Kwikima learned counsel ;**(1)** that contrary to the provisions of Item 21 Part III of the Schedule to the Law of Limitation Act Cap. 89 RE. 2019 (the Act) the application was time barred because instead of 60 days limit, the impugned decision was delivered on 16/03/2021 but the instant application was lodged say 30 days far beyond ie on 17/06/2021 that under S. 3 of the Act the application was liable to be dismissed **(2)** that as the present applicant wasn't a party in the original proceedings, and revision was not an alternative of appeal, unless, an appeal was blocked by a judicial process which is not the case here, the application was improperly before the court (the cases of **Tanzania Rent a car Ltd v. Peter Kinuhu**, Civil Application No. 226 of 2017 and **Said Ally Yakuti v. Feizal Ahmed Abdul**, Civil Application No. 4 of 2011 (CA) at Dar es Salaam and Mwanza respectively both unreported. That is all.

Mr. Kabugushi learned counsel submitted; **(a)** that revision was not alternative of appeal yes, but the applicant was only compelled to due to reason that having won the battle in the trial court but in respect of his reply on record on appeal the judgment and decree over turned, the applicant could not have appealed under such exceptional circumstances (case of **Halais Prochemie v. Wella AG** (1996) TLR 260 **(b)** that the Act did not apply on matters originating from primary courts but only Section 22 (4) of the Magistrate's Courts Act Cap. 11 RE. 2019 (the MCA) which set out only 12 months limit and the instant application was within the first 3 months lodged therefore the 2 cases cited were distinguishable. That is all.

In his rejoinder, Mr. S.M. Kwikima learned counsel submitted that Section 22(4) of the MCA only provided for the district court's jurisdiction over primary courts. That if at all he wasn't served, the applicant should have only applied for inter pates hearing (Order XXXIX Rule 21 of the Civil Procedure Code Cap. 33 RE. 2019 refers). That is it.

The pivotal issues are; **(ii)** whether the application was time barred **(2)** whether, without considering contents of the applicant's reply to the petition of appeal the exparte judgment and decree were justifiable.

I entertain no doubts that under the provisions of the said limitation Act with all intents and purposes the limitation period set for applications for revision and the like it was an aggregate of sixty (60) days of the impugned decision but the instant application was lodged say a month far beyond the prescribed time.

Second, the applicant may have had well within time filed his reply to the petition of appeal yes, but for his nonappearance on the date of hearing whether or not the former was, or was not duly served it is immaterial in my considered opinion because this one is neither application for setting aside the ex-parte judgment nor is it equivalence thereof be as it may, a reply to petition of appeal constituted no written submissions or worth the context hearing of the matter. I think, unless the ex parte judgment was set aside, an abandoned reply to petition of appeal entitles one ex parte judgment just as an abandoned petition of appeal entitles the court to dismiss the matter for nonappearance or want of prosecution as the case may be logically. Not only the law is general but also the law always had the two edges equally sharp much as court orders were not there to only suit cosmetic purposes a person that defaults he runs risks of

whatever adverse orders. It could be dismissal of the matter or, like it happened here ex parte judgments/orders.

In the upshot, the preliminary objection is sustained. The application is for avoidance of doubts dismissed with costs. It is so ordered.

Right of appeal explained.

S.M. RUMANYIKA

JUDGE

30/07/2021

Ruling delivered under my hand and seal of the court in chambers this 30/07/2021 in the absence of the parties.

S.M. RUMANYIKA

JUDGE

30/07/2021