

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISC CIVIL APPLICATION NO. 11 OF 2021**

*(Originating from RM's Mwanza Misc. Civil Application No. 24/2018)*

**ANNA CHRISTOPHER ..... APPLICANT**

**VERSUS**

**MONTESSORI TRAINING CENTRE KAWEKAMO ..... RESPONDENT**

**RULING**

*02/08/2021 & 26/08/2021*

**W. R. MASHAURI, J;**

By didn't of the chamber summons supported with an affidavit of the applicant, this is an application for extension of time to lodge the application for revision against the decision of the Resident Magistrates' court in Misc. Civil Application No. 24 of 2018 dated 08/10/2019.

It has been made under section 14 of the law of Limitation Act Cap. 89 R.E. 2002 and section 79(I)(a)(b) and (c) of the CPC Cap. 33 R.E. 2002.

The orders sought the applicant to be given by this court is that: -

1. This court be pleased to extend time to lodge the application for revision against the decision and proceedings of the Resident

Magistrates' court of Mwanza at Mwanza in Misc. Civil Application No. 24 of 2018 dated 08/10/2018.

2. Costs of the application to follow the events out of time.

The applicant is represented by Mr. Julius Mushobozi Advocate and the respondent by Mr. Mwanaupanga advocate.

When the respondent was served with the application, he filed in this court notice of preliminary objection to the effect that: -

1. In view of the provisions of item 21 part III to the schedule of the Law of Limitation Act Cap. 89 R.E. 2002, and Section 19 thereof, the application is time barred.
2. That, as the application for revision was previously struck out vide Civil Revision No. 14 of 2019, for being time barred, the present application is unmaintainable and is an abuse of court process.

In his written submission in support of the preliminary objection points, the learned counsel for the respondent started with the 1<sup>st</sup> point of preliminary objection where he submitted that, this current application before this court is filed under section 14(I) of the Law of Limitation Act Cap. 89. That, according to the provisions of section 13(I) of the Act, is that, every

proceeding prescribed in the schedule to the Act shall be dismissed if it is filed after its prescribed period of limitation. The learned counsel for the respondent has asked himself a question if section 13(I) of the Act is applicable in this application.

That, there is no doubt that the instant application is a proceeding as per section 2 of the Act (supra) which defines a proceeding to include an application. That, once it is agreed that it is a proceeding, the remaining step is to find out that, there is (sic) prescribed in the schedule, a limitation period for type of proceeding i.e. an application for extension of time.

That, looking at part III of the schedule which deals with application there is no item which specifically refers to application for extension of time. However, there is a residual item 21 which provides that:

*"any application for which no period of limitation is prescribed but which is filed under the provision of the CPC Cap. 33 R.E. 2002 the Magistrates' court Act or any other written law must be filed within 60 days from the date when the right to file it arose. That, this is a 60 days rule which was established by the Court of Appeal of Tanzania in the case of*

**I.S Kivuyo V/s Wayari Langoji** (1989) TLR 140 at page 142; and Dr. N.M Swammy in his commentary booklet on the law of limitation 1<sup>st</sup> Edition Vol. 2 at page 1942 where it is said that:

*"An application for condonation of delay is itself an application no specified period being prescribed for its limitation"* the residual article will apply.

That, under paras 11, 12 and 14 of the affidavit in support of the application the applicant alleges to have a right to file this application in court within 60 days.

However, the applicant despite the fact that is aware of the provision of item 21, she has filed her application for extension of time to file revision after a lapse of 724 days as stated by the applicant under paragraph 15 of her affidavit, the delay of which is too inordinate. The learned counsel for the respondent concluded by telling the court that, this application is time barred and must face the legal consequences.

For the 2<sup>nd</sup> point of preliminary objection, the learned counsel for the respondent started by asking himself a question that, can a person whose application for revision or any application for that matter which has been

dismissed for being out of time can go to court and file the same application for extension of time within which to file the same revision out of time.

That the High court dismissed the former application of this kind on 27/1/2018 and this application at hand has been filed in this court on 16/10/2018. By all standard, this is beyond the statutory period.

That, the applicant filed this application being aware of the fact that she was late she is in fact attempting to combine the two applications but unfortunately without sufficiently elucidating or conspicuously putting the prayer for extension of time in the chamber summons. This means that, this application is hopelessly filed without securing an extension of time. The said application for extension of time to file revision was struck out.

That, it is now settled that, once an application is dismissed for being out of time, a party cannot thereafter apply for extension of time to file the same application. That amounts to an abuse of the court process.

That, even if the court upon found the application being out of time did not dismiss it but merely struck it out which is not a bar to institute the present application, it must however be noted that, under the mandatory

provision of section 3(I) of the Law of the Limitation Act is that once a proceeding is found to be out of time it must be dismissed.

Counsel for respondent also referred the court to the case of Mapunda v/s Uda (1982) TLR 258 and **Hashimu Madongo & 2 Others v/s Minister for Industry and Trade and 2 Others** Civil Appeal No. 27 of 2003. CAT DSM Registry (unreported) in which the Court of Appeal of Tanzania held at page 5 of its judgment that: -

*"first of all, since the application was struck out, rather than dismissed, it ceased to exist. It is as if no application had been made. Any consequent application cannot then come to this court because, whenever an application may be made either to this court or to the high court. It has to be made to the high court in the first instance."*

In reply Mr. Julius Mushobozi counsel for the applicant submitted that, upon carefully read the respondent's written submission in support the preliminary objection he found it to be substantively lacking and baseless. That, the respondent's submission and the objection in particular lack merits.

He referred the court to the issue he raised: - whether after the application has been held time barred, there can be a remedy for extension of time.

That, the respondent's submission that the application before Hon. Tiganga, J who held the application to be out of time and struck it out, there is no remedy of applying for extension of time in a very court instead to prefer the appeal to the High court. The learned counsel for the respondent was wrong to rely on section 3(I) of the LLA Cap. 89 R.E. 2019, and the decisions are no longer good law as it has been taken and overruled by the advent of purposive interpretations in our legal system.

That, when the application, appeal or suit is either dismissed or struck out on merits but on in competence. The application before Hon. Tiganga, J had been struck out for being incompetent.

That, the bases of incompetence mean it had been disposed of on merits. That, the Law of Limitation Act relates only to procedures and it does not diverse any person of right recognized by law. In essence the court has no mandate to entertain the appeal which is abortive as being incompetent. The learned counsel for the applicant also referred this court to the case of **Blue Star Service v/s. Jackson Musseti t/a Muset Enterprises** (1999) TLR 80 the court of Appeal held that: -

When the application is dismissed not on merits.... It would be proper to subsequently file fresh application subject to the requirement of the law.

That the word "*shall*" used in section 3(I) of the LLA Cap. 89 is not for everywhere means mandatory.

That in the case of **Fortunatus Masha v/s. William Shija** (1997) TLR. The CAT held thus: -

*"We think that the use of the word "shall" does not in every case make the provision mandatory. Whether the use of that word was such effect will depend on the circumstance of the case."*

Having so submitted at length, the learned counsel for the applicant told the court that the 2<sup>nd</sup> raised point of objection also has no merits, equally his to be overruled with costs.

For the 1<sup>st</sup> point of preliminary objection, the learned counsel for the applicant submitted that, the application vides Civil Revision No. 14 of 2020, was filed in court on 20<sup>th</sup> February, 2020 and the same was struck out before Hon. Tiganga, J.

The instant application was electronically filed by the applicant on 15/12/2020 after a lapse of one month and two days.



The issue is whether this application was filed in this court being or not time barred, and the same is properly before this court.

This application has been filed in this court under section 14(I) of the Law of Limitation Act Cap. 89.

It is an application covered under the provisions section 3(I) of the Act and section 2 also of the same Act.

Section 3(I) of the Law of Limitation Act Cap. 89 R.E. 2019 provide that: -

3(I) subject to the provision of this Act, every proceeding described in the 1<sup>st</sup> column of the schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the 2<sup>nd</sup> column, shall be dismissed whether or not limitation has been set up as a defence.

Section 2 of the same Act define an application to mean an application made to a court which of, or in relation to any proceeding of a civil nature.

That, since this application is not prescribed in the schedule, the same therefore falls under item 21 of the schedule to the Act which provides that, 21. Any application for which no period of limitation is prescribed but is filed under the provisions of the CPC Cap. 33 R.E. 2019 the MCA or any other written law.... 60 days. However, despite the applicant is aware of the

provisions of item 21 she has filed her application after a lapse of 724 days as stated in paragraph 15 of her affidavit.

And in his submission in opposition of the preliminary objection, the learned counsel for the applicant has failed to account for a delay of each day.

That, in the case of **Tanzania Fish Processing Ltd v/s. Eusto Ntagalinda** Civil Application No. 4 of 2008 CAT MZA Registry (unreported) the Court of Appeal held that: -

*"The law is clear that in application for extension of time the applicant should account for each day of delay... a delay of even a single day should be accounted for. Otherwise should be no point of having rules prescribing period within which certain step has to be taken."*

It should be noted and it is cardinal principle that, the issue of limitation of time is a fundamental one and not merely a technicality.

Once a challenge of time is raised, the court is obliged to pursue the pleadings filed by the parties and found whether or not the suit is time barred before proceeding with the case on merits.

The rules of limitation are not merely meant to destroy the right of the parties but instead they are meant to see that their remedy is appropriately in time.

It is also not disputed that, this application for extension of time within which to file revision against the decision of the RM's court in the High court civil Revision No. 14 of 2019 delivered on 13/10/2020. Hon. Tiganga, J was struck out. The order sought in this application was therefore passed 13/10/2020 and this application at hand was received by this court, according to the rubber stamp stamped on the chamber summons on 27/01/2021 after a lapse of 86 days which also is out of time of the statutory period of 60 days. The same therefore is also time barred.

Further still, since the former application for revision was struck out in Civil Revision No. 14 of 2019 for being time barred, there was no right to file an application for extension of time to file another revision.


It was held in the case of **Dickson Bujingwa v/s. Paulo Lazaro** Civil Case No. 01 of 2008 CAT Mwanza Registry (unreported) that: -

*"where there is a right to appeal, there is no right of revision."*

From the look of events, I have therefore reviewed my ruling dated 25/05/2021 by removing the word dismiss of the two grounds of preliminary objection and substitute there of the word sustaining the two raised two points of preliminary objection.

In the event I find this application devoid of merits and the same is dismissed with costs.



  
**W. R. MASHAURI**  
**JUDGE**  
**26/08/2021**

Date: 26/6/2021

Coram: Hon. W. R. Mashauri, J

Applicant:

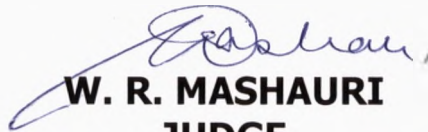
Respondent:

Mr. Mushobozi for applicant.

Mr. Mwanaupanga Advocate for respondent. The matter comes for ruling and we are ready.

**Court:** Ruling delivered in present of Mr. Julius Mushobozi for applicant and Mr. Mwanaupanga advocate for respondent his 26/8/2021. Right of appeal explained.



  
**W. R. MASHAURI**  
**JUDGE**  
**26/08/2021**