

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

(APPELLATE JURISDICTION)

MISC. CIVIL APPLICATION NO. 15/2021

(Arising from HC Misc. Civil Application No. 9/2021, originating from PC Civil Appeal No. 16/2020, originating from Kasulu District Court Civil Appeal No. 6/2020 and originating from Kasulu Urban Primary Court Civil Case No. 56/2020)

NICODEM DAMIANO NTIGAHELA.....APPLICANT

VERSUS

1. **MICHAEL YANGO**

2. **JAMES KIBHALA**

3. **AUGUSTINO THOMAS**

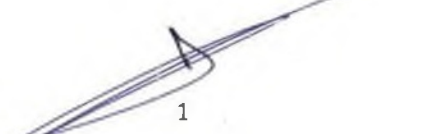
.....**RESPONDENTS**

RULING

20th & 20th September, 2021

A. MATUMA, J

The applicant was as well an applicant in Misc. Civil Application No. 9/2020 before this court for certification on point of law so that he could lodge



his appeal to the court of Appeal against the decision of this court in (PC) Civil Appeal Case No. 16/2020.

When such application came for hearing on 27/5/2021, the Applicant was absent and without any notice. His application was thus dismissed for want of prosecution.

It is from such background; the applicant is now before me with this application to have his dismissed application restored.

On 31/8/2021 when this application came for hearing I noted that the same was filed on the deadline date i.e on the 30th day from the date of the dismissal of the earlier on application.

It however transpired that the filing fees was effected on 8th July, 2021 thereby making the application out of time although the documents were presented for filing in time though on the last day (deadline).

I asked the applicant whether his application can be considered to have been filed in time despite of having not paid the filing fees in time.

He lamented that on his party he filed the documents in time but the court Registry did not give him the control number for him to effect payment promptly. According to him, he was told to go home until when the control number shall be ready and he will be called to collect it for payment.

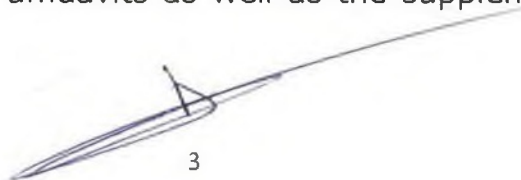
In the circumstances, I adjourned the hearing to satisfy myself with the claims of the applicant as I considered the affidavit of the relevant Registry officers were necessary to ascertain the truth. I thus ordered the applicant to file supplementary affidavit putting his averments in it and obtain a supporting affidavit from the relevant judicial officer.

The affidavits have already been filed and I invited the parties to submit on the matter.

The applicant submitted this time conceded that when he presented his documents, the Registry Officer received them and told him to await its admission by the Deputy Registrar or leave away pending the admission which he shall be informed on phone call. He chose to go away. Later around 15:00hrs he was phoned and told the control number is ready, he should come to pick it and pay the requisite fees. He asked the Registry Officer the date when such control number is to expire. The registry officer told him that it was on the 9th July, 2021. In that respect he decided to come on the 8th July, 2021 and paid the requisite fees.

On their party, the Respondents maintained that the Application is time barred for it was filed beyond the prescribed thirty days.

Having heard the parties, scrutinizing the relevant documents on record and the supplementary affidavits as well as the supplementary counter

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affidavit, it is obvious that the applicant having presented his documents on the deadline did not pay the filing fees on that date.

According to the affidavit of Yekonia Jackson Karanyi, the judicial officer who is the Record Management Assistant Incharge, it was him who received the documents of the applicant on 25/6/2021 (on the deadline). He assisted the applicant to file the same online through the online help desk (kiosk) and successfully submitted the documents to the Deputy Registrar online on the same date at 12:43 pm. Mr. Yekonia further deposed that he successfully generated the bill, printed it and issued the same to the Applicant for him to effect payment of the filing fees. The applicant did not pay the filing fees until on 8th July, 2021.

The Applicant has in fact conceded that the bill was generated on the same day he presented his documents but at that time he had gone away. He was however informed through a phone call that the bill was ready for his action.

The RMA'S affidavit is supported by annexure 'B' thereof which is the bill itself with the relevant control number. The same is very clear that it was generated and printed on 25/6/2021.

The Applicant ought to have acted diligently and pay the requisite fees on the same day because he was aware that he presented his documents for filing on the last day within the time limit.

In fact, the affidavit of the court officer is very clear that when they issued the bill to the applicant, he told them that he had no money and prayed to have such fee waived. They advised him to recourse into the normal course to the Deputy Registrar but he went away without effecting the payment of such fees. He paid the same on 8/7/2021 which rendered his documents out of time. This is because there cannot be effective filing of documents without paying the requisite fees unless such fees has been legally waived. That is what has been held in a number of cases both of this Court and that of the Court of appeal. See; ***John Chuwa v. Anthony Ciza (1992) TLR 233 (CAT)*** and ***Bakema s/o Said Rashid v. Nashon S/O William Bidyanguze & 3 Others, Election Reference No. 1 of 2020*** (HC at Kigoma). In these cases, it was decided that the date of filing is the date of payment of the fees and not that of receipt of the relevant documents in the registry.

The documents filed without paying the requisite fees cannot be acted upon. In the instant matter up to the 8th day of July, 2021 prior to the payment of the filing fees, the applicant's application could not be acted upon and presumed ineffective in the Court Registry despite there presence thereat.

And when the fees were subsequently paid on 8th July, 2021, the time had already expired as the payment of filing fees must be within the prescribed period for the filing of the documents themselves. The Applicant tried to



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reason that the Control number was still alive up to 9th July, 2021 meaning that he could pay at any time before expiration of the control number. That is wrong perception, filing fees must be paid within the statutory time limit for filing documents in court. The time for the expiration of the control number is irrelevant in the circumstances.

I therefore find this application to have been filed out of time and accordingly struck it out. Since this application falls on the Courts own issue raised *suo motto*, no orders as to costs.

It is so ordered




A. MATUMA

JUDGE

20/9/2021

Court: This Ruling delivered in chamber on this 20th day of September, 2021 in the presence of both parties in person. Right of appeal is hereby explained.

Sgd: A. MATUMA

JUDGE

20/9/2021