

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

APPELLATE JURISDICTION

(DC) CIVIL APPEAL NO. 09 OF 2021

(Arising from Misc. Civil Application No. 2 of 2021 of Kigoma Resident Magistrate
Court Before G.E. Mariki, PRM)

THE REGISTERED TRUSTEE OF THE GOMBE

SCHOOL OF ENVIRONMENT SOCIETY..... APPELLANT

VERSUS

THE BOARD OF TRUSTEES OF THE

NATIONAL SECURITY FUND (NSSF).....RESPONDENT

J U D G M E N T

09th & 10th November, 2021

A. MATUMA J.

The appellant herein had her application before the Resident Magistrate's Court of Kigoma to have her earlier on dismissed application for want of prosecution, restored.

Briefly, the respondent instituted a summary suit against the appellant (Civil Case No. 2/2020) for payment of **Tshs. 40,902,000/=** being unremitted members' contributions due and payable to her, interests, costs and any other relief. The appellant attempted to obtain leave to defend but the same was dismissed for she failed to meet the court's

schedule for presenting her written submission in support of the application.

The summary judgment was thus entered and the Decree thereof extracted.

The Appellant being aggrieved by the summary judgment and the Decree thereof filed Misc. Civil Application No. 1 of 2021 to have the summary decree set aside. Whether or not that was a proper remedy to resort into, it is none of my business at this juncture. Such Misc. Civil Application No. 1/2021 was as well dismissed for want of prosecution. The appellant filed another application Misc. Civil Application No. 2/2021 seeking restoration of Misc. Civil Application No. 1/2021. She faced a preliminary objection to the effect that the application was filed out of time. After hearing both parties the learned Principal Resident Magistrate G.E. Mariki upheld the objection and dismissed such application.

The said ruling which dismissed Misc. Civil Application No. 2/2021 is the subject matter to the instant appeal. A total of five grounds of appeal were drawn and filed but at the hearing of this appeal and after some discussion with the parties, it was agreed that only one major complaint arising from the grounds of appeal sufficed to dispose of this appeal. The complaint is ***the failure of the Principal Resident Magistrate to***

have satisfied himself by electronic means as to when the documents were filed and when exactly the filing fees were paid as against the hand-written receipt which was dated and obtained some time later after the requisite fees were already been dully paid within the required time limitation.

Mr. Ignatius Kagashe learned advocate represented the Appellant while Mr. Allan Shija learned State Attorney represented the respondent.

Mr. Kagashe submitted that he consistently asked the learned principal magistrate to satisfy himself through electronic mechanism as to when exactly the documents were filed and the fees paid but unfortunately the learned principal magistrate concentrated on the hand-written receipt which was dated 12/04/2021 instead of the electronic receipt which show that the requisite fees was paid within the prescribed time for filing an application for restoration of a dismissed application.

Mr. Allan Shija learned State Attorney, on his party stated that the court below was not availed with sufficient explanation contravening the hand written receipt upon which their objection based. He however conceded upon perusal of the court record that there is an electronic receipt to the effect that the court fees were paid within the time limit prescribed by law. He did not thus oppose this appeal.

After having heard both parties, I am in agreement with both of them that this appeal be allowed. Before stating the grounds for such stand, I would wish to put it clear that the learned Principal Resident Magistrate had nothing to be blamed in the findings he reached on the preliminary issue due to the line of argument by the parties before him. The records speaks by themselves that the receipt which accompanied the application was dated on 12/04/2021 which was extremely out of the requisite time for filing applications of that nature.

Mr. Kagashe learned advocate who appeared for the applicant argued in line of **electronic filing** and not on **electronic payment**. He contended that the documents were electronically filed on 17/03/2021 which was within thirty days, the time limit for filing the application. He did not at any point of time argued that the requisite fees were electronically paid within such thirty days.

The other party argued on the hand written receipt which was dated 12/04/2021 to the effect that such date of the receipt is the date to be considered as the date of filing of the application because electronic filing does not waive the requirement of paying the requisite fees within time since the date upon which payment of court fees is done counts for the time of filing when time limitation is to be determined. Therefore, the

Appellant did not address the lower court that filing fees in respect of the matter was paid in the period within which an application was to be filed. He concentrated to prove that the documents were electronically filed within time without reconciling such filing and the date when the requisite fees were paid.

In that respect the argument of the respondent which relied on the exchequer hand-written receipt was left unchallenged to the effect that the filing fees was paid extremely out of the period within which the application could be filed.

The learned magistrate in line of the arguments before him by the parties was thus right in holding that;

'The date of payment of court fees is deemed to be the date of filing'

Such finding is backed up with a chain of authorities both of this court and the Court of Appeal. I had also dealt with the matter of similar facts in the case of ***Nicodem Damiano Ntigahela versus Michael Yango & 2 others***, Misc. Civil Application No. 15/2021 High Court of Tanzania at Kigoma in which I held at page 5;

'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 (High Court at Kigoma). In these cases, it was decided that the date of filing is the date of payment of fees and not that of receipt of relevant documents in the registry'.*

I therefore find that the learned Principal Resident Magistrate committed no wrong in his decision as far as the principle of the law is concerned in relation to when exactly the documents are deemed filed between the date of their reception into the Court registry be it physically or electronically and the date when the filing fees thereof are paid.

Even though I find that he ought to have gone a step further to peruse the court records to see anything material therein which might have assisted him to reach a just decision without necessarily confining himself to the arguments of the parties.

Despite of the weaknesses of a litigant in stating his/her case or in addressing the court on a certain legal issue or weaknesses in the analysis of the facts and evidence on record, courts of law are not there to adjudge on such weaknesses but rather to adjudge on the strength or weaknesses



of the case itself by considering the available facts and evidence along with the relevant guiding law to the matter.

In the case of ***Angelina Reuben Samson & Another versus Waysafi Investment Company***, DC Civil Appeal No. 4 of 2020 in the High Court at Kigoma, the Court had these to say;

'Justice must at all times be administered and even when it is about to drop out for either negligence or in any other manner, the judicial officer is owing a duty to lift it up and put it at its peak as against any abuse or mishandling'.

Therefore, the Judicial Officer is not a mere observer of the litigation before him but an administrator of justice in the litigation before him. Such duty must be discharged accordingly despite of the weaknesses the parties might have in addressing the court. That is why we have in place section 176 of the Law of Evidence Act, Cap. 6 R.E. 2019 reserving the court's powers to put any question, to any party or witness, in any form, at any time just to probe out, justice. The power extends to order the production of any document relevant to the fact in issue. For easy of reference, the section provides;

"The court may, in order to discover or to obtain proper proof of relevant facts, ask any question it desires, in any form, at any time, of any witness or of the parties about

any fact relevant or irrelevant and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question"

All these are to ensure that justice is being administered accordingly and the parties are not left to fall because of their weaknesses in prosecuting or defending their respective suits.

In the instant case at all times when the parties were scrambling on whether or not the application was filed within the prescribed time limit of thirty days by looking the date of the hand-written receipt for filing fees, an electronic receipt was within the case file. It is this receipt which I shown the parties and required them to address me versus the hand-written receipt. Such electronic receipt is descriptive by itself that the filing fees were dully paid on 18/03/2021 at 16:03:40 hours just a day after electronic filing of the documents themselves. The electronic receipt bears control No. 991400403966. It is a receipt No. EC10085593112300IP. The hand-written receipt is No. 32006508 and dated 12/04/2021 which formed the basis of the preliminary objection.

Had the learned magistrate considered the two receipts and reconciled them, would have not reached the decision he reached. He would have sought from the parties a reconciliation or otherwise of the two receipts and make a finding thereof as to when exactly the filing fees were paid before concluding that the filing fees were paid out of the prescribed time for filing the relevant document.

Now the hand-written receipt when scrutinized thoroughly it does not state that the payment thereof was effected on 12/04/2021 although the same is dated on such date. It speaks by itself that the payment thereof was not by cash, not by check but through control number 99400403966.

In that respect the payment thereof was not effected through that receipt but the receipt acknowledged that the payment thereof was effected through the stated control number.

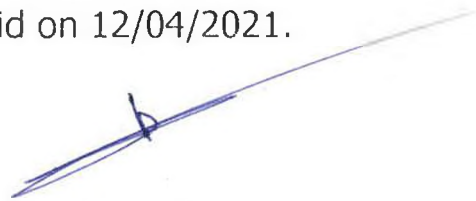
It was therefore upon the learned principal magistrate to go further and satisfy himself on when exactly the indicated control number was paid. He could have done so by invoking his powers under section 176 of the Evidence Act supra or even asking the accounts section within his office to cross check the stated control number on the receipt whether it has been paid or not. If paid then when. By doing so would not mean



assuming the role of the parties to the matter before court but executing the duty of administering justice.

Had he gone such a step he would find himself driven by such control number into the electronic receipt upon which the payment was effected as herein above stated. To that end he would have found that the payment was effected on 18/3/2021 at 16:03:40 hours as per electronic receipt and the hand-written receipt was for a mere accounts' purposes. It did not stand for the date of payment of the requisite court fees but acknowledging that the payments thereof was paid through a control number stated thereof. The details of the control number thereof also drives us to the electronic receipt to the effect that the payment thereof were effected on 18/03/2021 as against the date of the hand-written receipt.

It is upon this analysis, I find that, although the learned Principal Resident Magistrate was right in his finding on the legal position on when exactly the document is deemed to have been filed in court between the date of its presentation into the Court Registry/Register and the date upon which the filing fees were paid, he was wrong in his finding that the court fees in the instant matter was paid on 12/04/2021.

A handwritten signature in blue ink, consisting of a stylized 'D' followed by a long, sweeping horizontal stroke.

It is upon such a mistake, he wrongly ruled out that the application before him was out of time. He adjudged on the weaknesses of the learned advocate for the appellant to address him properly on the facts of the matter. I therefore allow this appeal, quash the ruling of the Resident Magistrates' Court, and set aside the drawn order thereof.

I order the restoration of Misc. Civil Application No. 2 of 2021 into the register of the Lower Court to have it determined on merits.

The appellant did not press for costs of the matter and I abstain from awarding them. Right of further appeal is fully explained.




A. Matuma

Judge

10/11/2021

Court: Judgment is delivered in the presence of Advocate Kagashe for the Appellant and Mr. Allan Shija learned State Attorney for the respondent. Right of appeal explained.

Sgd: A. Matuma

Judge

10/11/2021