

**IN THE HIGH COURT OF TANZANIA  
(MTWARA DISTRICT REGISTRY)  
AT MTWARA**

**MISCELLANEOUS CIVIL APPLICATION NO. 17 OF 2021**

(Originating from the Miscellaneous Civil Application No.3 of 2019 from the  
District of Court of Mtwara at Mtwara)

<b>EMMA MOHAMED NAMPEMBE.....</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>SADIKI ISAYA MNUDUMA.....</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>HAWA MASUDI NAMENYE.....</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>HAMISI AHMADI NAMBONDOLA.....</b>	<b>4<sup>TH</sup> APPLICANT</b>
<b>ZAKIA ADAMU NAMENYE.....</b>	<b>5<sup>TH</sup> APPLICANT</b>
<b>LATIFA HEMEDI NANJAMA.....</b>	<b>6<sup>TH</sup> APPLICANT</b>
<b>HAWA ABDALLAH PEMBE.....</b>	<b>7<sup>TH</sup> APPLICANT</b>
<b>SHILAZI HAMISI CHONYO.....</b>	<b>8<sup>TH</sup> APPLICANT</b>
<b>JEMA ALLY.....</b>	<b>9<sup>TH</sup> APPLICANT</b>
<b>ATHUMANI A. CHILUMA.....</b>	<b>10<sup>TH</sup> APPLICANT</b>
<b>ALLY SWALEHE.....</b>	<b>11<sup>TH</sup> APPLICANT</b>
<b>DANFORD NDAMBALILLO.....</b>	<b>12<sup>TH</sup> APPLICANT</b>
<b>SHAIBU HAMISI BOMBEI.....</b>	<b>13<sup>TH</sup> APPLICANT</b>
<b>SAID HAMISI BOMBEI.....</b>	<b>14<sup>TH</sup> APPLICANT</b>
<b>HAMZA HAMISI ADINANI.....</b>	<b>15<sup>TH</sup> APPLICANT</b>
<b>HAMIDA RAPHEL RASHA.....</b>	<b>16<sup>TH</sup> APPLICANT</b>

**VERSUS**

<b>FATUMA MACHINGA.....</b>	<b>RESPONDENT</b>
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**RULING**

5<sup>th</sup> Oct. & 16<sup>th</sup> Nov., 2021

**DYANSOBERA, J.:**

The applicants have filed this application under section 44(1)(a) and (b) of the Magistrates' Courts Act [Cap. 11 R.E. 2019] and section 79(1) of the Civil Procedure Code [Cap 33 R.E. 2019] seeking this Court's

intervention to revise or in the other words to call and examine the records of the District Court of Mtwara in Misc. Civil Application No.3 of 2019 for the purpose of satisfying itself as to the correctness, legality or propriety of the proceedings and consequently make an order thereto. As is the usual case the application has been supported by the joint affidavit of the applicants. However, the application has been resisted by the respondent vide her affirmed counter affidavit. In addition, the respondent has raised two preliminary objections on point of law which are to the effect that one, the affidavit by the applicants is incurable defective and two, the application is time barred.

As a matter of practice, this court on 5.10.2021 ordered the disposition of the preliminary objections by way of written submissions on the following time frame,

1. The written submissions in chief to be filed by 19.10.2021,
2. Written reply to be filed on 2.11.2021,
3. Rejoinder, if any to be filed on 9.11.2021 and
4. Ruling on 16.11.2021.

Surprisingly, only the respondent complied with the order of this Court whereby she filed her written submission in chief on

18.10.2021. Therefore, What is the effect of the applicants' failure to comply with the order of this court by not filing their written reply. Since the preliminary objections were raised by the respondent noncompliance by the applicants to file their written reply amounts to a non-appearance as it was stressed by the Court of Appeal in the case of **P3525 LT Idahya Maganga Gregory v. The Judge Advocate General**, Court Martial Criminal Appeal No.2 of 2002(unreported) the Court held: -

"It is now settled in our jurisprudence that the practice of filing written submissions is tantamount to a hearing and; therefore, failure to file the submission as ordered is equivalent to non-appearance at a hearing or want of prosecution. The attendant consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend, as the case may be. Court decision on the subject matter is bound...Similarly, courts have not been soft with litigants who fail to comply with the court orders, including failure to file written submissions within the time frame ordered. Needless to state here that submissions filed out of time and without leave of the court are not legally placed on records are to be disregarded"

In the light of the above holding by the Court, the disposition of the preliminary objections will be by way of ex-parte hearing. Submitting on the first preliminary objection the respondent argued that the applicants

have prepared a joint affidavit containing 16 deponents but not all the deponents' attestations are stamped. To substantiate her argument the respondent submitted that the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> applicants' attestations lack notary stamps of notarizing officer before whom the affidavit was taken. The respondent also referred this court to section 8 of the Notaries Public and Commissioner for Oaths Act [Cap 12 R.E. 2019] and contended that for it to be valid it must contain the name of the deponent, date and place where it was signed, signature together with the address and qualification of the attesting officer. She went further and argued that the attesting officers also notarize documents in order to ensure their authenticity which include stamps as they validate the originality of the documents and the signatures therein. The respondent went on and submitted that the notarizing stamp is important in assuring that the attesting officer indeed has qualification as claimed in the jurat of attestation and so prevents fraud. In view of her submission the respondent argued that the applicants' affidavit is defective therefore it should be dismissed for premature application as the notary stamps are missing on the above-mentioned deponents.

As to the second preliminary objection of time bar, the respondent submitted that the ruling by this honourable court granting the extension of time to the applicants was delivered on 1<sup>st</sup> day of June 2021, and it was ordered that the applicants to lodge their application of revision within fourteen days from the date of the ruling. More so, the respondent argued that the application for revision lodged by the applicants was dated on 22<sup>nd</sup> day of June 2021 whereby the period of fourteen days had already elapsed for about eight days. Thus, the respondent stressed that this application should be dismissed since it is unattainable and the applicants had initially delayed to file their application for revision hence the prayer for extension of time however they have delayed for the second time. To buttress her argument, she referred this court to the case of **Mussa Mustafa v. Halid Ahmad**, Misc. Civil Application No.12 of 2021 at High Court-Kigoma at page 6 where this court held that "...He should blame himself for dishonest and disrespect to the court's order (the 14 days extended to him earlier on). This application stands dismissed with costs. It is so ordered."

At last, the respondent she prayed this application to face the same fate as it was instituted beyond the time ordered by the court. She further emphasised that the court's time is so precious we need to be jealous of it.

Furthermore, the respondent prayed this court to dismiss this application as it never been in time.

Having considered the raised preliminary objections and the submission by the respondent this court can now settle them as they have been brought by the respondent and argued respectively. Tackling the first preliminary objection from the very outset I find it baseless because the affidavit filed by the applicants in the court's record has stamps for all sixteen applicants. Therefore, I find this objection is devoid of merit hence, is dismissed.

As to the second preliminary objection, the ruling which permitted the applicants to file this application for revision was delivered on 01.06. 2021. Whereas, this application was filed on 22.06.2021 as evidenced by Exchequer Receipt which is characterized by Control Number 991400453988 and Receipt Number EC100947746459. The ruling of this court delivered on 01.06.2021 required the applicants to file this application revision within fourteen days from the date of the ruling. Thus, from 01.06.2021 to 22.06.2021 there are twenty-one days. If you take twenty-one days minus fourteen days the answer is seven days. Therefore, in view of that simple arithmetic calculation, the applicants delayed to file

their application for revision in this court on time as directed by the ruling of this court by seven days. As correctly submitted by the respondent this application is time barred hence is unattainable and should be dismissed since being time barred it does not provide this court with jurisdiction to entertain this application.

Following such unfounded delay, the applicants ought to have applied for another extension of time to file this application. Since the application was filed out of fourteen days that is, on the twenty-one days from the date of the ruling of this Court in Misc. Civil Application No.17 of 2020 and without assigning any reason for their delay on the extended time.

The upshot of this, I find this application having been filed out of fourteen days ordered by this court.

I order that this application be dismissed with no order as to costs.



**W.P. Dyansobera**

**Judge**

**16.11.2021**

This ruling is delivered at Mtwara under my hand and the seal of this Court on this 16<sup>th</sup> day of November, 2021 in the presence of the applicants and Mr. Mbaraka Katela, the learned Advocate for the respondent.



  
**W.P. Dyansobera**

**Judge**

IN THE HIGH COURT OF TANZANIA AT MTWARA