

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

AT KIGOMA

(APPELLATE JURISDICTION)

MISC. CIVIL APPLICATION NO. 23 OF 2021

(Arising from PC Civil Appeal No. 7/2020 of the High Court of Kigoma, Civil Appeal No. 5/2019 of Kasulu District Court, Original from Civil Case No. 66/2017 of Kasulu Urban Primary Court)

JOSEPH JUMA APPLICANT

VERSUS

NASIBU HAMISI RESPONDENT

RULING

15/11/2021 & 15/11/2021

L.M. MLACHA, J.

Earlier in the morning, when the application was called for hearing, Mr. Silvester Damas Sogomba, counsel for the respondent, asked the court to hear his preliminary points of objection in respect of the application. As it is the practice of the court, the prayer was granted. The notice which was filed had two points which can be put to read thus;

- 1. That, the Applicant's application is incompetent because the cited law does not apply in the High Court in respect of orders made by itself.*
- 2. That, the Applicant's application is incompetent as the prayers sought in the chamber summons do not correspond with Applicant's affidavit, hence a vague application.*

Submitting in respect of the first point, Mr. Sogomba told the court that rule 3 (4) of the Customary Law (proceedings) Rules 1963, GN 311/1964 under which the application is brought has no application in the High Court. He said that the applicant (Joseph Juma) is seeking extension of time within which to file an application to set aside an order of this court made in Miscellaneous Land Application No. 7/2021. The relevant law could be section 14 (1) of the Law of Limitation Act and not rule 3 (4) of GN 311/1964, he said.

Submitting in ground two, counsel for the applicant said that, the application is bad in law because the prayers made in the chamber application do not have supporting facts from the affidavit which is speaking of something else. Referring to paragraph 2 and 4 of the affidavit, he said that they show that the application is an application for readmission of the dismissed application something which does not support the prayers in the chamber summons.

In reply, Mr. Ndayanse who represented the respondent (Nasib Hamis) admitted readily the objection based on the second point saying that he was sick shortly before and might have confused the matter. In ground one, counsel had the view that his application is properly before the court because the case originated from the primary court. He said that

if a matter originated from the primary court, we apply primary court laws up to the High Court.

I had time look at the law. I have also considered the parties submissions. With respect to the counsel, I have the view that Mr. Ndayanse is not only missing the point but had also misquoted the Law as well. GN 311 of 1964 has its name which reads "THE MAGISTRATES' COURTS (LIMITATION OF PROCEEDINGS UNDER CUSTOMARY LAW) RULES." That is its name as described by rule 1. It is not called "The Customary Law (proceedings) Rules 1963". It was thus wrong to cite it this way.

Rule 3 is headed "**Extension of periods of Limitation**". It deals with extension of time. It means that, if a person has a case at the primary court and he thinks that he is out of time, he can apply to the court to extend the time. Rule 3 (4) which was cited by Mr. Ndayanse reads;

"4. The court may, in its discretion, admit any proceedings after the expiration of the period of limitation if it is satisfied that the person bringing such proceedings was unable, for sufficient cause, to bring the proceedings earlier." (Emphasis added)

It means that the court (primary court) may, in its discretion, admit any proceedings after the expiration of the period of limitation if there is good

course to do so. The court must be satisfied that the applicant was unable to take steps for good cause, that is, without negligence on his side.

Now, if the primary court will decline to grant the application, the applicant may appeal to the district court against the refusal. The district court will receive the appeal like any appeal but it will put itself in the position of the primary court and apply the facts to rule 3 (4). It will not receive or hear the appeal under rule 3 (4) but will make its interpretation to it. Further, appeals can go up to the High Court and Court of Appeal. The High Court and the Court of Appeal will not receive the appeal under rule 3 (4) but will step into the shoes of the primary court and make the interpretation of rule 3 (4). In this reasoning, with respect to Mr. Ndayanse once again, rule 3 (4) can not be cited in the High Court as an enabling provision to an application for extension of time in appeals originating from the primary court. It may only be cited in the course of discussions.

If a person seeks to access the jurisdiction of the District Court or the High Court to extend the time within which to take a certain legal step, the relevant provision is section 14 (1) of the Law of Limitation Act Cap 89 R.E. 2019. It states in part that "the court may for any reasonable or sufficient cause, extend the period of limitation for the institution of an

appeal or an application other than an application for execution of a decree". The court which is referred to in this section in the District Court or the High Court. The law of Limitation Act is not applicable in the Court of Appeal which is governed by the Court of Appeal Rules 2009, made under section 12 of the Appellate Jurisdiction Act, Cap 141 R.E. 2019.

Both the High Court and the District Court get their jurisdictions under section 14 (1) of the Law of Limitation Act in applications for extending the time within which to appeal or lodge applications other than applications for executions. Rule 3 (4) of GN 311/1964 may only come in the course of discussions and interpretations. It cannot be cited as an enabling provision. That dispose ground one which is disposed in favour of the respondent. This ground alone renders the application improperly before the court. I see no base for discussing the second ground which was admitted. It will not serve any useful purposes.

That said, the application is found to be improperly before the court and struck out. I make no order for costs. It is ordered so.




L.M. Mlacha

JUDGE

15/11/2021

Court: Ruling delivered in the presence of Mr. Masendeka Ndayanse for the applicant and Mr. Silvester Damas Sogomba for the respondent. Right of Appeal Explained.



A handwritten signature in blue ink, consisting of a stylized 'L' and 'M' followed by a flourish.

L.M. Mlacha

JUDGE

15/11/2021

ORIGINAL