

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM REGISTRY

AT DAR ES SALAAM

CIVIL REVIEW NO. 09 OF 2020

BARRETO HAULIERS (T) LTD.....APPLICANT

VERSUS

JOSEPHINE E. MWANYIKA.....1st RESPONDENT

PHILIP E. MWANYIKA.....2nd RESPONDENT

[Application from the Decision of High Court of Tanzania at Dar es Salaam.]

(Hon. Kulita, J.)

dated the 13th day of March, 2020

in

Misc. Civil Application No. 806 of 2018

RULING

25th May & 22nd December, 2021.

KULITA, J.:

This is a civil application for review. It has been filed by the Applicant by way of chamber summons in terms of the provisions of sections 78 (a) and (b) and Order XLII Rule 1(1) a, b and (2) of the Civil Procedure Code, Cap. 33 R;E 2002. In the chamber summons, the Applicant prays for this

Court to review its decision, thereby rectify or expunge or vacate its dismissal order in the Misc. Civil Application No. 806 of 2018.

In a nut shell, as can be gathered from the records, it appears parties had a case at the High Court of Tanzania at Dar es Salaam, that was Civil Case No. 81 of 2016. The said case on 17th day of October, 2016 was before Hon. Teemba. J, specifically for mediation. The record shows that, on that date, mediation was marked to have been successful. Thus, Civil Case No. 81 of 2016 was marked to have been settled and thereby the resultant decree was drawn. On 21st day of December, 2018 the Applicant filed Misc. Civil Application No. 806 of 2018 seeking for extension of time to file Application for Review of the Consent Settlement Order and its resultant Decree. This Application was before Hon. Kulita, J.

After hearing of the same through written submissions, the court found the application to have no merits. Thus on 13th day of March, 2020 the Court proceeded to dismiss the same, Misc. Civil Application No 806 of 2018 with costs. Again, aggrieved with that dismissal order of Misc. Civil Application No 806 of 2018, the Applicant has on 13th August, 2020 filed this Application for review of the Misc. Civil Application No 806 of 2018. The application has been supported by an affidavit sworn by Jude Burreto on 12th August, 2020.

In reply thereto the applicant's application was ambushed with three preliminary objections on point of law. But in the course of hearing, the Respondent prayed to drop two preliminary objections, thus remained with one, which is to the effect that, the applicant's application is hopelessly time barred.

As the law requires preliminary objections be argued first, on 16th February, 2021 the preliminary objections were scheduled to be argued by way of written submissions. Both parties complied with. Mr. Magusu Mugoka Advocate, represented the Applicant, whereas Mr. Mafuru, Advocate represented the Respondents.

Submitting in support of the preliminary objection Mr. Mafuru stated that, the decision subject for review was delivered on 13th day of March, 2020. He proceeded submitting that, in terms of section 3 (1) and item 3 of part III to the schedule of Law of Limitation Act, the time limit to file application for review of decree, judgment or order is provided to be 30 days. With regard to that, Mr. Mafuru stated that, as the applicant has filed this present application on 13th August, 2020, he thus formed a considered opinion that, the same is time barred. On that note, he invited this court to dismiss the same with costs. He cited the case of **Stephene**

Masatu Wasira v. Joseph Sinde Warioba [1999] TLR 334 to fortify his assertion.

In response to that Mr. Mugoka submitted that, the applicant's application is not time barred. He gave the reason that, the applicant filed the present application after his application for extension of time was not well considered while it has merit.

Mr. Mugoka advanced another reason submitting that, on 10th August, 2020 the applicant appeared on Civil Application No. 186 of 2020. He said on that date, he complained about non consideration of his application for extension of time. He went on stating that, the court suo motto ordered to determine the said application. He submitted further that; it was on that ground when in three days later the applicant opted to file this application too for consideration as well. It in on that premise, Mr. Mugoka submitted that, the present application is in time. He stated further that, the cited authority by the respondent's counsel is irrelevant and urged this court not to be tied with technicalities when justice is in jeopardy..

In rejoinder Mr. Mafuru reiterated his submission in chief. He then submitted that, the suo motto order if any, and which does not exist, did not extend time within which to file application for review. He lastly insisted that, the applicant's application for review should be dismissed for being time barred.

I have taken into consideration both parties' submissions. I have also read the available records as well. The issue for determination is whether the applicant's application for review is time barred.

From the submissions and the records available, it is not in dispute that, the decision subject for revision was delivered on 13th March, 2020. Also, it is not in dispute that, the Applicant's present application for review was filed in court on 13th August, 2020. Thus, it therefore follows that, the present application was filed after five (5) months have passed. Further, it is not in dispute that, item 3 of part III to the schedule of the Law of Limitation Act, Cap 89. RE 2019 provides for a duration of 30 days' time limit to file application for review, like the present one.

The question is, the mere suo motto order by the court to continue determine the application for extension of time to file review application, does it in itself suffice to be extension of time to file the present application for review? The answer is not at all. First, we are not told what

Civil Application No. 186 of 2020 was all about. Then, if the court on the said date of 10th August, 2020 ordered that it would re-determine the Applicant's application for extension of time, then there could be such order written down. The applicant could have attached it here to substantiate his assertion. Unfortunately, the applicant has never appended that order in his submissions. That failure, verifies the respondent's argument that, the said court order does not exist. This takes me to conclude that, the reason advanced by the applicant in defending the preliminary objection does not hold water.

On that note, I am settled in my mind that, the Applicant's application for review of Misc. Civil Application No. 806 of 2018, which was filed after the elapse of five months since the delivery of the impugned decision, is time barred. In line with the cited case of **Stephene Masatu Wasira v. Joseph Sinde Warioba [1999] TLR 334**, I proceed to dismiss the same with costs.

However, I think I have to say a word on the issue of technicalities. The preliminary objection that has been argued, concerns time limit. It therefore directly touches jurisdiction of the court. To me, it is not among the ones that can be ignored. On that stance, the applicant's invitation to ignore it, fails.

It is so ordered



A handwritten signature in black ink, appearing to be "S.M. Kulita".

S.M. Kulita
JUDGE
22/12/2021

DATED at Dar es Salaam this 22nd day of December, 2021.



A handwritten signature in black ink, appearing to be "S.M. Kulita".

S.M. Kulita
JUDGE
22/12/2021