

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF TANGA)

AT TANGA

MISC. CIVIL APPLICATION NO. 20 OF 2021

(Arising from Matrimonial Appeal No. 6 of 2020 of Handeni District Court, originating from Matrimonial Cause No. 08/2018 of Chanika Primary Court)

GILBERT PETER SEMPOMBE.....APPLICANT

-VERSUS-

MARIAM MUSSA SENGAO.....RESPONDENT

RULING

Date of last order: 12/11/2021

Date of ruling: 23/11/2021

AGATHO, J.:

Applicant filed his Chamber Summons supported by an Affidavit made under Section 14(1) of the Law of Limitation Act, Cap 89 RE 2019 before this Court for the purpose of persuading this Court to exercise its power of setting aside dismissal order for want of prosecution since parties were absent when this application was scheduled for mention on 11/6/2021, 15/7/2021, 31/8/2020, 13/10/2020 and 24/5/2021. All mentioned dates parties were absent as a result of their absence, Matrimonial Civil Appeal No 6/2020 was dismissed for want of prosecution hence this application for setting dismissal order. Both parties were not enjoying legal services

(unrepresented). Parties agreed to dispose this matter by way of written submission.

There is no need of going further to discuss the submissions submitted by the parties which support and oppose this application since this Court is not properly moved by the applicant.

It is the position of the law that a party whose matter has been dismissed for want of prosecution to bring an application for the purpose of setting aside dismissal order and to proceed with the matter dismissed basing on the grounds raised by the applicant. That remedy is enjoyable only when the applicant rely on what is directed by the law.

An application for setting aside dismissal order must be brought before this Court by way of Chamber Summons supported by an Affidavit. It is mandatory for the Chamber Summons to contain relevant enabling provision and not otherwise. Failure to cite relevant provision is fatal.

On perusing the Chamber Summons which initiate this application, this Court observed that the presented Chamber Summons does not meet the mandatory required standard of Chamber Summons for the purpose of initiating application before this Court due to the wrong citation of the law.

The presented Chamber Summons contain **Section 14 (1) of the Law of Limitation Act Cap 89 (R.E 2002)**. The cited provision states as follows,

Notwithstanding the provisions of this Act, 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 the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

It's clear that the cited provision deals with the extension of time and not about the issue of setting aside dismissal order for want of prosecution as prayed by the applicant. It is the requirement that an enabling provision must support the prayers. Speaking of the application before this Court it is clear that the cited enabling provision (law) does not support prayers. In the case of **Abdul Aziz Suleiman vs. Nyaki Farmers Cooperative Ltd and Another (1966) EA 409**, East Africa Court of Appeal had this to say;

"The applicant is required to cite the relevant provision from which the Court derives power to hear and determine the application."

The Applicant is under duty of citing relevant law as well as provision of the law for the purpose of enabling this Court to determine this application properly. On the failure to cite relevant law and provision this Court will not have any legal capacity to deal with that application since the application brought before this Court is incompetent. The High Court of Tanzania stated through Bahati, J in **Land Application No.43/2018, Robert Stephano Vs Vedastina Achard Msika.**

Since this Court was not properly moved by the applicant's wrong citation of the enabling provisions in the chamber summons, the application is incompetent.

Also in the case of **EDWARD BACHWA AND 3 OTHERS Vs THE ATTORNEY GENERAL AND ANOTHER, CIVIL APPLICATION NO. 128 OF 2006 (CAT-DSM) (UNREPORTED)** Court of Appeal of Tanzania Said that;

Wrong citation of the law, section, subsections and/ or paragraphs of the law or non-citation of the law will not move the court to do what it is asked and renders the application incompetent.

The Jurisdiction of this Court ceases to have effect if this Court is not properly moved and one of the things lead this Court to cease its jurisdiction is the wrong citation of the law as the applicant in this application did. It is not allowed to deal with incompetent application as backed up by Court of Appeal of Tanzania in the case of **Aloyce Mselle Vs The Consolidated Holding Corporation, Civil Application No. 11 Of 2002 (Unreported),**

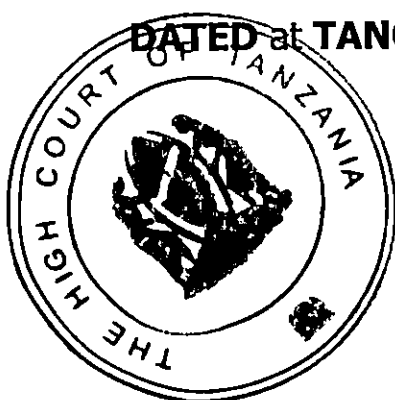
There is an unbroken chain of authorities of this Court to the effect that wrong citation of a provision of law under which an application is made renders that application incompetent.

Although both parties are laymen, this cannot lead this Court to proceed with the application at hand. Court doors are open for the administration of justice but those doors must be entered properly as required and directed by our jurisprudence. As well settled in the case of **Thomas David Kirumbuyo and Another Versus Tanzania**

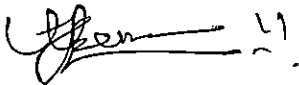
Telecommunication Co. Ltd, Civil Application No. 1 Of 2005 (CAT-Dar es Salaam) (unreported)

In order to ensure that the machinery of administering justice is not hampered, the court is bound stringently. There is no exception provided under the rules for a relaxed application when laymen are involved as is the case here. All the more so, when it involves noncompliance with the rules on aspect which go to the root, the consequences are fatal. ...I cannot therefore entertain the applicant's lenience in applying the rules upon the fact they are laymen.

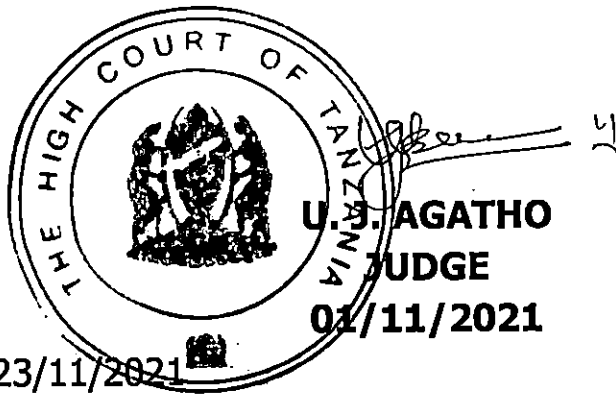
Basing on the above legal position this application qualifies to be struck out for wrong citation of the law, since parties had a relationship as husband, and wife wisdom guide me to order no costs.



DATED at **TANGA** this 23rd Day of November 2021.


U. J. AGATHO
JUDGE
23/11/2021

Court: Ruling to be delivered on this 23rd day of November, 2021 by the Hon. Beda Nyaki Deputy Registrar.



Date: 23/11/2021


Coram: Hon. B. R. Nyaki, DR

Applicant: Present in person

Respondent: Present in person


C/C: Zayumba

Court: Ruling delivered this 23rd day of November, 2021 in the presence of both parties in person.



The seal of the High Court of Tanzania is circular, featuring the national coat of arms in the center. The text "THE HIGH COURT OF TANZANIA" is written around the perimeter. To the right of the seal, there is a handwritten signature and a date stamp that reads "B. R. Nyaki DEPUTY REGISTRAR 23/11/2021".

Right of appeal explained.



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