

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOB DISTRICT REGISTRY**

**AT BUKOBA**

**MISC. CIVIL REFERENCE NO. 01 OF 2021**

*(Arising from Taxation Cause No. 212 of 2019 and original Application No. 260 of 2010)*

**TWEYAMBE ISHOZI GERA DEVELOPMENT**

**SOCIETY (TIDESO).....APPLICANT**

**VERSUS**

**DOROTHEA KOWILIZA..... RESPONDENT**

**RULING**

**29/09/2021 & 14/12/2021**

**NGIGWANA, J.**

This ruling emanates from the four preliminary objections raised by the respondent Dorothea Kokwiliza through her advocate, Mr. Scarious Bukagile. The objections are as follows;

- 1. That the application for Reference is bad in law and incompetent for being time barred.*
- 2. That the application for reference is bad in law and incompetent for failure to state the name of the court or tribunal or any competent Authority in which this application originated and without stating the name of the trial judge magistrate or chairman or any of the trial officers in the chamber summons, so as to determine the jurisdiction of this court in Reference.*

- 3. That the application for Reference is bad in law for being brought by a non-existing person (entity), thus abuse of the court process.*
- 4. That the application for Reference is bad in law for being supported by in competent affidavit.*

In a nutshell, the material facts giving raise to this application are as follows:-Sometimes in 2010, In the District Land and Housing Tribunal for Kagera at Bukoba, the respondent, Dorothea Kokwiliza ( Administratix of the estate of the late Emmanuel Mutashubulukwa) filed a suit against Tweyambe Ishozigera Development Society (Tweyambe Secondary School) encroachment into of a piece of land located at Ishozi Ward, Nyarugongo Village within Missenyi District whose value is estimated to be Tshs. **10,000,000/=**, (Hence forth the suit land).

At the end of the hearing, the tribunal found that the suit was filed against a wrong party. According to DLHT, the proper party ought to have been **the Registered Trustees of Tweyambe Ishozigera Development Society (TIDESO)**, and for that matter, the application was dismissed with costs.

From there, the applicant, Tweyambe Ishozigera Development Society on 06/08/2019 filed Taxation Cause No. 212 of 2019 claiming a total sum Tshs. 7,573,500/= being costs that she incurred in the prosecution of the Application No. 260 of 2010. Eventually, the applicant was awarded a sum of **Tshs. 12,500/= only**.

From there, the applicant filed the present Reference praying for orders;

1. *That the honorable court be pleaded to make reference in respect of the ruling date 02/02/2021 in Taxation Cause No. 212 of 2019 and set aside the ruling and its orders therein.*
2. *That the honorable court be pleased to order that the costs of the suit to the tune of Tshs. 7,573,300/= were satisfied and be granted.*
3. Costs of the application be provided for.
4. Any other orders as the court may deem fit grant for the interest of justice.

When the matter was called on for hearing, the respondent had the legal services of Mr. Scarious Bukagile while the applicant had the services of Mr. Frank Karoli, learned advocates.

Addressing the court in support of the first preliminary objection on point of law, Mr. Scarious submitted that according to Regulation 7(1)(2) and (3) of the Advocates Remuneration Order, G.N. No. 263 of 2015, any party aggrieved by the order of the Taxing Officer has to file reference within 21 days from the date of the decision. Bukagile faulted the case at hand for being filed out of time. He stated that in the case at hand, the decision was handed down by the Taxing Officer on 02/02/2021 but the present application was filed on 20/05/2021.

Reacting on the same point, Mr. Frank Karoli submitted that the order of the court was certified for collection on 12/05/2021 thus reference was filed within time, that is to say within 21 days. He made reference to the case **Mohamed Salimin versus Jumanne Omari Maposa**, Civil Appeal No. 345 of 2019. Mr. Frank further stated that, section 19(2) of the Law of

Limitation Cap. 89 R: E 2019 is very clear that the time for obtaining the copy of judgment or order has to be excluded.

I have carefully read the four points of preliminary objection, the law and submission made by both parties and found that, the first limb of the preliminary objection suffices to dispose of this application. Therefore, I will not deal with the rest of the preliminary points of objection because that would be a mere academic exercise which I opt not to do. I would like to address the first limb of objection as follows;

The position of the law is settled that where there is a specific law or provision of law which covers or governs a particular situation, then such law must be applied. It is only justifiable to resort to other written laws when there is a lacuna. In the case at hand, I shake hands with Mr. Bukagile that there is a specific law governing matters relating to References to wit; the **Advocates Remuneration Order, 2015**.

Regulation 7(1), (2) and (3) of the Order provides: -

*"(1) Any party aggrieved by a decision of the Taxing Officer, may file reference to a judge of the High Court"*

*"(2) A reference under order (1) **shall** be instituted by way of chamber summons supported by an affidavit and be filed **within 21 days** from the date of the decision"*

*"(3) The applicant **shall** within seven days of filing reference save copies all parties to appear on such taxation"*

It is elementary that whenever the word "**shall**" is used in in a provision of law, it means that the provision is imperative. This is by virtue of the

provision of section 53 (2) of the Interpretation of Laws Act, Cap 1 R:E 2019. See also the case of **Godfrey Kimbe versus Peter Ngonyani**, Civil Appeal No.41 of 2014 CAT (Unreported).

In the case at hand, the taxing officer handed down the ruling on 02/02/2021, but this Misc. Civil Refence was filed on 20/05/2021. It therefore apparent that the matter at hand was not filed within 21 days prescribed by the law cited herein above, and worse enough, no extension of time ever sought and obtained prior to the filing of the same.

It follows therefore that; this matter is incompetent for being time barred. The 1<sup>st</sup> limb of preliminary objection is found meritorious hence sustained.

It was the submission of Mr. Frank that according to section 19 (2) of the Law of Limitation Act, Cap 89 R: E 2019, in computing the period of limitation prescribed for **an appeal, an application for leave to appeal, or an application for review** of judgment, the day on which the judgment complained was delivered, and the period for time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be executed. I concur with him that, that is the pure position of the law in our jurisdiction.

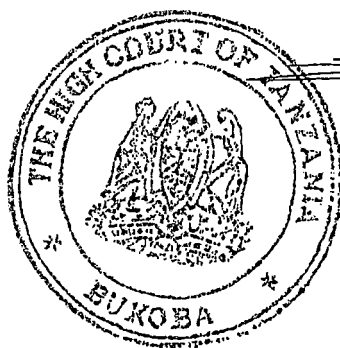
However, it should be noted that, the issue of **"Reference"** has not been listed/ mentioned under section 19(2) of LLA, thus, it is my considered view that the Law of limitation is not applicable in the matter at hand.

Even if we assume for the sake of argument that section 19(2) of LLA, **which is not the case in this matter**, yet the applicant would not have benefited with the same because, the provision can only apply **if the intended appellant made a written request for the supply of the requisite copies for the purpose of an appeal**. In this case, no proof that the applicant made such request. **See Valerie MCgovern versus Salum Farkudin Balal**, Civil Appeal No. 386 of 2019 CAT (unreported).

Mr. Frank relied under the Law of limitation and consumed much court's time addressing the same while knowing that the matter at hand was not **an appeal, or an application for leave to appeal, or an application for review** of judgment. In my view, that was not right. **I am alive that Advocates are honorable ladies and gentlemen who are trained to assist litigants and the court. Their first duty is to the court as Ministers in the Temple of Justice therefore, let no one forget or try to forget or neglect or undermine this peculiar duty.**

In the premises, the only legal remedy for an application filed out of time is to dismissal. I accordingly dismiss this reference application. Given to the nature of the application, each party shall bear its own costs.

It is so ordered.

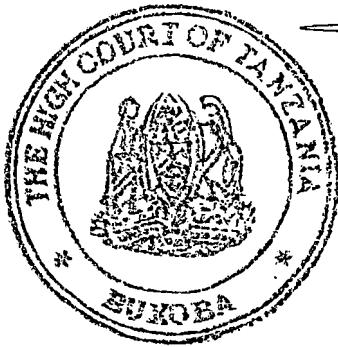


E.L. NGIGWANA

JUDGE

14/12/2021

Ruling delivered this 14<sup>th</sup> day of December, 2021 in the presence of Mr. Scarious Bukagile, learned advocate for the respondent, Mr. E. M. Kamaleki, Judges' Law Assistant and Mr. Gosbert Rugaika, but in the absence of the Applicant.



  
E.L. NGIGWANA

JUDGE

14/12/2021.