

**IN THE HIGH COURT OF TANZANIA**

**AT MOROGORO**

**MISCELLANEOUS LAND APPLICATION NO. 6 OF 2022**

*(Arising from Land Appeal No. 5 of 2021, Originated from Land Application No. 26 of 2020 Between Frida Malya vs. Epimael Nko)*

**EPIMAEEL NKO.....APPLICANT**

**VERSUS**

**FRIDA MALYA.....RESPONDENT**

**R U L I N G**

**5<sup>th</sup> & 29<sup>th</sup> April, 2022**

**CHABA, J.**

This ruling is in respect of a preliminary objection raised by the respondent FRIDA MALYA through the legal service of Ms. Ester Shoo, learned advocate to the effect that:

1. This application is bad in law for being filed out of time.

When the application was called on for hearing of the raised preliminary objection on a point of law, Prof. Binamungu, learned counsel appeared for the respondent, while Mr. Gabriel Mwansoho, learned counsel entered appearance for applicant.

Arguing in support of the preliminary objection, the learned counsel for the respondent submitted that on 28/02/2022 the applicant filed the instant application, registered as Miscellaneous Land Application No. 6 of 2022 seeking for leave to appeal before the Court of Appeal of Tanzania. Basically, the applicant intends to challenge the decision of this Court in Land Appeal No. 5 of 2021. He went on submitting that the matter was

filed out of 40 days from the date of judgment because the judgement was delivered on 21/01/2022. He accentuated that, whether it was 36 or 40 days, but the most important thing is, since the applicant received a copy of judgement on 25/01/2022 but the truth is that such an application was filed against Rule 45 of the Tanzania Court of Appeal Rules, GN 368 of 2009 (As amended from time up to 2019) (the Rules, 2009). He highlighted that the provision of the law under Rule 45A of the Rules, 2009 requires the applicant to file his or her application within thirty (30) days from the date of decision. He stated that, since the applicant violated the above provisions of the law, it is obvious that this application is not proper before this Court and should be dismissed with costs.

In reply, Mr. Mwansoho did not dispute the fact that the applicant's physical documents were received and stamped by the Seal of this Court on 28/02/2022. However, he highlighted that the applicant filed the instant application on 24/02/2022 through Electronic Filing System at 13:11:24 hours with Ref. 66966205.

He underlined that the applicant received a copy of judgment on 25/01/2022 and filed her application within the prescribed period of time as hinted above, and not beyond 40 or 36 days. He said, the JUDICATURE AND APPLICATION OF THE LAWS (ELECTRONIC FILING RULES) GN. NO. 148 published on 13/04/2018 (the EFR, 2018) aims to regulate electronic filling of the Courts' documents and pleadings and it postulates when such documents can be recognized as such by the court. He submitted that under Regulation 9 of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 provides that the official record of the court shall be the Electronic Case File (ECF), proceedings pertaining to that case, together with any documents and exhibits filed under the conventional

method. In that view, the learned counsel stressed that even if the documents show that were physically received by the registry at the High Court on 28/02/2022 but the same were received by the court electronically on 24/02/2022 to means that the same were officially filed within time.

He underlined that Rule 21 (1) of the the EFR, 2018 talks about the dates and time for filing a document(s). The law articulates that; a document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected. In purview of the above position of the law, the counsel underlined that if one may count the days from 25/01/2022 to 24/02/2022, will learn that thirty (30) days had not been expired as claimed by the learned counsel for the respondent. He further requested this court to consider Section 19 (2) of the Law of Limitation Act [Cap. 89 R. E. 2019] (the LLA) as relevant provisions to rely on. To buttress his argument, the counsel referred this court to the case of **Mohamed Hashil v. National Microfinance Bank (NMB Bank)**, Revision No. 106 of 2020 where the Court (Mwipopo, J.) at page 3 ruled in line with the requirement of the EFR, 2018. He stressed that the holding in **Mohamed Hashil** (supra), falls within the circumstance of this case.

In addition, the counsel pointed that they were supplied with the Control Numbers 991400605483 on 25/02/2022 and paid the respective fee at 14:50:02 hours. He maintained that since the use of technology nowadays is a business of day to day in the court of law, he prayed the court to consider his application and dismiss the preliminary objection raised by the respondent with costs. He concluded by requesting this court

to consider Section 3B (1) (b) of the Civil Procedure Code [Cap. 33 R. E. 2019] (the CPC) and apply accordingly.

In re-joinder, Prof. Binamungu emphasized that it has all along being the law that filling of a document(s) before the court means making payment of the respective fee. He faulted the argument advanced by Mr. Mwansoho to the effect that, since the payment was effected on 25/02/2022 and the physical document(s) was received by the court on 28/02/2022, in his opinion, that was unusual, very strange and wishing thinking. He accentuated that if the court will rely on the decision of **Mohamed Hashil's case** (supra), probably may enter into mischief as the same is not applicable in this case. His main averment is that, in normal circumstance the case do not enter into the court register on the date filed electronically. He insisted that thirty (30) days expired on 22/02/2022 and this application was not placed or recorded into the relevant court register. He believes that the applicant delayed to file her application for about five (5) days and the EFR, 2018 has no place in this application.

As regards to the Law of Limitation Act (supra), Prof. Binamungu submits that the same do not apply in this situation and the worse thing is that Mr. Mwansoho did not substantiate his argument. He added, even the overriding objective rule cannot be applied in the circumstance of this case to rescue this application on the ground that it was uploaded out of time, hence time barred. He ended to submit that since the learned counsel for the applicant is trying to hide himself under the umbrella of the EFR, 2018; this application has no merit and it deserves dismissal and costs shall follow the event.

I have objectively considered the parties submissions, court records and relevant laws. In my view, the issue for determination is whether this application is proper before this court in-terms of time limits to be lodged and or filed.

At the outset, I thank both the learned counsel for their brilliant submissions in light of the matter at hand. Honestly speaking, in the course of determining this application, it exercised my mind to the extent that I was compelled to revisit intensely the Judicial Statistical Dash Board System - II (JSDS2) to investigate and satisfy myself whether this application was filed within time or it is time barred. In other words, my thoroughly examination aimed to draw a line as to when exactly the alleged thirty (30) days expired. To walk the talk, the resultant of my thoroughly examination (inspection) revealed the truism of the contentions advanced by the learned counsel for the applicant to the effect that, the applicant submitted (filed) to the Court her documents through Electronic Filing System for scrutiny before the Honourable Deputy Registrar on thursday 24/02/2022 at 13:11:24 hours vide reference No. 66966205. On the next day on friday 25/02/2022 she was supplied with the Payment Control Numbers 991400605483 and effectively completed the payment process at 14:50:02 hours.

Apart from the above pieces of evidence, yet the most important point at issue is, did the applicant filed her application within the prescribed period of time and duly complied with the law? To answer this question, I have sought assistance from THE INTERPRETATION OF LAWS ACT [CAP. 1 R. E. 2019] which is an Act to consolidate the law relating to the construction, application, interpretation and operation of written laws and

to provide for related matters. Section 60 (1) (b) of the Interpretation of Laws Act (supra) provides that:

***"Section 60 (1) - In computing time for the purposes of a written law, (c) Where anything is to be done within a time before a specified day, the time shall not include that day".*** (Emphasis is mine).

In his submission, the learned counsel for the respondent submitted that the filing of this application contravened the provision of Rule 45A of the Rules, 2019 as the law requires that such an applicant must be filed in court within thirty (30) days. I had an ample time to revisit the relevant provisions of the law, I think the proper provisions is Rule 45 (a). The laws provides that:

*"Rule 45. In civil matters:*

*(a) notwithstanding the provisions of rule 46 (1), where an appeal lies with the leave of the High Court, application for leave may be made informally, **when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, within thirty days of the decision".*** (Emphasis is mine).

From the above position of the law, it is Mwansoho's contention that the JALA-EFR, 2018 is a relevant and guiding rule on electronic filing. Referring to rule 9 of the JALA-EFR, 2018, the counsel submitted that, it is the rule of law that:

*"the official record of the court shall be the electronic case file (ECF), proceedings pertaining to that case, together with any documents and exhibits filed under the conventional method,*

whereas Rule 21 (1) clearly provides that:

*a document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected”.*

Since the JALA-EFR, 2018 (supra) is currently the governing rule for filing cases before the court electronically, I find that rules 9 and 21 (1) of the JALA-ERF, 2018 and section 19 (2) of the Law of Limitation Act [Cap. 89 R.E. 2019] are safe and relevant provisions of the law to apply in the circumstance of this case. As rule 45 (a) of the Rules, 2019 (supra) requires the applicant who seeks for leave to appeal to the Court of Appeal of Tanzania to file the respective application within thirty days of the decision, I am satisfied that the applicant filed her application in compliance with section 60 (1) (b) the Interpretation of Laws Act (supra).

If that is the position, it is my observation and holding that since the applicant received the impugned decision on 25<sup>th</sup> January, 2022 and filed her application on Thursday 24<sup>th</sup> February, 2022 through Electronic Filing System at 13:11:24 hours with Ref. 66966205 and later managed to obtain the Payment Control Numbers 991400605483 on Friday 25<sup>th</sup> February, 2022 and then paid the fee at 14:50:02 hours on the same date, computation of time began on the 26<sup>th</sup> January, 2022 and ended on 25<sup>th</sup> February, 2022 which is within thirty (30) days and in compliance with the provision of the law under section 45 (a) of the Rules, 2009. As noted above, apparently, the official record of the court is electronic case filing and a document(s) shall be considered to have been filed if it is submitted through the electronic filing system. This is the current position. However,

I agree that what the learned counsel for the respondent highlighted on this facet, that was the position before the advent and enactment of the JUDICATURE AND APPLICATION OF THE LAWS (ELECTRONIC FILING RULES) GN. NO. 148 published on 13/04/2018 (the EFR, 2018).

In addition, the law is clear that, in computing the period of limitation prescribed by the law in respect of an application for leave to appeal to the Court of Appeal of Tanzania, the day on which the judgment complained of, was delivered on 21/01/2022 and the period of time requisite for obtaining a copy judgment and decree (25/01/2022), shall be excluded. (See: Section 19 (2) of the Law of Limitation Act [Cap. 89 R.E. 2019]).

In the final analysis, this application is meritorious. The preliminary objection raised by the learned counsel for the respondent is lacking merit. I thus dismiss it with costs.

**It is so ordered.**

**DATED at MOROGORO** this 29<sup>th</sup> day of April, 2022.

  
**M. J. Chaba**

**Judge**

**29/04/2022**

**Court:**

Ruling delivered at my Hand and Seal of this Court in Chamber's this 29<sup>th</sup> day of April, 2022 in the presence of Godwin Myavilwa who represents the applicant and the respondent who appeared in person.





**M. J. Chaba**

**Judge**

**29/04/2022**

Rights of the parties fully explained.



**M. J. Chaba**

**Judge**

**29/04/2022**

