

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**CIVIL APPLICATION NO. 16 OF 2022**

(Originating from PC Civil Appeal No. 56 of 2020, High Court of Tanzani, Arusha Registry, Civil Appeal No. 7 of 2020 in the district court of Arumeru and Maji ya Chai Primary Court in Civil Case No. 58 of 2019)

**SHORISAEEL EZEKIEL KAAYA..... APPLICANT**

**VERSUS**

**VARAEL NDEKIRWA KIMAMBO.....RESPONDENT**

**RULING**

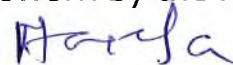
14.06.2022 & 28.06.2022

**N.R. MWASEBA, J**

The applicant, Shorisael Ezekiel Kaaya seeks before this court the following orders:

- i) That this Honourable Court be pleased to re admit the appeal.
- ii) Costs of this application.
- iii) Any other order(s) this Honourable Court deems fit to grant.

The application was supported by an affidavit sworn by the applicant himself and it was opposed by a counter affidavit sworn by the respondent herself.



Prior to the hearing of the application the respondent raised one point of objection that the application is hopeless time barred.

At the hearing of the raised preliminary objection, both the applicant and the respondent appeared in person, unrepresented and prayed for the preliminary objection to be disposed of by way of written submission and the court granted their prayer.

Supporting the preliminary objection, the respondent argued that this application is time bared as it was filed after a lapse of 60 days from the day the PC Civil Appeal No. 56 of 2021 was dismissed for want of prosecution on 25.10.2021 by Hon Robert, J. She cited **Section 25 (1) (b) of the Magistrates' Court Act**, Cap 11 R.E 2019 and the case of **Bibi Merick and Kabihe Merick Vs Phillimon Merick**, PC Probate Appeal No.04 of 2020 (HC- Unreported) to support her arguments and prayed for the application to be dismissed for being time barred.

Opposing the raised preliminary objection, the applicant submitted that first of all the respondent used **Section 25 (1) (b) of the MCA** which is used by someone who wants to lodge an appeal to the court not to re admit the appeal. He added further that **Rule 17 of the Civil Procedure (Appeals in the Proceedings Originating from Primary Court)**, GN No. 312 of 1964, does not provide the specific limit of time for applicant

*Handwritten signature*

to make such application the same applies to **the Magistrates' Court Act**, Cap 11 [R. E 2019]. The only law available is **the Law of Limitation Act**, Cap 86 (R.E 2019), Item 21 of part III which provides for sixty days limit to the procedures which had no time limitation. He cited the case of Steven **Juma Munigannkiko Vs Theresia Andrea**, Misc. Application No. 26 of 2021 (Unreported) to support his arguments.

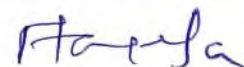
It was his further submission that, this application was filed within the time as it was filed on the 58<sup>th</sup> day out of sixty days required by the law. Thus, he prayed for the raised preliminary objection to be dismissed with costs for want of merit.

Having heard the submissions made by both parties herein, the pertinent issue for determination is whether the application is properly filed within the prescribed time.

I wish to start with the point raised by the applicant that **Section 25 (1) (b)** of Cap 11 R.E 2019 is irrelevant in this application as it deals with appeal not re-admission of appeal.

**Section 25 (1) (b)** of Cap 11 provides that:

*"In any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its*



*appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired."*

Guided by the cited authorities, it is crystal clear that the said provision of the law is distinguishable in this application. However, in his chamber summons the applicant moved this court by citing **Rule 17 of the Civil Procedure (Appeals in the Proceedings Originating from Primary Court)** GN No. 312 of 1964 which provides that:

*"Where an appeal has been dismissed under subrule (2) of 13 in default of appearance by the appellant, he or his agent may apply to the appellate court for the re-admission of the appeal; and if the court is satisfied that he was prevented by any sufficient cause from appearing either personally or by agent when the appeal was called on for hearing it may re-admit the appeal on such terms as to costs or otherwise as it thinks fit."*

Although the applicant argued that there is no time limit for the application of this nature and decided to use Law of Limitation Act, Cap 89 R.E 2019 this piece of legislation is not applicable in the suits originating from the

*Handwritten signature*

Primary Court. **The Magistrates' Courts (Limitation of Proceedings Under Customary Law) Rules**, GN 311 of 1964 which was made under Section 71 of Cap 11, item 1 provides time limit to set aside a decision which was dismissed for non-appearance. The item provides:

*"Applications to restore proceedings dismissed for non-appearance or to set aside decisions or orders made ex parte 6 weeks".*

In our present application, the appeal which need to be restored (PC Civil Appeal No. 56 of 2020) was dismissed on 25.10.2021 and the current application was filed on 23.12.2021. Counting from the day the previous appeal was dismissed it is 58 days which is more than six weeks which is specified by the law. That means this application was filed out of the prescribed time without seeking leave of the court.

The issue of time limitation was firmly stated in the case of **Dr. Ally Shabhay Vs. Tanga Bohora Jamaat** [1997] TLR 305 where it was held that:

*"It is settled law that those who seek justice in court of law must file proceedings within the prescribed time, otherwise they will face the law of limitation as a bar. Parties cannot conduct litigation as they deem fit. Limitation clause is there*

*Ally*


*to speed truck proceedings. To the contrary, court will have endless litigations at the whims of the parties".*

It was further held in the case of **Tanzania Fish Processors Ltd Vs. Christopher Luhangula**, Civil Appeal No 161/1994 Court of Appeal of Tanzania, at Mwanza registry held that:

*"The question of Limitation of time is fundamental issue involving jurisdiction ...it goes to the very root of dealing with civil claims, limitation is a material point in the speedy administration of justice. Limitation is there to ensure that a party does not come to Court as and when he wishes".*

It is a trite law that a party who has delayed to file an application or suit he/she need to seek extension of time first. In this case, the application was filed outside the prescribed time without the prior leave of the court. As it was held in the case of **DED Sengerema D/Council Vs. Peter Msungu & 13 Others**, Lab. Div. Mwanza, Misc. Appl. No. 27/2013 (unreported) Rweyemamu J. held that:

*"When an action is time barred a party seeking to initiate it must first apply for extension of time. That the applicant did not do, consequently, I find this application incompetent and dismiss it as per the requirement of the law and practice".*



In the end, it goes without saying that this application was filed out of the prescribed time. Therefore, the preliminary objection is sustained for being meritorious. Consequently, the application is hereby dismissed with costs.

It is so ordered.

**DATED** at **ARUSHA** this 28<sup>th</sup> day of June 2022.



*N.R. Mwaseba*

**N.R. MWASEBA**

**JUDGE**

**28.06.2022**