

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)
AT DAR ES SALAAM**

MISCELLANEOUS LAND APPLICATION NO. 02 OF 2022

(Arising from Misc. Land Application No. 790 of 2018)

EVANS BENSON APPLICANT

VERSUS

AJANE DONATILA RUAMBO..... 1st RESPONDENT

RAMADHANI ABDALLAH MDULU..... 2nd RESPONDENT

RULING

7th, & 13th July, 2022

ISMAIL, J.

The instant application represents the applicant's effort to gain access to the Court of Appeal, on an intended appeal against the decision of the Court (De Mello, J) in Misc. Land Application No. 790 of 2018. It is an application for leave, accompanied by an affidavit sworn by Evans Benson, the applicant himself, and it sets grounds on which leave is sought.

The 1st respondent has opposed the application. Besides filing the counter-affidavit, she has raised preliminary objections challenging the competence of the application, on the following grounds:

- 1. That the application is time barred; and*

2. That the application is incompetent as the intended appeal is against an interlocutory application which is not appealable.

Hearing of the matter, which took the form of written submissions, saw the applicant represented by Andrew Kannonyele, learned counsel, whilst the 1st respondent enjoyed the services of Mr. Francis Mgare, learned advocate. The 2nd respondent chose to enter a non-appearance.

Setting the ball rolling was Mr. Mgare. With regards to ground one of the objections, learned counsel contended that the ruling of this Court (by De Mello, J (as she then was)) and from which the instant application emanates, that to say; Misc. Land Application No. 790 of 2018, was delivered on 07/12/2021. However, filing of this application went contrary to the requirement of the law, as enshrined under the provisions of Rule 45 (a) of the Tanzania Court of Appeal Rules, 2009 (as amended). This is because the same was lodged 31 days after the decision, instead of being made within 30 days stipulated by law. The delay rendered the application time-barred, and that the remedy under section 3 (1) of the Law of Limitation Act, Cap. 89 R.E. 2019 is to dismiss the application.

Regarding the second limb of objection, the contention by Mr. Mgare is that the decision sought to be appealed against is a decision on an interlocutory matter which is not appealable. The argument is that the

decision in Misc. Land Application No. 790 of 2018, from which this matter arises, merely extended time for filing a revision. He contended that the application for revision was filed vide Land Revision No. 58 of 2021, and that the same is pending before Hon. Masoud, J. He took the view that, it being an interlocutory decision, the same would not be amenable to appeal because it did not have the effect of finally determining the case. It is one of the non-appealable decisions under section 5 (2) (d) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019. He urged the Court to uphold the objection and dismiss the application with costs.

Mr. Kannonyele's rebuttal submission took a serious exception to the contention raised by his counterpart. With respect to the first ground, learned counsel's argument is that filing of the application was done electronically, and that the same was filed at 17:32:23 on 6th January, 2022. He attached a copy of the eCase Registration printout. He argued that, though admission and payment of fees was done on 7th January, 2022, the law vindicated the applicant's action. He sought refuge in rule 21 (1) of the Judicature and Application of Laws (Electronic Filing) Rules, GN. No. 148 of 2018, which provides as hereunder:

"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.”

It was the learned advocate’s contention that the application is timeous. He implored the Court to base its finding on the decision in ***Mohamed Hashti v. National Microfinance Bank Ltd (NMB Bank)***, HC-Revision No. 106 of 2020 (unreported).

Regarding the 2nd objection, the view held by the applicant is that the intended appeal is justified, since the applicant was denied the right to be heard. Mr. Kannonyele argued that the decision did not factor in arguments raised by the applicant, and that it included issues and arguments which were never raised by the applicant. He contended that perusal of the file revealed that submissions made by the applicant were not in the file, meaning that they were never filed. This effectively denied the applicant an opportunity to challenge the decision. It was the learned counsel’s contention that the Court’s conduct was an affront to the constitutional right, enshrined in Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 (as amended and pronouncements made in numerous decisions, including: ***Peter Adam Mboweto v. Abdallah Kulala & Another*** [1981] TLR 335; ***Bank of Tanzania v. Said A. Marinda & Others***, CAT-Civil Application No. 74 of 1998; ***Highland Estate Ltd v.***

Kampuni ya Uchukuzi Dodoma & Another, CAT-Civil Application No. 183 of 2004; ***Tanga Gas Distributors Limited v. Mohamed Salim Said & 2 Others***, CAT-Civil Application No 68 of 2011; and ***Claude Roman Shikonyi v. Estomy A. Baraka & 4 Others***, CAT-Civil Revision No. 4 of 2012 (all unreported).

On the contention that the decision is not appealable, the argument by the applicant's counsel is that section 5 (2) (d), cited by the 1st respondent's advocate is not applicable since exercise of the Court's jurisdiction in that case was not judicious. This is in view of the fact that the allegation of fraud was not proven. He also argued that no sufficient reason had been adduced for the 1st respondent's dilatoriness that lasted for 2 years and 19 days to the day he instituted the application. He maintained that, on the basis of the decision of the Court of Appeal of Tanzania in the case of ***Commissioner General Tanzania Revenue Authority & Another v. Milambo Limited***, CAT-Civil Appeal No. 62 of 2022 (unreported), the respondent's contention is fallacious.

Seeing nothing untoward in the application, the applicant's counsel urged the Court to overrule the objections with costs.

I will start with the first limb of objections, and the question is whether the application is timeous. The trite position is that matters submitted in

court must conform to the time prescription set for each matter. With respect to applications for leave, the relevant provision is, as argued by counsel for the 1st respondent's counsel, rule 45 (a) of the Court of Appeal Rules (supra), which provides as hereunder:

"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."

The contention by Mr. Mgare is that the instant application was filed on the 31st day since the decision against which an appeal is intended was delivered. The applicant contends that the application was filed right on time, it having been filed through the system on 6th January, 2022, and that, having done that, the applicant was deemed to have filed it. He took the view that the law was fulfilled.

It is generally agreed that filing through the system would be considered to have been done upon submission or uploading in the system which, in this case, was done on 6th January, 2022. But this assumption is

not absolute, and the position set down through numerous decisions of this Court is that, where fees are payable, then completion of the filing is done upon payment of the requisite filing fees. Before that, the talk of filing it through the system is considered to be premature for want of fulfilment of the condition precedent i.e. payment of filing fees. This implies that payment of fees precedes any other requirement, and it would not matter if the document is uploaded onto the system days before the deadline day.

See: ***John Chuwa v. Anthony Ciza*** [1992] TLR 233; ***Camel Oil (T) Ltd v. Bahati Moshi Masabile & Bilo Star Debt Collector***, HC-Civil Appeal No. 46 of 2020; ***Misungwi Shilumba v. Kanda Njile***, HC- (PC) Civil Appeal No. 13 of 2019; and ***Adamson Mkondya & Another v. Angelina Kukutona Wanga***, HC-Misc. Land Application No. 521 of 2018 (all unreported).

The cited decisions are premised on the fact that electronic filing system is merely a channel through which documents are lodged in court. This new invention was not intended to dispense with other filing requirements that existed prior to the introduction of the Rules on electronic filing. These include payment of the fees which precedes admission of the documents. In this case, the applicant has said nothing on when exactly he paid the filing fees to officially usher in the filing of the application. In the

absence of any confirmation that fees were paid on the same day on which the application was lodged electronically, the plausible assumption is that the earliest the said fees were paid was on 7th January, 2022, and that this is the day the filing was done. Credence to this contention is added when it is gathered that the alleged electronic filing was done at 17:32:23 hours, when the official working hours had already elapsed. No service, including that of assessing and assigning a control number, would be done after the official working hours.

It is important to note that reliance on the date of submitting a document through the system is fraught with dangers, as a party to the proceedings may even get an assessment of fees to be paid, given a control number, only to have it paid a few days or weeks later. This means that the process that commenced by filing the document electronically would be considered to have fulfilled the requirements of the law if fees had been assessed and paid.

Thus, if we assume that payment was done on the next working day, at the very earliest i.e. 7th January, 2022, the conclusion is that filing of the application was late by a day, meaning that, as submitted by Mr. Mgare, the application was filed outside the time prescription.

As I wind down, I find it apposite to cite the decision of the Court of Appeal of Tanzania in ***Hassan Bushiri v. Latifa Lukio Mashayo***, CAT-Civil Application No. 3 of 2007 (unreported), wherein it was held as follows:

"... Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

It would not matter, therefore, that the delay in this case was a single day, provided that the same was not explained out. In consequence, the objection is upheld and, on this ground alone, the application is dismissed with costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 13th day of July, 2022.



M.K. ISMAIL

JUDGE

13/07/2022

