

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

MISC. LAND APPLICATION NO. 32 OF 2022

(Arising from Misc. Land Appeal No. 31 of 2020, of the High Court of Tanzania at Bukoba, Appeal No. 17/2018, of the District Land and Housing Tribunal for Kagera at Bukoba, Originating from Civil Case No. 15 of 2017 at Katerero Ward Tribunal)

IDRISA OMARY..... APPLICANT

VERSUS

HABIBU YUSUPH..... RESPONDENT

RULING

Date of Ruling: 24.06.2022

A.Y. Mwenda, J.

The applicant, through the services of Mr. Victor Brasio, learned Counsel, filed the present application seeking this Hon. Court's pleasure to certify that there is a points of law involved in the appeal which need be determined by the Court of appeal. This application is supported by an affidavit affirmed by the applicant.

When served with the application papers, the respondent through the services of Mr. Gerase Reuben, learned Counsel, responded by filing a Counter affidavit affirmed by the respondent. On top of that the respondent issued a notice of preliminary point of objection on the point of law. The content of the notice reads as follows, and I quote:

1. That, this Application is time barred contrary to the leave of the Court dated 18/02/2022

2. The Application is bad in Law for being supported by an affidavit that contain defective *jurat* of attestation.

It is trite principal that when a notice of preliminary point of objection is raised, the court is required to determine it first. The court invited the parties to appear at the hearing of the Preliminary objection. Both parties were represented by their respective learned Counsels.

When invited to submit in support of the Preliminary points of objection Mr. Gerase Reuben, learned counsel for the respondent abandoned the second preliminary point of objection and remained with the first one. In support thereof the learned counsel stated that before filing the present application the applicant had filed application No. 25/2021 seeking certification of points of law.

He said before hearing of the said application i.e. on 18/2/2022, the counsel for the applicant prayed to withdraw his application with leave to refile. His prayer was granted in that he should do so within 14 days. The learned Counsel said the applicant did not file his application within the prescribed time and added that the present application was filed out of 14 days which was granted and without leave of this court. He said from 18/2/2022 when the said prayer was granted he was required to file his application on 3/3/2022. Instead, he did so on 14/3/2022 which is almost 12 days after, contrary to the court's order dated 18/2/2022. He thus

prayed this application to be dismissed with costs. In support to his argument he cited the case of *HEZRON M. NYACHIYA VS. TANZANIA UNION OF INDUSTRIAL AND COMMENCE WORKERS AND ANOTHER, CIVIL APPEAL NO. 79 OF 2001*, CAT (unreported) (at the last but one page) and Section 3(2)(c) of the Law of Limitation Act, [Cap 89, RE. 2019].

In reply to the submission by the learned Counsel for the respondent, MR. VICTOR BRASIO, learned Counsel for the applicant submitted that following the order which granted leave to refile this application, the applicant was required to do so by 3/3/3033. He said, the applicant complied with the said order by filing through the electronic filing system on 3/3/2022. He said, when the applicant received the present notice of preliminary objection he made a follow up with the Registry office where he got a copy of the retrieved information which is certified by the Hon. Deputy Registrar. He said in the said copy the applicant's application was submitted on 03/03/2022 and to his this is also the filing date. He said it is however unfortunate that the registry officer recorded 14/03/2022 in the hard copy as a filing date and this was by mistake.

He then concluded that this application was filed in time and he prayed the Preliminary point of objection to be overruled.

In rejoinder, MR GERASE REUBEN, learned counsel for the respondent submitted that the filing process is complete upon payment of the court's filing fees. As per information retrieved from the said electronic filing system, the filing date reads

14/3/2014 at 13:14:25 hours and also the fees receipt indicate the same date. He said the said information shows the 3/3/2022 as a submission date and according to him after the applicant have submitted the said application he ought to have made a follow up to ensure the application is filed timely. Instead, he said, the applicant relaxed and for that matter he filed this application out of time. He said, before filing the present application the applicant ought to have sought leave and in the cause, he would have advanced reasons which he was trying to raise at the hearing of this preliminary objection. The learned Counsel concluded by insisting that this application was filed out of time and repeated to his previous prayer that it should thus be dismissed with Costs.

Having summarized the rival submissions from the learned Counsels for the parties, and after a thorough perusal of the records, it is not in dispute that the present appeal follows an order granting 14 days leave to refile issued by this court on 18/02/2022. It is also evident that the filing date as appearing in the petition of appeal (a hard copy) is 14/03/2022. After being faulted by the learned counsel for the respondent that he filed the present application out of time, the learned counsel for the applicant stated that through electronic filing system, the said application was filed on 03/3/2014. He then referred this court to an extract from electronic filing system. In the said extract it shows the date of submission as 03/03/2021 at 18:23:43 hour.

In a bid to seek legal guidance this court went through the Judicature and Application of Laws, (Electronic Filing Rules), GN. No.148 published on 13/04/2018 and came across Rule 21(1) which reads:

"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"

Although by virtue of Gn.148/2018 a document is deemed to be filed upon submitting it through electronic filing system, it is however important to note that submission of the document and filing the necessary court's fees is what makes filing of a document complete. In other words the coming of G.N 148 of 2018 did not do away with the requirement of payment of Court fees. In the case of MISUNGWI SHILUMBA V. KANDA NJILE, PC, Civil Appeal No. 13 of 2019, HC, (Unreported), this Court held inter alia that:

"...a document is deemed to be filed in Court when payment of Court fees is done and the proof of payment of fees exhibited by the Exchequer receipt." [emphasis added]

The said position was previously discussed in the case of JOHN CHUWA V. ANTHON CIZA (1992) TLR 233. In this case the Court of appeal held that:

"According to the learned judge, the date of filing the application is the date of payment of the fees and not that

the receipt of the relevant document in the registry... ”

[emphasis added]

In the present matter, the applicant having submitted the application papers on the 03/03/2022 which was the last day of this court's order granting him leave to refile, did not pay Court's fees until 14/03/2022 at 11:33:24 hours.

Having submitted the said document, the applicant ought to have acted promptly to ensure Court's fees are paid timely. In the case of MUSTAPHA BOAY AKUNAAY V. MOSES MEIMAR LAZIER (legal Administrator of LUCIA LETROVIKI LEIZER) & TWO OTHERS, LAND REFERENCE NO. 06 OF 2020, HC, (Unreported) this court held inter alia that:

"If filing fees is required to be paid, then the date of filing is the date of paying the required fees. It is not enough for an advocate or a party to the case to submit the document electronically and relax without taking necessary action of paying fees... ” [emphasis added]

Guided by the above positions of the Law, since in the present application the filing fees was paid on 14/03/2022 this Court is in agreement with Mr. GERAZE REUBEN, learned Counsel for the respondent that this application was filed on 14/3/2022 out of time.

The respondent's preliminary objection is meritorious and it is hereby sustained. This application is hereby dismissed with costs.

It is so ordered.

A.Y. Mwenda
Judge
24.06.2022

Ruling delivered in chamber under the seal of this court in the presence of Applicant Mr. Idrisa Omary and in the absence of the respondent.

A.Y. Mwenda
Judge
24.06.2022