

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

MISC. CIVIL APPLICATION NO. 589 OF 2020

(Arising from Civil Appeal No. 235 of 2029 before Hon. Mlyambina, J)

BURAFEX LIMITED (formerly
known as **AMETAA LIMITED**).....**APPLICANT**
VERSUS
THE REGISTRAL OF TITLES**RESPONDENT**

RULING

Date Of Last Order: 26/11/2021

Date Of Ruling: 26/1/2022

MASABO, J.:

The applicant has moved this court by way of a chamber summons made under section 5(1) of the Appellate Jurisdiction Act, (Cap 141 R.E. 2019). His main prayer is for leave to appeal to the Court of Appeal against the ruling of this court which dismissed her appeal, against the decision of the respondent. Supporting the application is an affidavit deposed by Mr. Mashaka Ngole, the applicant's counsel, vide which it is averred that the applicant filed an appeal in this court challenging the decision of the respondent. The appeal ended futile. It was dismissed at an infant stage after the court sustained a point it had raised *suo motto* regarding the competence of the appeal owing to non-joinder of the Attorney General. The dismissal order has aggrieved the applicant. He now intends to appeal to the apex court for it to interrogate whether the provision of section 6 of the Government Proceedings Act [Cap 5 R.E 2019] apply to appeals emanating from the decision of the Registrar of Titles and whether it was

correct for the court to dismiss the appeal for non-joint the Attorney General.

The appeal was heard in writing. Both parties were represented. Mr. Mashaka Ngole, learned counsel, appeared for the applicant and Mr. Thomas Mahushi, learned State Attorney, was for the respondent. Both parties complied with the schedule for filing schedule. In the course of his reply submission, the respondent raised an objection regarding the competence of the application whereby he submitted that the application is incompetent for being filed out of time. In fortifying his point, he brought to the court's attention the provision of Rule 45(a) of the Court of Tanzania Rules, 2009 and prayed that the application be dismissed as it was filed after the expiry of the duration of 30 days prescribed under this rule as the period within which an application for leave should be filed.

Mr. Ngole was very opposed to the objection and prayer. Through his rejoinder submission, he argued that the objection has been improperly raised thus it should not be entertained. In the alternative he submitted that, the application was filed within the prescribed time as it was lodged in court through the electronic filing system on 27/10/2021 which was well within the prescribed duration.

I have taken the liberty to commence with this point before proceeding to the merit of the application and the first question to be answered is whether it is proper and worthwhile to consider and determine this point, which as shown above, was raised in the course of reply submission. Much

as there is no doubt that the point was improperly raised in the course of reply submission contrary to the established practices of this court in similar matters, I am hesitant to resist the invitation fronted by the learned State Attorney. My hesitancy is grounded on two points the first being the nature of the objection adverted by the counsel. There is no dispute that time limitation is a serious legal issue which, which cannot be easily ignored or shelved. The seriousness of this issue is vividly displayed in the remedy for a matter filed out of time. Pursuant to section 3(1) of the Law of Limitations Act [Cap 89 RE 2019], the only remedy for a time barred matter is dismissal. Thus, where a matter is found to be time barred it will suffer dismissal irrespective of whether the point of limitation was raised by a party as the case in point or *suo motto* by court.

My second reason is on the mode of hearing which in my strong view, gave the applicant an opportunity to ponder and respond to the objection as he did in his rejoinder. From the record, the rejoinder was filed 12 days after the date of filing of the reply submission. This was, certainly, a sufficient time for the applicant to research and make his case.

With this preface, I will now turn to the merit of the objection. It is an established position in our jurisdiction that in civil appeals to the Court of Appeal, save for appeals emanating from decisions made by the High in the exercise of its original jurisdiction (section 5(1)(a) and appeals emanating from orders listed under section 5(1)(b) and other decisions emanating from statutes which provide for automatic appeal to the Court of Appeal, appeals to the Court of Appeal require a leave obtainable from this court under section 5(1)(c) of the Appellate Jurisdiction Act, Cap 141

RE 2019. The duration of applying for leave is prescribed under Rule 45(1)(a) of the Court of Appeal Rules, 2009 which provided that:

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;

As none of the parties herein contend the duration prescribed under this rule, the only issue pending determination is whether the application was filed within the prescribed duration of 30 days. As intimated earlier, Mr. Shija's contention is that the application was filed in court on 10th November 2020, which was about 42 days reckoned from 29th September 2020 when the decision sought to be challenged was delivered by this court. On the other hand, Mr. Ngole has passionately submitted that the application was filed through the judicial electronically filing system on 27/10/2020, thus it was filed well within time and has relied upon the provision of rule 21 (1) of the Judicature and Application of Laws (Electronic Filing) Rules, GN No. 148 of 2018 which provides that a document shall be considered to have been filed if it is submitted through electronic filing system. There is however nothing on file to substantiate this. The chamber summons filed in institution of this application (the hard copy) bears an endorsement by a registry officer showing that it was filed in court on 10th November 2020 as asserted by the learned State Attorney. Even the exchequer receipt attached to the application shows that, the filing fees was paid on the same date, 10th November 2020. Cumulatively, these support the contention made by the learned State Attorney.

My further contemplation and attempt to accord the applicant the benefit of doubt, is unfortunately, unlikely to yield any fruit because, even if I were to assume that the application was logged electronically on 27th October 2020 as averred by the applicant's counsel and that by virtue of rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, is deemed to have been filed on that date, it defeats my reasoning why the filing fees was paid 13/14 days later.

I understand that, there has been divergent schools as to documents filed electronically. One of the schools to which Mr. Ngole has sought reliance propounds that, rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, is self-executory in that, a document filed electronically, is regarded to have been duly filed immediately as it is uploaded/registered in the system. The second school which reflects what I will call 'the ordinary practice' and which had prevailed even before the introduction of electronic filing system and its respective rules holds that a document is deemed to be filed in court when payment of court fee is done (see: **John Chuwa v. Athony Ciza** [1992] TLR 233; **Camel Oil (T) Ltd v. Bahati Moshi Masabile & Bilo Star Debt Collector**, Civil Appeal No. 46 of 2020; **Misungwi Shilumba v. Kanda Njile**, (PC) Civil Appeal No. 13 of 2019; and; **Adamson Mkondya & Another v. Angelina Kukutona Wanga**, Misc. Land Application, No 521 of 2018). The argument in support of this school to which I fully subscribe to is that, Electronic Filing Rules has not changed the law, procedure and practice which deems the payment of court fees as proof of filing in court.

Under the circumstances, since the fees appears to have been paid on 10/11/2020, it is vivid that the application was filed after the expiry of time hence time barred. Since as alluded to earlier on, the only remedy for a matter filed out of time is dismissal, this application stands dismissed. Considering the manner in which the objection was raised, I refrain from awarding any costs.

DATED at DAR ES SALAAM this 26th January 2022.



X

A handwritten signature in black ink, appearing to be "J.L. MASABO", written over a horizontal line.

Signed by: J.L.MASABO

J.L. MASABO
JUDGE