

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

MISCELLANEOUS CIVIL APPLICATION NO. NO. 63 OF 2021

(Arising from judgment and decree of the District Court of Temeke in Civil Case No. 134 of
2013)

STEEL SUPPLY & GENERAL TRADE COMPANY LIMITED.....APPLICANT

VERSUS

CHRISTOPHER RUKONGE.....RESPONDENT

RULING

Last Order: 12/7/2022
Date Ruling 12/8/2022

MASABO, J.:

By a chamber application filed under section 14(1) of the Law of Limitations Act, Cap 89 RE 2019, a leave for extension of time is sought to enable the applicant to restore his appeal against the decision of the district court of Temeke in Civil Case No. 134 of 2013. From the affidavit filed in support of the application, it is gathered that being grieved by the judgment and decree of the subordinate court, the applicant appealed to this court in Civil Appeal No. 171 of 2015 but his appeal was dismissed under section 3(1) of the Law of Limitations Act for being time barred. Still displeased, he issued a notice for appeal to the Court of Appeal but he later on withdrew it and came back

to this court with the instant application in which he has prayed that this court be pleased to enlarge the time within which he can file a fresh appeal in this court.

Upon being served the respondent raised a notice of preliminary objection vide which he contended that the application is incompetent as it is intended to restore an appeal which has been dismissed.

Hearing of the preliminary objection and of the merit of the application proceeded concurrently in writing in the interest of time. Starting with the preliminary objection, the respondent represented by Mr. Mashiku Sabasaba, learned counsel argued that once the appeal is dismissed it can no longer be reinstated in the same court. The only remedy in the circumstances is for the grieved party to appeal to a higher. He relied upon the judgment of the Court of Appeal in **Hashim Madongo & 2 others v The Attorney General & two others**, Civil Appeal No. 27 of 2013 (unreported).

The applicant, represented by Mr. Dickson Matata, conceded that the first appeal was dismissed for being time barred but impressed upon the court

that the application is competent as, it is within the realm of the two remedies available to a party aggrieved by a dismissal order. The first remedy, he argued, is if for the grieved party to appeal to a higher court if he believes that his appeal was within the time and the second, is for him to second bite by filing an application for extension of time. Further, while citing **Nguni- Matengo Cooperative Marketing Union Ltd v Ahmamohamed Osmn** (1959) E.A 577, **Yahya Khamis v Hamida Haji & 2 Others**, Civil Appeal No. 225 of 2018 and **Cyprian Mamboleo Hizz v Eva Kioso and Mrs. Semwaiko**, Civil Application No. 3 of 2010 CAT (unreported), he impressed upon this court to deem the dismissal order as an order striking out the appeal and having done so, overrule the preliminary objection and proceed to determine the application on merit.

On my party, I am conversant with all the authorities cited by both parties and especially, the distinction between 'a dismissal order' and an 'order striking out a matter,' and the circumstances under which each of the two may issue and the consequences thereto as well elucidated in **Nguni- Matengo Cooperative Marketing Union Ltd v Ahmamohamed Osmn**

(supra), which as correctly demonstrated by the applicant's counsel has been cited and followed in many decisions of the Court of Appeal and this court.

I am however resistant to accept the invitation extended to me by Mr. Matata when he impressed upon this court to turn a blind eye and deem its previous dismissal order as an order for striking out the appeal. In my considered view, the invitation was lucidly misconceived. Whereas it is possible for the higher court to act in a manner suggested by Mr. Matata in respect of decisions of lower courts as demonstrated through **Yahya Khamis v Hamida Haji & 2 Others** (supra), the court that pronounced the dismissal order cannot do so as it would risk usurping appellate and revision powers over its own decision.

As correctly submitted by Mr. Sabasaba, the twin remedies available to a party grieved by a dismissal order is to appeal to higher court or apply for revision to have the dismissal order vacated/set aside. Unless this is done, there is certainly no room for the aggrieved party to reinstate the appeal. As held in **Bank of Tanzania v Said Marind & 3 Others**, Civil Reference No. 3 of 2014 CAT (unreported), once the appeal has been dismissed for being

filed out of time without leave of court, the appellant cannot file an application for extension of time to file an already dismissed appeal.

In the foregoing, the preliminary objection raised by respondent is sustained.

The application is found abortive and is consequently struck out with costs.

DATED at DAR **ES SALAAM** this 12th day of August, 2022

X 

Signed by: J.L.MASABO

J.L. MASABO

JUDGE

