

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

CIVIL REVISION NO. 3 OF 2022

(Arising from the judgment of District Court of Bagamoyo in Civil Appeal No.01 of 2021, dated 24/03/2021 - Original Civil Case No. 14 of 2020 before Chalinze Primary Court)

MARIA THOMAS MADEGA..... 1ST APPLICANT

SHARIFU SADIKI MWINYIMBEGU.....2ND APPLICANT

VERSUS

MIHIDINI HAJI MUSHI.....RESPONDENT

RULING

27th Sept, 2022 & 27th Sept, 2022.

E. E. KAKOLAKI, J.

The applicants herein under section 79(1)(c) of the Civil Procedure Code, [Cap. 33 R.E 2029] and section 30(1)(a) of the Magistrates Courts Act, [Cap. 11 R.E 2019] supported by their joint affidavit moved this Court to call and examine the records of the District Court of Bagamoyo in Civil Appeal No. 01 of 2021 and Chalinze Primary Court in Civil Case No. 14 of 2020, for the purposes of satisfying itself as to the correctness, legality or propriety of the decision or record made therein. They are therefore inviting the Court to quash and nullify the proceedings, Judgment and order of both courts and provide for their costs. Upon being served with the chamber summons the Respondent, filed his counter affidavit in opposition of the application which

was replied by the applicants too. Further to that the respondent through his advocate filed a notice of preliminary objection on points of law containing four grounds.

As it has always been the practice of the Court, the said preliminary points of objection were to be disposed of first. On the date set by the Court for that purposes the 1st applicant appeared in person unrepresented while the respondent hired the services of Mr. Elinas Kitua, learned advocate. As for the 2nd applicant while aware of the date set for hearing of the preliminary points of objection without notice failed to enter appearance in Court as a result a prayer was made by the respondent and granted for the hearing to proceed ex-parte against him.

Mr. Kitua chose to argue the first ground of objection believing that it disposes of the matter. It was his submission that, this application is time barred for contravening the provision of item 21 Part III of the schedule to the Law of Limitation Act, [Cap. 89 R.E 2019], providing for 60 days within which to apply for an application in which time limitation is not provided for by the law. He argued, before this Court the applicants are seeking to revise among other the judgment of the District Court of Bagamoyo which was delivered on 24/03/2021 while their application for revision was filed in this

Court on 16/03/2022 almost one year passed which is contrary to the law of limitation as cited above. Since the matter was filed out of time, he prayed the Court to invoke the provisions of section 3(1) of the Law of Limitation Act, and proceed to dismiss the application with costs.

In her reply the 1st applicant lay as she is resisted the submission by Mr. Kitua. She contended the application is in time as it was filed on 16/03/2022, eight days before lapse of one year since delivery of the decision they are seeking to challenge with her fellow applicant. She thus implored the Court to dismiss the preliminary objection raised against them. For the respondent, Mr. Mtua had nothing to rejoin apart from pressing for the prayers made before.

I have had enough time to peruse the record accompanying the application with view of ascertaining the assertions by the respondent. Equally I have taken into consideration both parties submission. It is common ground that every action must be instituted in Court in compliance with the time limitation prescribed by the law. In this matter the law does not specifically provide for time limitation within which to bring an application for revision. The resort therefore is made to item 21 of Part III of the schedule to the Law of Limitation Act, which covers the time limitation for filing all applications for

which no period of limitation is provided under the said Act or any other written law. The said item 21 of Part III to the first schedule of LLA provides:

21. Application under the Civil Procedure Code, the Magistrates Courts Act or other written laws for which no period of limitation is provided in this Act or any other written laws is sixty days.

Applying the above provision to the facts of this matter it is apparent to me that this application was filed almost one year passed since delivery of the decision sought to be impugned made on 24/03/2021 as the application was filed on 16/03/2022. Thus, I am at one with Mr. Kitua that this application was preferred out of time. Now what is the consequences of matters preferred out of time. As submitted on by Mr. Kitua, the submission which I embrace, when the action is brought to Court outside the prescribed time limitation, the Court will mercilessly dismiss it under section 3(1) of LLA, as it knows no sympathy or equity when dealing with time barred matter. This position was taken by the Court of Appeal in the case of **Barclays Bank Tanzania Limited Vs. Phylisiah Hussein Mcheni** (Civil Appeal No. 19 of 2016)[2022] TZCA 202 (17 May 2021); www.tanzilii.org.tz where the Court of Appeal adopted the statement made by His lordship Kalegeya, J, (as he then was) when he stated that:

"However unfortunate it may be for the plaintiff, the law of limitation on action, knows no sympathy or equity. It is merciless sword that cuts across and deep into all those who get caught in the web."

As alluded to above this matter was preferred out time by the applicants. The only available remedy for them to have this application dismissed for contravening the law governing time limitation of actions as submitted on by Mr. Kitua. I therefore sustain the preliminary point of objection raised and proceed to dismiss the application as I hereby do.

No orders as to costs.

Order accordingly.

Dated at Dar es salaam this 27th day of September, 2022



E. E. KAKOLAKI

JUDGE

27/09/2022.

The Ruling has been delivered at Dar es Salaam today 27th day of September, 2022 in the presence of the 1st applicant, Mr. Elinas Kitua advocate for respondent and Ms. Asha Livanga, Court clerk and in the absence of the 2nd respondent.

Right of Appeal explained.



E. E. KAKOLAKI
JUDGE
27/09/2022.

