

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL REVISION NO. 37 OF 2021

(Arising from the decision of District Court of Temeke in Civil Case No. 82 of 2014)

ACCESS BANK TANZANIA LIMITED.....APPLICANT

VERSUS

MAHITI MANYORI WAMBURA.....RESPONDENT

RULING

28th Sept, 2022 & 28th Sept, 2022.

E. E. KAKOLAKI, J.

The applicant herein under section 79(1)(c) of the Civil Procedure Code, [Cap. 33 R.E 2019] and any other enabling provision of the law, supported by the affidavit of one advocate Amedeus Mallya and principal officer to the applicant, has moved this Court to call and examine the records of the District Court of Temeke in execution proceeding in respect of Civil Case No. 82 of 2014, for the purposes of satisfying itself as to the correctness, legality or propriety of the decision or regularity of the proceedings therein. She is therefore inviting the Court to quash the proceedings, and judgment thereof and costs of the application. Upon being served with the chamber summons the Respondent, filed his counter affidavit in opposition of the application

while at the same time raising a notice of preliminary objection on point of law to the effect that, the application is hopelessly time barred.

As is has always been the practice of the Court, the said preliminary point of objection was to be disposed of first. On the date set by the Court for that purposes the applicant appeared represented by Mr. Burton Mayage and Mr. Amon Meja, both learned advocates while the respondent hired the services of Mr. Richard Maforo, learned advocate. In the course of submission the Court also probed the parties to address it on the propriety of the application for want of specification of the decision or order sought to be revised.

Submitting on the sole ground of objection Mr. Maforo argued that, this application is time barred for being preferred outside the time limitation as provided by item 21 Part III of the schedule to the Law of Limitation Act, [Cap. 89 R.E 2019] (the LLA), providing for 60 days within which to apply for an application in which time limitation is not prescribed by the law governing the matter. He argued, before this Court the applicant are seeking to revise the ruling or order of the District Court of Temeke handed down on 27/08/2021 while their application for revision was filed in this Court on 09/11/2021, two (2) months and twelve (12) days passed and in infraction of the LLA as cited above as the deadline of 60 days was on 27/10/2021.

Since the matter was filed out of time, he prayed the Court to dismiss the application with costs. He referred the Court to the Court of Appeal decision of **Ahmed Mohamed Suud and Another Vs. Mohamed Suud and 2 Others**, Civil Application No. 12/17 of 2019, when the Court was considering the import of Rule 65(4) on the requirement of the party to comply with the mandatory terms of the rule by lodging the application for revision within sixty (60) days from the date of the decision sought to be revised.

In reply Mr. Mayage resisted the submission by Mr. Maforo, contending that the application was filed in time online on 18/10/2021, nine days before lapse of sixty (60) days from the date of delivery of the decision sought to be revised. While submitting to the Court an extract from JSDS showing that the application was filed online on 18/10/2021, Mr. Mayage relied on Rule 21 of the Judicature and Application of Laws (Electronic Filing) Rules of 2018, providing that, a document shall be considered to have been filed if it is submitted through electronic filing system before midnight East African time, on the date it is submitted unless specific time is set by the Court or it is rejected. In this case he argued, this Court neither issued specific date for filing of this application nor was it rejected when filed online, hence the same was filed in time when submitted online on 18/10/2021, Mr. Mayage

stressed. To fortify his stance he referred the Court to its own decision in the case of **Mohamed Hashil Vs. National Microfinance Bank (NMB Bank)**, where it was held since there was evidence on record showing that the application was filed electronically on 10th March, 2020 and hard copy filed on 16th March, 2020, the revision application was filed in time. She thus implored the Court to dismiss the raised preliminary objection for want of merit. In his rejoinder submission, Mr. Maforo submitted, if at all the application was filed online as alleged which he questions, the Court is not told as to what happened such that it took 21 days for the applicant to file hard copy in Court on 09/11/2021. According to him the same was filed out of time on, hence maintained his prayer that the same be dismissed with costs.

I have had enough time to revisit the contested record annexed to the affidavit in support of the chamber summons with view of ascertaining the assertion by the respondent that, this application is time barred. Equally, I had enough time to serenely internalise and consider both parties' submission. It is the common ground and in need not cite any law that, time limitation for institution of any suit or action is governed by the 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 LLA as rightly referred by Mr. Maforo, which covers the time limitation for the party to lodge an application 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 to 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 and I agree with Mr. Mayage that, with the interpretation of Rule 21 of the Judicature and Application of Laws (Electronic Filing) Rules of 2018, this application filed online on 18/10/2021 as shown in the submitted excerpt from JSDS system against the decision delivered on 27/08/2021, was filed 9 days before expiry of 60 days which were to expire on 27/10/2021. However it is noted with concern as submitted by Mr. Maforo that, the hard copy of the said application was lodged in Court on 09/11/2021 as per the filing fee electronic receipt, which is 21 days after the same was filed online and 13 days after expiry of 60 days. As rightly submitted by Mr. Maforo, no reasons

for such inordinate delay of 21 days in filing the hard copy was supplied by Mr. Mayage.

Now with the prevailing circumstances of this matter where the applicant decided to lodge hard copy of the said application 21 days after its filing online without assigning reasons for such delay, this Court asks itself as to what was the intention of introducing electronic filing system of documents? The answer no doubt was to speed up the process of filing documents in Court and enable easy access of Court services to all court clients and stakeholders. Was it meant to delay the process of filing documents in Court or allow parties to not to act diligently by filing documents for Court's actions at their time and feeling convenient to so do after online filing? With due respect, I don't think that was the intention of having in place Judicature and Application of Laws (Electronic Filing) Rules of 2018. This Court in the case of **Chris George Kasalile Vs. Tanzania Institute Education and Another**, Miscellaneous Course No. 26 of 2022, had an opportunity to discuss and explained the good intention of having the electronic filing rules in place and the observation which I subscribe to. The Court said and I quote:

*It is apparent that, the intention of having the rules in place is to facilitate **efficiency and speedy delivery of justice in handling cases**. Despite the fact that on the face of it, the reading of rule 21 of the rules seems to be plain, yet there is a lacuna since the law doesn't provide for instance when the applicant or claimant file a case electronically well in time but he doesn't pay the necessary fees timely, as is in the present case. **Evidently, filling the case electronically, and staying dormant defeats the purpose of the law**. It is my view that, to fill in the gap we should look at the purpose of the law and other legal requirements. (Emphasis supplied).*

The Court in the above cited case, further quoted with approval the case of **Emmanuel Nakundize and Others Vs. Aloysius Benedicto Rutaihwa**, Land Case Appeal No. 26 of 2020 (HC), the case which followed the principle in the case of **John Chuwa Vs. Antony Cisa** [1992] TLR 223 where it was held that:

"...a document is deem filed, when requisite fees have been duly paid."

It is the position of law from the above decision that, a document is deemed filed in court when the requisite filing fees are dully paid. That position has never been departed by this Court. Now does that requirement of payment

of court fees as proof of filing the document in Court cease to operate with the introduction of Judicature and Application of Laws (Electronic Filing) Rules of 2018? In my considered view it does not as once the document is filed online the requirement of payment of court filing fees remains. It is undisputed practice that, once the document is filed online and admitted the system immediately and automatically issues the party filing, with control numbers for payment of court's fees and submission of documents in hard copy for immediate action of the Court. It follows therefore that, the party has to comply with the good intention of introduction of electronic filing by making sure that once the document is filed electronically the same is submitted without delay for the Court's immediate actions. In this matter undisputedly hard copy application was filed 21 days after online filing and 13 days after expiry of 60 days within which the applicant was to file the same. As there is no reasons assigned for such inordinate delay of 13 days, I find the application was filed outside prescribed time of 60 days as to hold otherwise is to bless the inaction of the party or applicant in this matter, something which this Court is not prepared to do. This point is enough to dispose of the matter and I see no issue to go to the point raised by the Court suo motu.

As to what is the consequences of bringing an action to Court after expiry of time limitation, section 3(1) of LLA provides an answer that, the only remedy is to dismiss the matter for being preferred outside the time limitation, as the law of limitation applies merciless for knowing no sympathy or equity. 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 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."

This application having been preferred in infraction of the time limitation as provided under item 21 Part III of the schedule to the LLA, I sustain the preliminary point of objection raised and proceed to dismiss the application.

No orders as to costs.

Order accordingly.

Dated at Dar es salaam this 28th day of September, 2022.

E. E. KAKOLAKI

JUDGE

28/09/2022.

The Ruling has been delivered at Dar es Salaam today 28th day of September, 2022 in the presence of the Mr. Barton Mayage and Mr. Amon Meja advocates for the applicant, Mr. Richard Maforo, advocate for respondent and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.

E. E. KAKOLAKI

JUDGE

28/09/2022.

