

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
(AT DAR ES SALAAM)  
CIVIL APPLICATION NO.693 OF 2020**

**SAID ALLY OMARY**

**AND OTHERS.....PLAINTIFFS**

**BETWEEN**

**OMARY ALLY OMARY**

**AND OTHERS.....DEFENDANTS**

*Date of last order: 30/06/2022*

*Date of Ruling: 13/07/2022*

**R U L I N G**

**MGONYA, J.**

Before this Honourable Court is a **Miscellaneous Civil Application No. 693 of 2020**. In course of filing the pleadings to this Application, Defendants raised two preliminary objections to the effect that:

1. ***The Application raised is time barred as to the requirement of the Law; and***
2. ***The Application is defective for itself being based on legal Opinions not laws.***

The Applicants from the records appears in person while the Respondents are enjoying the services of **Mr. Ndunguru Learned Advocate**. The Court ordered this Application be

disposed off by way of written submission; after having the submissions filed in accordance to the court's scheduled order, this Court now is at a position to dispose the same.

On the **first point of objection** Mr. Ndunguru Counsel, for the Respondents submitted that, the matter before this Court is out of time since the same was filed on **31/12/2020** after the latter was aggrieved by a decision that was delivered on **25/11/2020** by Hon. Ebrahim J. Mr. Ndunguru also stated that the Application was filed 35 days late after the decision was delivered. The requirement of the law under **section 5 (1) (c) of the Appellate Jurisdiction Act** read together with **Rule 45 of the Court of Appeal Rules** which requires the Applicant to file the leave of appeal before **14 days** from the date of Judgement. The case of ***RITAGATINA C. L VS THE ADVOCATES COMMITTEE & CLAVERY MTINDO NGALAPA*** was cited to support the contention of the Respondents' Counsel argument.

Submitting on the **second objection** the Respondents' Counsel stated that, the Applicant filed an appeal at Temeke District Court and all the grounds stated herein were also raised during the appeal, the decision thereto was in favour of the Respondents. Further, Appeal was filed to the High Court where the Court decided the matter to have been Res *judicata* and hence a dismissal order was granted. The argument drawn by

the Applicant here is seeking for opinion and not laws. Once a matter is dismissed for *Res judicata* there is no room for an appeal.

In their reply, the Applicants stated that the objections raised are unfounded and misconceived and should be overruled with costs. Submitting on the **first objection** that the law cited is dead law as the same has been amended from time limit of 14 days to 30 days. Further that the law has long been amended under **GN NO. 362 of 2017 which amended Rule 45 (a) of the Court of Appeal Rules** which now provides for the time limit with which to file leave to be **30 days** from the date of the decision. The said section was quoted in the submissions for ease of reference.

Further, it was also the Applicants' averment that with introduction of electronic filing system by **Judicature and Application of Laws (Electronic Filing) Rules 2018, GN. NO. 148 of 2018 by virtue of Rule 21** of the Rules filing is presumed to be on the date of which a party has commenced the process. The Rule was reproduced in the submission for ease of reference. It is also stated that on their part they commenced the process on **23/12/2020** and admission was allowed on **28/12/2020**. The decision being delivered on **25/11/2020** and commencement of filing online being on **23/12/2020** they state to have been within time that is **28 days**.

Arguing on the **second objection** it was averred that the opinions stated to exist in the application can't be traced by the Applicants after having gone through the said application. What the Respondents have submitted has been referred to be irrelevant and out of context by the Applicants; and hence cannot reply to their submission on the second ground.

Having gone through the rival submissions by both parties, I am at this juncture at a position to determine the objections raised before this Court.

To begin with the first objection, the Respondents' Counsel avers that the application before this Court has been filed out of time as required by law and that the time to file the said appeal was 14 days from the date of the decision. The Applicant countered the said objection by stating that the law referred to by the Respondent has been long been amended and the time limit as of present is thirty days. It is from here that the Application was filed within time as per the Rules of Electronic Filing as demonstrated in their submission above.

Having gone through the Application before me, I have discovered and I am mindful that the Applicant's had two distinct prayers in the Chamber summons, one being a certification of point of law and leave to appeal to the Court of Appeal. The objection of the application to have been filed out of time has been argued with regards to filing of leave. It is strange that the

Applicant's have sought for an application for a certificate on point of law and leave. The matter intended to be appealed against has its history from the Primary Court hence making the intended appeal to be a third bite. Hence the proper procedure is to seek for a certification of point of law unlike leave.

Therefore, since the Applicant has cited **Section 5 (1) (c) of the Appellate Jurisdiction Act Cap. 141 of 2019**, I will direct myself to that part regarding seeking of certification of point of law. Since this Application is within the domain of the High Court, time limitation is therefore regulated by **the Law of Limitation Act Cap. 89 of 2019**.

Having gone through the entire Act, I have not come across a provision of the Act that states the time within which a party is required to file an application seeking for Certification of point of law. It from that fact it results in resorting to **PART III of the Law of Limitation Act, paragraph 21** which states:

***"21. Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law is 60 days"***.

From the above it is clearly shown that the time that the Applicant was required to file an application seeking for a certification of point of law was **60 days**. Hence filing the

application on E-filing on the **28/12/2020** the Applicant was on time and **hence the objection raised by the Respondent is misconceived and hereby overruled.**

On the **second objection**, that the application is on legal opinions and not law; this application before this Court has been argued by the Respondents' Counsel to be incompetent and worth being dismissed for it contains legal opinions. The Applicants replied that the contention of the Respondent is misconceived and they fail to reply on it since they have gone through the application and have not located what has been stated by the Respondents Counsel.

This objection before the Court will not detain me since it is trite law and explained in a plethora of cases that where an affidavit contains paragraphs or contents that are not in line with the rules of drafting affidavits. The said paragraph are to be expunged and not striking out the whole Application for the interest of justice and administration of timely justice.

**It is from the above, I find the second objection too lacks weight and is also overruled.**

Each party to bear their own costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya", with a horizontal line extending to the right.

**L. E. MGONYA**

**JUDGE**

**13/07/2022**