

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SONGEA DISTRICT REGISTRY)**

AT SONGEA

MISC. CIVIL APPLICATION NO. 08 OF 2022

(Originating from Matrimonial Cause No. 06 of 2021 Mbinga District Court at Mbinga)

MALISELINO B. MBIPI APPLICANT

VERSUS

OSTINA MARTINE HYERA RESPONDENT

RULING

Date of last Order: 06/09/2022

Date of Ruling: 18/10/2022

MLYAMBINA, J.

This application for extension of time to file appeal out of time brings into discussion of the *inter alia* two Rules. *First*, in terms of *Rule 21 of the Electronic Filing Rules, 2018 G. N. No. 148 of 2018*, a document is considered to have been filed in Court if it is submitted through the electronic filing system before mid – night East African Time on the date it is submitted unless a specific time is set by the Court. *Second*, in terms of *Rule 3 and 5 (1) of the Court Fees Rules, 2018 G. N. 247 of 2018*, a document is deemed to be filed in Court when appropriate payment of Court fee is done. One thing to note is that the two subsidiary legislation are made under one mother law, the *Judicature and Application of Laws Act (JALA) [Cap. 358 Revised Edition 2019]*. The synthesis I endeavor to state is that; the provision of *Rule 21*

of the Electronic Rules cannot be read in isolation of the provision of *Rule 3 and 5 (1) of the Court Fees Rules (supra)* which mandatorily requires paying appropriate fees. The major reasons are *inter alia* that *the Electronic Rules* did not revoke *the Court fees Rules*. It just provides for the procedure to be followed when the document is filed electronically.

I would be less than frank if I do not say that a number of brethren and learned sisters have extensively addressed the issue. A clear picture of the dilemma was portrayed in the case of **Bakema S/o Said Rashid v. Nashon S/o William Bidyanguze the Returning Officer for Kigoma and 2 Others**, Election Reference No. 1 of 2020 High Court of Tanzania Kigoma Registry at Kigoma (unreported). In that case, this Court made the following findings:

I am of a settled view that the electronic Filing Rules has not misapplied any Rule of procedure including Rule 8 (1) of the Election Rules which provides that filing includes payment of fees and the general practice as found in case law. The Rule of practice that a document is deemed filed upon payment of Court fees was settled in the case of **John Chuwa v. Antony Sizya** (1992) TLR 233 where it was held that the date of filing is the date of payment of the fees and not that of receipt of

the relevant documents in the registry...To my knowledge, the registry practice on filing documents is that even when documents are filed electronically, they are attended during office hours where the Deputy Registrar approves them for payment of fees. Then a bill is generated at the registry office and sent to the client for payment in form of a control number. This mode of payment and practice is still in practice as the Chief Justice has not prescribed new mode of payment under *Rule 34 of the Electronic Filing Rules* for purposes of the electronic filing of documents. Therefore, when a party files a case electronically on the last date of the limitation period, he/she must file it within office hours and pay Court fees.

Despite of the state of affairs stated in the **case of Bakema Said Rashidi** (*supra*), there are not less than ten circumstances which an electronic filer of a document may face. The first two have no challenges: *One*, a person may submit his document on time, be admitted on time and pay appropriate fees on time. *Two*, a person may submit a document out of time, be admitted out of time and pay appropriate fees out of time. *Three*, a person may submit his document on time, be admitted on time but pay appropriate fees out of time. *Four*, a person may submit his document on time, be admitted on time but

pay less fees on time. *Five*, a person may submit his document on time but be admitted out of time on negligence of the admitting officer, consequently pay appropriate fees out of time. *Six*, a person may submit his document on time, be admitted out of time on internet technical ground, consequently pay appropriate fees out of time. *Seven*, a person may submit a document on time but fail to be delivered on time on internet technical ground. *Eight*, a person may submit a document on time but get delayed to be delivered on internet technical ground, consequently be admitted out of time and appropriate fees be paid out of time. *Nine*, a person may submit his document on time but be admitted out of time due to electricity technical ground, consequently pay appropriate fees out of time. *Ten*, a person may prepare his document on time but fail to submit it on time due to an internet or electricity technical ground.

The above third up to tenth cumulative circumstances requires detailed consideration so that Court fees are paid timely and people are not benefiting from their sloppiness of non-compliance to Court Fees Rules on time. As observed by this Court in the case of **Mororo Kisiri Chacha v. James Rioba**, Miscellaneous Land Application No. 21 of 2021 High Court of Tanzania Mwanza District Registry at Mwanza

(unreported), there can be a danger for a party to get a control number and retreat for some days to mobilize filing fees.

At any rate, in my opinion, the Court cannot lay down hard and fast Rules in the area of filing of documents electronically because it pre-eminently calls for a case-by-case judgement, and the Court's language has to reflect its assessment of the differing levels of probability found in every individual case.

I recognize in the first place; it is undeniable fact that the online registration system is subjected to many pros compared to cons. On the latter, the system has difficulties such as poor or no network at all, lack of reliable electricity, delay due to Court's managerial issues and incompetence on the majority of the stakeholders, save for most lawyers and elite part of the society. As such, the overriding decisive controlling factor should be to uphold justice and that parties are not punished by negligence or failures of the Court Officers or technological encounters. In the case of **MW Rice Millers Limited v. Mwasa Security Limited**, Civil Appeal No. 10 of 2022, High Court of Tanzania, Morogoro District Registry at Morogoro (unreported), this Court observed:

Having heard all what happened in filling this appeal, I am satisfied that electronic filing system had some challenges, thus the hard copy of the

Memorandum of appeal was filed on 24th February, 2022 but due to technological problems, the online filing was effected on 4th March, 2022. In such circumstances, any delay was not caused by the Appellant, if any, the blame may be directed to the Court itself for failure of the Court Clerk to observe the governing Rules on electronic filing.

Equally, in the case of **Josiah Zephania Warioba v. Bouygues Energies and Services**, Miscellaneous Application No. 28 of 2021 High Court of Tanzania Labour Division at Arusha (unreported) it was held:

According to the *Electronic Filing Rule 10 of the G. N. No. 148 JALA (Electronic Filing) Rules, 2018*, a document is deemed to have been filed when it is submitted and admitted. A party cannot be condemned due to technical error caused by the judicial staff, be it due to laxity or negligence on the part of the Court's staff or technical error in the filing system.

In my opinion, however, drawing the threads together, it seems to me that reading *Rule 21 of the Electronic Rules (supra)* and *Rule 3 along with Rule 5 (1) of the Court Fees Rules (supra)* in tandem will give unequivocal interpretation that submission and admission of a document electronically is not a conclusive proof of filing. For that reason, a Party

who delays to pay appropriate fees on time must seek extension of time in terms of *Rule 24 of the Electronic Rules (supra)* which provides:

24.-(1) The period during which electronic filing system is not in operation, for any reason, shall be excluded from the computation of time for filing. (2) Problems on the user's end, such as problems with the user's Service Provider (SP), hardware, or software problems, shall not constitute a sufficient reason for an untimely filing. (3) For the purpose of sub-Rule (1), the excluded time shall not extend the limitation period for such filing under the Law of Limitation Act, or any other written law. (4) Where electronic filing is done the Rules relating to time for the purposes of limitation shall be the same as those applicable to a conventional filing. (5) Where party misses a filing deadline due to technical problems referred to in sub-Rule (1) the party shall move informally and ex-parte the Registrar or the Magistrate in-charge not later than 15:00 hours of the following working day for appropriate relief. (6) Where the Registrar or Magistrate in-charge is satisfied that there was good cause for missing the deadline, he shall grant the request under sub-Rule (5) in writing.

In considerations of the above circumstances, a party who failed to submit his document due to technical issues afore stated under *Rule*

5 of the *Electronic Filing Rules (supra)* has a duty to make ex-parte informal application supported with tangible evidence such as a receipt, printout of the failed transaction or an affidavit of the necessary person or officer responsible on the transaction in issue. Though oral evidence has equal weight with documentary evidence, as it was celebrated in the case of **Loitare Medukenya v. Anna Navaya**, Civil Appeal No. 7 of 2018, Court of Appeal of Tanzania (unreported), it was the duty of the Applicant to support his oral evidence with electronic retrieved evidence. Upon satisfaction that the party was not negligent, the Court will deduct the time in terms of *Rule 6 of the Electronic Filing Rules (supra)*.

At this pace, it may be worth pointing out that *G.N Nos. 148 and 247 of 2018 (supra)* have attracted two different jurisprudential approaches properly to be termed two schools of thought as to when electronic filing of a document is deemed complete. The same were evidently stated by this Court in the case of **Emmanuel Bakundukize (Kendurumo) and 9 Others v. Aloysius Benedict or Rutaihwa**, Land Case Appeal No. 26 of 2020, High Court of Tanzania Bukoba District Registry at Bukoba (unreported), in which the Court observed *inter alia* that:

It is unfortunate that both *Rule 21 of the Electronic Filing Rules and Rules 3 of the Court Fees Rules* are

silent on the nexus of the electronic filing of documents and date of payment of Court fees and Presentation of the Conventional or manual documents for filing in Court as part of cherishing both introduction of new science and taking on board the traditional Rules of filing cases in our Courts.

The principles to be derived from the authorities forming part of the first school of thought is that; a document is considered to have been filed in Court if it is submitted through the electronic filing system before the time limited by the law. Supporters of the first school includes the cases of **Mohamed Hashil v. National Microfinance Bank Limited (NMB Bank)**, Revision No. 06 of 2020, High Court of Tanzania at Dar es Salaam; **Kitumbo Security Co. Limited v. VIMAJI and Sons Limited**, Civil Appeal No. 12 of 2020 High Court of Tanzania at Tabora (unreported); **Kaji Hamis Abdallah v. The Republic**, Miscellaneous Criminal Application No. 27 of 2021, High Court of Tanzania Musoma District Registry at Musoma (unreported) and **Hamza Hatibu and 12 Others v. Salima Saidi Juma**, Miscellaneous Land Application No. 41 of 2021, High Court of Tanzania Arusha District Registry at Arusha (unreported). In the latter case, the Court held:

Even though the exchequer receipt shows that the application was successfully filed on 28th June, 2021

but the document was submitted to the Court registry on 24th June, 2021 soon after being supplied with all necessary copies.

In the case of **Kaji Hamis Abdallah** (*supra*), it was held:

...The printout from JSDS II electronic filing system (Annexure A3 to the supporting affidavit) shows that the petition of appeal was filed on 29th September, 2020 at 18:24 hours and that it was admitted on 30th September, 2020 at 18:22 hours. Therefore, pursuant to *Rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018*, the appeal is deemed to have been filed on 29th September, 2020 when it was submitted through electronic filing system.

In the case of **Kitumbo Security Co. Limited** (*supra*), this Court while referring to *the Judicature and Application of Laws (Electronic Filing) Rules, 2018 G. N. No. 148 of 2018* made the following observation at page 3 of the ruling:

From its advent, this law recognized electronic filing of cases as a means of filing documents in Court. Mr. Kilingo claimed that he filed this appeal on 24th June 2020 via the Judicial Online Registration System (JSDS), I consulted the system to verify the assertion and I found that it true that the appellant filed this appeal on 24th June 2020.

The second school of thought by the Court, of which I support but with a different viewpoint, is of the position that; a document is deemed to be filed in Court when payment of Court fees is done and proof of payment of fees exhibited by the exchequer receipt. Supporters of second school includes the case of **Gratian Bernard Mali (Administration of Dovote T. Limited T/a Sasatel Tanzania v. Dr. Peter Jonas Chitamu and 2 Others**, High Court of Tanzania Commercial Division, Miscellaneous Commercial Application No. 40 of 2020; **Mwaija Omary Mkamba v. Mohamed Said Msuya and 2 Others**, Land Appeal No. 142 of 2020 High Court Land Division at Dar es Salaam (unreported), **Camel Oil (T) Limited v. Bahati Moshi Masabile and Bilo Star Debt Collector**, Civil Appeal No. 46 of 2020; **Misungwi Shilumba v. Kanda Njile** (PC) Civil Appeal No. 13 of 2019 (unreported); **Adamson Mkondya and Another v. Angelina Kukutona Wanga**, Miscellaneous Land Application No. 521 of 2018; **Msasani Peninsula Hotels Limited and 6 Others v. Barclays Bank Tanzania Limited and Others**, *Civil Application No. 192 of 2006*; and **Magreth Kajuna v. Huud Juma**, Miscellaneous Land Application No. 38 of 2020, High Court of Tanzania Bukoba Registry at Bukoba (unreported).

In the case of **Camel Oil (T) Limited v. Bahati Moshi Masabile and Another** (*supra*) In that case, the appeal was filed on 21/07/2020 but duly filed by paying appropriate fees on 30/07/2020 it was alleged that the Appellant filed his appeal online through an electronic system, *G. N. No. 148/2018 under the Judicature and the Application of Laws Act*. This Court while faced with similar issue, cited with approval the case of **Misungwi Shilumba** (*supra*) by observing that:

It is nowhere written in the law of electronic filing system that its advent has changed the law and/or the procedure of filing documents in Court in that a person who is filing his document in Court can pay Court fees at his own wish notwithstanding of time limitation and/or an order of the Court. That is not the gist of the law of electronic filing system in filing matters in Court.

Similarly, in the case of **Msasani Peninsula Hotels Limited and 6 Others** (*supra*), the Court held *inter alia* that:

No document is properly filed until fees have been paid.

In the case of **Magreth Kajuna** (*supra*), the Applicant claimed that science of this Court in electronic filing of appeal through judicial statistics Dashboard System (JSDS) had failed her in paying filing fees

within time. She contended that after submitting the said appeal online, she waited for generation of control number so as to pay for the Court fee but was not generated, this Court held:

I have gone through the application, submissions of the parties and Certification of Deputy Registrar of this Registry on the date of electronic registration of the appeal, that is 8th May, 2020, and I believe that the Applicant had filed her appeal within time as per requirement of the law in *Rule 21 (1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 G. N. No. 148 of 2018 (the Rules)*.

It is my considered view that the law in both *the Electronic Filing Rules (supra)* and *Court Fees Rules (supra)* needs to be read together. The reason being that it is one thing to submit a document electronically; it is quite another to properly file a document. It is the latter which gives the Court with jurisdiction to cause the file before the trial Magistrate or Judge and issue necessary orders including summons. This latter (though not the former) is *prima facie* a denial of the Party's right of access to the Court conferred by *the Court Fees Rules* and guaranteed by *Article 13 (1) and (3) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time*.

Therefore, the issue of paying appropriate fees in all its strict *sagacity* may properly be regarded as a cornerstone Rule, applicable in all circumstances save exceptional circumstances like those civil cases filed under former pauperis in terms of *Rule 9 of the Court Fees Rules (supra)* and criminal cases in terms of *Rule 7 (2) of the Court Fees Rules (supra)*. Though Courts are the institutions where the aggrieved go to seek justice, Court fees Rule is based on various needs: *One*, to protect the process of the Court from abuse. *Two*, to legalise the instituted case. *Three*, to avoid unnecessary suits. *Four*, to secure revenue for the State benefit. *Five*, to show readiness and seriousness of the parties. *Six*, it indicates jurisdiction of the Court on matters whose jurisdiction is assessed based on value of the subject matter.

With the above brief analysis, I will now turn to consider the matter in its totality. The application was made under the provision of *section 14 (1) of the Law of Limitation Act [Cap 89 Revised Edition 2019]* and supported with an affidavit sworn by the Applicant. The Respondent, however, in reply contested the application by filing a counter affidavit.

By consent of the parties this application was argued by way of written submission. The Applicant was represented by Mr. Moses Ndunguru, learned Advocate while the Respondent was represented by

Mr. Dickson Ndunguru, learned Advocate. The genesis of the matter as per Court record is as follows: The Applicant was the Respondent in *Matrimonial Cause No. 06 of 2021 before Mbinga District Court at Mbinga (herein after the Trial Court)*. He was aggrieved by the decision of the Trial Court which was delivered on 30th July, 2021. He lodged the appeal online on 8th September, 2021. The date was endorsed on the petition of appeal. On 16th August, 2021 the Applicant paid a Court fee through control number 991400487352. On 19th January, 2022 the petition was endorsed with Court seal that it was filed on 19th January, 2022.

On 5th April, 2022 when the case was scheduled for the hearing, the Counsel for the Respondent raised a point of preliminary objection that the appeal was filed out of time. Consequently, on 26th May, 2022 the appeal was struck out for being filed out of time. He made an application for the certified copy of the ruling on 30th May, 2022 and he was supplied with the same on 28th through a letter dated 21st June, 2022. Thereafter, the Applicant filed this application on 30th June, 2022. The striking out of the first appeal made the Applicant to be out of time hence this application.

The Applicant was of contention that; his delay was not actuated by malice but rather technical delay. He believed that the appeal had

been filed at Mbinga Registry timely and dispatched to the High Court for hearing. The Applicant told this Court that; it is impossible for him to prove the date when the Court fees was paid but only Court Officers who are in control of the system are in a position to prove that the Applicant paid within time through his control number. It was the Applicant's view that it was upon the Court to verify and not the Applicant.

The Applicant went on to aver that the impugned decision has some illegalities. The trial Court decided the case without determining the issue of presumption of marriage and awarded the Petitioner TZs 4,000,000/= (Four Million Tanzanian Shillings) based on un-pleaded facts. He insisted that for the interest of justice, the application be granted so that the Applicant's Constitutional right to be heard not be curtailed.

After scrutinizing the record, it is the finding of this Court that the pesky issue is; whether the Applicant has adduced sufficient reasons warranting grant of this application. In a dozen of cases, this Court has maintained that; there is no any statutory interpretation or definition on the word sufficient cause/reasons, but the Court of law through various decision has defined the word sufficient cause/reasons. To mention the few; the cases of **Tanga Cement Company Limited v. Jumanne D.**

Masangwa and Amos A. Mwalwanda - Civil Application No. 6 of 2001 (unreported), **Sospeter Lulenga v. the Republic**, Criminal Appeal No. 107 of 2006, Court of Appeal of Tanzania at Dodoma (unreported); **Aidan Chale v. the Republic**, Criminal Appeal No. 130 of 2003, Court of appeal of Tanzania at Mbeya, (unreported) and **Shanti v. Hindoche & Others** [1973] EA 207; **Republic v. Yohana Kaponda and 9 Others** [1985] TLR 84; **Allison Xerox Silla v. Tanzania Habours Authority**, Civil Reference No. 14 of 1998 Court of Appeal of Tanzania at Dar es Salaam (unreported); **Paison Lyanda v. Bahati Simkoko**, Misc. Civil Application No. 03 of 2015, High Court of Tanzania at Mbeya (unreported); **Moto Matiko Mabanga v. Ophir Energy PLC, Ophir Service PTY LTD and British Gas Tanzania Limited**, Civil Application No. 463/01 of 2017, Court of Appeal of Tanzania at Dar es Salaam (unreported); **CRDB (1996) Limited v. George Kilindu** Civil Application No. 162 of 2006, Court Appeal of Tanzania at Dar es Salaam (unreported) where the Court stated *inter alia* that:

What amount to sufficient cause has not been defined but from cases decided by the Court it includes among others, bringing the application

promptly, valid explanation for the delay and lack of negligence on the part of the Applicant.

In the case of **Loshilu Karaine and 3 Others v. Abraham Melkizedeck Kaaya (suing as Legal Personal Representative of Gladness Kaaya)**, Civil Application No. 140/02 of 2018, Court of Appeal of Tanzania at Arusha (unreported), the Court insisted that; what is good cause is a question of facts depending on each case, for that reason may and varied circumstances could constitute good cause in any particular case.

To start with the point of bringing the application prompt, this Court is of the findings that the decision which the Applicant want to challenge was delivered on 30th July, 2021. The Applicant lodged his appeal on time through online filing system on 8th September, 2021, paid a Court fee on 16th August, 2021. The application was endorsed on 19th January, 2022 as a result the appeal was struck out for being filed out of time. The question to be asked is at what time the case submitted electronically can be considered to be duly filed.

As alluded at the beginning part of this Ruling, Electronic filing system is guided by two Regulations: *The Judicature and Application of Laws (Electronic filing) Rules GN No. 148 of 2018* and *The Judicate and*

Application of Laws Act (The Court Fees) Rules, G. N. No. 247 of 2018.

Rule 21 (1) of the Electronic filing Rules provides inter alia that:

A document shall be considered to have been filed if it is submitted through the electronic filing system before mid-night, East African time, on the date it is submitted, unless a specific time is set by the Court or it is rejected.

Rule 21 (supra) has to be read together with Rule 22 of the same GN No. 148 of 2018 (supra) which read as follows:

Whenever documents filed with, served on delivery or otherwise conveyed to the Registrar or Magistrate In-charge using the electronic filing service and is subsequently accepted by the Registrar or Magistrate In-charge, it shall be deemed to be filed, served, delivered or conveyed.

After scrutinizing *Rules 21 and 22 (supra)*, this Court maintains; for the filing to be complete, payment of the appropriate fees must be made within the time limit stipulated by the law. Therefore, payment of requisite Court fee is not a Court invention but requirement of the Rule which has to be adhered to when a person filed his/her document to the Court as per *Rule 3 and 5 (1) of the Judicature and application of Laws*

Act (Court Fees) Rules, G. N. No, 247 of 2018 which provides *inter alia* that:

3. The fees for any matter shall unless otherwise expressly provided, be paid in accordance with these Rules.

5.-(1) for the purpose of this Part, *fees* specified in the first schedule to this Rules *shall be paid to the High Court, a Court of Resident Magistrate and District Court in respect of proceedings and matter other than those for which specified fees are prescribed under any other law.* [Emphasis added]

Rule 3 as well as Rule 5 (1) (supra) which provides for the requirement of payment of fee are enacted in mandatory terms. The word "shall" used in the quoted Rules compel any person who wants to file a document to the Court has to pay fees. Failure to pay the fees required as provided by the law render the process incomplete. This was the position in the case of **Gregory Raphael v. Pastory Rwehabula** (2005) TLR 99, where the Court had this to say:

...filing process is complete when the petition of appeal is filed upon payment of the requisite Court fees.

Indeed, Rules are enacted to provides the procedures on how things have to be implemented. In the case of **Mwaija Omary Mkamba v. Mohamed Said Msuya**, Land Appeal No. 142 of 2020, High Court of Tanzania Land Division at Dar es Salaam (unreported), where it was stated that:

The Rules are guiding procedures for filing document in Court electronically and does not remove the position of the law that, where Court fee is required to be paid for a document to be filed in the Court a document is deemed to have been filed when Court fees is paid.

Also, in the case of **Adamson Mkondya and Another v. Angelika Kokutona Wanga (As administrator of the estate of the late Stephen Angelo Rumanyija)**, Misc. Civil Application No. 521nof 2018, High Court of Tanzania at Bukoba (unreported). The Court has this to say:

The date of the presentation for filling cannot be treated as the date of filling the appeal because the Court of appeal held from time to time that, it is the date of payment of filing fees and not of lodging a document, which amount to the date of filing an action.

Being guided by the decision in the case of **Adamson Mkondya** (*supra*), it is crystal clear that filing a document electronically cannot waive the requirement of payment of Court fees. For the case to be regarded as duly filed, the parties must pay fee in accordance to the law. The same position was maintained in the case of **Stephano Mollel and 4 Others v. A1 Hotel and Resort Limited**, Revision Application No. 90 of 2020, High Court of Tanzania at Arusha (unreported).

In furtherance of the above reasoning, right from the outset, it is the view of the Court that the general purpose suggests that *Rule 21 of the Electronic Rules* cannot be interpreted in isolation because in effect, there is no conflict between *Rule 21 of GN No 148 of 2018* and *Rule 3 or 5 of G. N. No. 247 of 2018*. None of the Rules allows what another prohibits or prohibits what another allows. By fiat, there is no any ambiguity between them.

I do understand that *GN No. 148 of 2018* took effect on 13th April, 2018 and *G. N. No. 247 of 2018* took effect on 1st June, 2018. I further do understand that proponent of the first school of thought do not lay a dictum that fees should not be paid. However, the issue remains; on which point of time should appropriate Court fees be paid. In any case, both *GN 148 and 247 (supra)* are specific Rules. None is general to

cause the Court to apply the specific Rule. As such, the two GN have to be read conjunctively.

It is the further strong view of this Court that, it was created by the design of the rule-maker that *Rule 21 of the Electronic Rules* and *Rule 3 along with Rule 5 (1) of the Court Fees Rules* worked in tandem. After GN No. 148 came into force on 13th April, 2018, the rule-maker decided to create a new scheme through (*GN. No. 247 of 2018*) on 1st June, 2018 to facilitate the procedure of paying Court appropriate fees, and to that extent, from that time onwards, the Rule maker intended that the two GN should work alongside each other.

The new scheme revoked *the Court Fees Rules, 2015 GN No. 187 of 2015* but carried over the long-established rule requiring a party to pay appropriate fees. With that reasoning, the interpretation of the Court in *inter alia* cases of **Gregory Raphael** (*supra*) still subsists irrespective of the aftermath of coming into force of *GN No. 148 of 2018*.

It is the duty of the Court, therefore, to balance the dimension of futurity of technology application on electronic filing of documents with legal certainty, predictability, efficiency or fairness of the already settled law. To that effect, *GN. No. 148 and 247* have to be read together.

In this case, *Section 80 (2) of the Law of Marriage Act [Cap 29 Revised Edition 2019]* requires that; whoever wants to appeal against any decision of the trial Court have to appeal within forty-five (45) days from the date of the decision. For easy of reference *section 80 (2)* provides:

80.- (1) any person aggrieved by the decision or order of a Court of a Resident Magistrate, a District Court or a Primary Court in a matrimonial proceeding may appeal therefrom to the High Court.

(2) an appeal to the High Court shall be filed in a Magistrate Court within forty-five days of the decision or order against which the appeal is brought.

At paragraph 4 of the Applicant affidavit, the Applicant averred that he filed his appeal electronically on 8th September, 2021 paid the Court fees on 16th August, 2021 through control No. 991400487352 and the petition was endorsed on 19th January, 2022. If that was the truth then, the Applicant filed his appeal within 45 days which are provided by the law. But the Applicant has provided nothing to prove his allegation. Though the filing system moved from manual filing to the electronic filing but the procedures remain the same. That, when a party file a

case, a bill is generated at the registry office and sent to the client for payment in form of control number. (See the case of **Bakema Said Rashid** (*supra*).

Moreover, the client after paying Court fee, the cashier issues a receipt to prove the payment. Surprisingly, after going through the Court record, the Court has found nothing apart from control number which was mentioned by the Applicant at paragraph 4 of his affidavit, to prove the payment. It is this Court findings that, it would have been more reasonable for the Applicant to attach the receipt or affidavit of a necessary person to prove his allegation of paying the fees on time. In which I believe the payment date would have been indicated. This was also the position in the case of **Murzah Oil Mills Limited v. Kouk Oils and Grains Pte Limited**, Civil Application No. 105 of 2004, Court of Appeal of Tanzania sitting at Dar es Salaam (unreported). In **Murzah Oil Mills Limited Case** (*supra*), the Court allowed the application by relying on the date indicated on a photocopy of the Court Fee Receipt. If the Applicant could have attached the receipt, it would have helped this Court to ascertain clearly on the date when the fee was paid.

To the contrary, the Applicant has not offered any explanation as to why there is no either a receipt or any reliable document such as an

affidavit from a Court Officer, notably, a Court Cashier or Registry Officer who facilitated the payment. This was the decision in the case of **Kighoma Ali Malima v. Abas Yusuphu Mwangano**, Civil Application No. 5 of 1987 where the Court held inter alia that:

An affidavit of a person so material, as the Cashier, in this case has to be filed.

In the case **Bakema Said Rashidi v. Nashon William Bidyanguze** (*supra*) this Court added that; a Registry Officer who returned the petition manually was a person so material to the alleged fact, therefore his/her affidavit ought to have been filed.

Further, under paragraph 10 and 11 of the affidavits, the Applicant told this Court that it was not by malice rather technical delay, honest belief of the Applicant that the appeal had been timely filed at Mbinga Registry, and dispatched to the High Court for hearing. He further alleged that it was upon Court Officer who is in control of the judicial payment to verify if the payment was actuated in time. But there is no any affidavit from the Court Officers to whom the Applicant thought they will be able to prove and verify his payment.

After going through the record, the Court has noted that; the appeal was filed on 19th January, 2022. It was almost 175 days since the

decision was delivered. It is a cardinal law that, the Court record accurately transpires what happened in Court and not otherwise. (See the case of **Onesmo Alex Ngimba v. The Republic**, Criminal Appeal No. 157 of 2019, Court of Appeal of Tanzania at Mbeya (unreported)). The Court insisted on the significance of the authenticity of the Court record in the case of **Isaack Wilfred Kasanda v. Standard Chartered Bank Tanzania Limited**, Civil Application No. 453/01 of 2019, Court of Appeal of Tanzania at Dar es Salaam (unreported). Also, in the case of **Halfani Sudi v. Abieza Chichili** [1998] TLR 527.

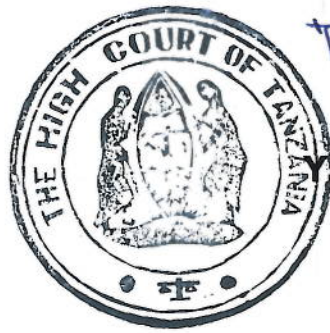
In alternative without prejudiced to the argument above, the Applicant at paragraph 12 of the affidavit alleged that the impugned decision has some illegality as the trial Court awarded subsequent relieves without determining the issue of presumption of marriage. The issue of illegality of the decision can be a good ground for the extension of time. That was the position of the Court in the case of **TanESCO v. Mufungu Leonard Majura and 15 Others**, Civil Application No. 94 of 2016, Court of Appeal of Tanzania at Dar es Salaam (unreported) where the Court has this to say:

...the fact that there is a complain of illegality in the decision intended to be challenged ... suffice to move the Court to grant the extension of time so

that the alleged illegality can be addressed by the Court.

Though the illegality of the decision can be a ground for granting the extension of time to the Applicant, the said illegality has to be apparent on the face of record. From the record, the trial Court awarded subsequent reliefs before determining the issue of presumption of marriage which was not right and unprocedural. (See the case of **Gabriel John Musa v. Voster Kimati**, Civil Appeal No. 344 of 2019, Court of Appeal of Tanzania at Dodoma (unreported)). Since there is nothing which can make the Court to rule that the Respondent will be prejudiced if the Applicant will be granted the extension of time to file his appeal in the Court out of time, the Court is of the findings that it will be inappropriate to deny the Applicant extension of time to lodge his appeal in the Court out of time because such denial will stifle his case. The same position was maintained by the Court in the case of **Mobrama Gold Corporation Limited v. Minister for Energy and Minerals and Others** [1998] TLR 425.

In upshot, taking a broad view of the merits, I find the point of illegality raised by the Applicant is a sufficient reason for extension of time. Therefore, the Applicant has to file his appeal within fourteen days from the day of certification of the copies of this Ruling. It is so ordered.

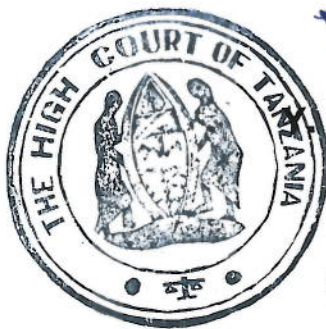


J. MLYAMBINA

JUDGE

18/10/2022

Ruling delivered and dated 18th day of October, 2022 in the presence of both parties in person.



J. MLYAMBINA

JUDGE

18/10/2022