

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC. CIVIL APPLICATION NO. 10 OF 2022

(Originating from the Misc. Civil Application No. 42 of 2017 of the High Court of Dodoma)

MSAFIRI OMARY SADALA APPLICANT

VERSUS

SALIMA MOHAMED.....1ST RESPONDENT

OMARY MSAFIRI SADALA.....2ND RESPONDENT

RULING

12/09/2022 & 03/11/2022

KAGOMBA, J

The applicant, MSAFIRI OMARY SADALA, seeks review of the order of this court dated 28/7/2021 which struck out the applicant's Misc. Civil Application No. 42 of 2017, for being improperly filed before the court, and allow the said application to be heard and determined on merit. The instant application is made under Order XLIII Rule 2 and Order XLII Rule 1(1)(b) of the Civil Procedure Code, [Cap 33 R.E 2019] being supported by affidavit of Fred Peter Kalonga, learned Advocate for the applicant. The applicant also prays for costs and any other reliefs.

The application was greeted by a Notice of preliminary objection, filed by Paul B. S. M. Nyangarika, learned Advocate representing OMARY MSAFIRI SADALA, the 2nd respondent. Three points of law have been raised as follows:

1. The application is time barred in law.
2. The relevant High Court judgment (sic) is not reviewable in law.
3. The application is wrongly assigned in law.

The court ordered the preliminary objection to be disposed by way of written submissions and both parties observed the scheduled dates of filing their submissions.

Before submitting on the above points of the preliminary objection, Mr. Nyangarika dropped the 3rd ground of objection, stating that it was no longer valid as the matter has already been re-assigned to the trial Judge who entertained the Misc. Civil Application No. 42 of 2017, which was the subject of review. Hence, only two grounds were argued upon. For reasons to be unveiled in due course, I shall dwell on the first ground of objection only.

Submitting on the 1st ground, Mr. Nyangarika contended that the application was filed out of the period of thirty (30) days prescribed for filing such an application under item 3 of Part III of the Schedule to the Law of Limitation Act, [Cap 89 R.E 2002] (Sic). He argued that, while the impugned order of the court was made on 28/7/2021, the application for review was filed on 4/4/2022, being 250 days out of the prescribed time. He described the application as an afterthought and prayed for its dismissal with costs.

Mr. Kalonga, in his reply, found the above objection misplaced and prayed for its dismissal, with costs, submitting that the application was not actually filed on 4/4/2022 but on 27/09/2021, electronically, after having obtained the typed order of the Court, on the same day. It was his further

contention that the bill for payment of court fees was created on 1/10/2021, and he paid the fees since 1/10/2021 as per exchequer receipt he attached to the written submissions.

Rejoining, Mr. Nyangarika, by and large, maintained his submission in chief.

As I stated earlier, having read the submissions by both parties, I found it compelling to dwell on the first ground of preliminary objection for a simple reason that if the application is truly time barred, as submitted by Mr. Nyangarika, the court shall have no jurisdiction to determine it. There is a long que of authorities on this settled position of the law, as can be seen, for example, in **Frank Lionel Marealle v Joseph Faustine Mawala, as a Legal Representative of Jennifer P. Lyimo, Deceased**, Civil Appeal No. 104 of 2020, CAT at Arusha. In fact, deliberation on the 2nd ground of preliminary objection would be rendered inconsequential.

Mr. Nyangarika has referred this court to the time set under item 3 of Part III of the Schedule to the Law of Limitation Act, [Cap 89 R.E 2019] for this type of application to be filed. Indeed, it has not been a matter of contention that there were only thirty (30) days for the applicant to file his application for review. Therefore, counting thirty (30) days from 28/7/2021, being the date of the impugned order, the time for the applicant to file his application elapsed on 27/8/2021.

However, Mr. Kalonga told the Court that the application was filed through electronic filing system on 27/09/2021, having received a copy of a

typed order on the same date. He also submitted that the bill for paying Court fees was created on 1/10/2021. He even attached to his written submission, the payment bill and the exchequer receipt thereof. Under such circumstances, the first has first to determine the date of filing of the application and then determine whether the application was filed out of time.

There are two Rules governing the first issue above, which were expertly-elaborated by my learned brother Hon. Mlyambina, J in the very recent Ruling in **Maliseno B. Mbipi v Ostina Martine Hyera**, Misc. Civil Application No. 08 of 2022, High Court, Songea District Registry. The Rules are those governing electronic filing and court fees payment, being the Judicature and Application of Laws (Electronic Filing) Rules, 2018 [G.N No. 148 of 2018] and the Court Fees Rules, 2018 [G.N 247 of 2018] respectively. As correctly expounded by Hon. Mlyambina, J in the above cited Ruling of this court, the two Rules are to be read together to find the relevant date of filing.

According to rule 21(1) of the Electronic Filing Rules (Supra) a document shall be considered to have been filed, if it is submitted through electronic filing system before the time limited by the law. Whereas, in terms of rule 3 and rule 5(1) of the Court Fees Rules (Supra), a document is considered to be filed in Court when Court fees are paid in accordance with the scale provided by the law. There are different views expressed by this court on this point, which I shall, however, not endeavour to discuss in this rather straightforward matter. Suffice to state here that an extensive exposition made by Hon. Mlyambina, J on this subject is more than convincing.

Reading the two pieces of subsidiary legislation together, I join hand with my brother Hon, Mlyambina, to find that the legal position is that, a document is deemed to be filed in court, not on the date it was submitted in the system, but when its prescribed fees were paid and such payment exhibited by an exchequer receipt to that effect. In that regard, the application at hand having been submitted in the system on 27/9/2021 at 16:06:24 was deemed to have been filed on 01/10/2021 when the appropriate court fees were evidently paid.

Based on the above deliberations, it is apparent that from the date when the court order was made, that is 28/07/2021 to 1/10/2021 when the application was duly filed, a total of sixty-five (65) days had elapsed, which makes the application to have been filed out of the prescribed time of thirty (30) days as aforesaid, hence the same is time barred.

There is yet one more argument to be considered. Mr. Kalonga raised a contention that the applicant received the typed order on 27/09/2021, arguing, in effect, that there was delay in supplying him with the same, which the court must consider. The law is very clear. Under the provision of section 19(2) of the Law of Limitation Act (Supra), in computing the period of limitation prescribed by the law, the court is required to exclude the period of time requisite for obtaining a copy of the decree or order subject of the intended review. However, for the court to consider such delay, the same must be established by the applicant.

The above contention by the applicant is obviously unfounded as there was no tangible explanation from Mr. Kalonga to show that the applicant

sought for a copy of the impugned court order and could not be supplied the same before 27/08/2021. It is not difficult to know where the fault lies in this matter. While the applicant was able to attach, in his written submissions, a copy of the Exchequer receipts No. FH534031633066230 dated 01/10/2021 as well as a copy of JSDS print out, to support his argument, no such proof was made to show that he applied for a copy of the court order in time or at all.

It is, therefore, apparent that there was laxity on part of the applicant, which supports the assertion by Mr. Nyangarika that the application has come as an afterthought.

For the above reasons, the 1st ground of preliminary objection that the application is time barred, has merit and the same is sustained. Having so decided, I shall not labour on the 2nd ground of objection for the reason already stated earlier.

Accordingly, the application is dismissed for being time barred. But, as the court was intimated that the parties are relatives, I make no order as to costs.

Dated at Dodoma this 03rd day of November, 2022.




ABDI S. KAGOMBA

JUDGE