

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**MISCELLANEOUS CIVIL APPLICATION NO. 29 OF 2021**

*(Originating from Shinyanga District court in civil Appeal No. 03/2020)*

**PANTALEO MARTINE CHUWA .....APPLICANT**

**VERSUS**

**AMOS MASESA MAHONA.....RESPONDENT**

**RULING**

10 March, 2022

**A. MATUMA, J.**

The applicant had his Civil Appeal No. 3 of 2020 in this court dismissed for want of prosecution. The dismissal was made by Judge Mdemu on 17<sup>th</sup> June, 2021.

He has thus preferred this application to have the dismissal order set aside.

The Respondent has raised a preliminary objection to the effect that this application is time bared. At the hearing of this application both parties were present in person unrepresented.

The Respondent submitting on the preliminary point of objection stated that, the Applicant has brought this application after the elapse of 61 days from the date when the appeal was dismissed instead of bringing the same within 30 days.



The Applicant on his party, contended that he received a copy of the dismissal order on 20/7/2021 and lodged this application on 18/8/2021 and thus he was in time.

It is the law as per part three of the schedule to the law of Limitation Act, Cap. 89 R.E 2019 that, application for an order to set aside a dismissal order of the suit must be done within 30 days.

The applicant is wrongly calculating the thirty days from when he received the copy of the dismissal order. Under the law, time starts to count from the date of the dismissal.

I therefore agree with the respondent that this application is time barred. In accordance to section 3(1) of the law of Limitation (supra) any proceedings instituted after the period of limitation shall be dismissed.

I therefore dismiss this application for being filed out of time. The applicant should obtain leave of the Court for extension of time before he lodges his application to have the dismissal order set aside.

No orders as to costs. It is so ordered.



  
**A. MATUMA**  
**JUDGE**  
**10/3/2022**