

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC CIVIL APPEAL No. 42 OF 2021

ALEX ENOCK..... APPELLANT

VERSUS

SARIAKE COMPANY LIMITED (PAUL KIDINGI) RESPONDENT

JUDGMENT

10th February & 24th March 2022.

TIGANGA, J.

This appeal emanates from the decision of the District Court of Nyamagana, Hon. Ryoba- RM in Miscellaneous Civil Application No. 01 of 2021 which dismissed the appellant's application for setting aside the dismissal order in Civil Appeal No. 26 of 2020 which was dismissed for want of prosecution.

Its origin can be traced from Civil Case No. 425 of 2019 before the Mwanza Urban Primary Court where the respondent herein sued the appellant for Tshs 10,633,700/= and was awarded Tshs 9,633,700/= plus the costs of the suit. The appellant (the then defendant) was dissatisfied with the decision and decided to appeal to the District Court of Nyamagana in Civil Appeal Case No. 26 of 2020, the appeal which was later, on 30th November, 2020 dismissed for want of prosecution after the appellant and his counsel had failed to appear when the matter

was called for hearing. The appellant was again dissatisfied with the dismissal order and lodged a Misc. Civil Application No. 01 of 2021 for setting aside the said dismissal order and to have the dismissed matter readmitted. Yet again his application was dismissed after the respondent had successfully raised a preliminary objection that the suit was time barred. The appellant is now appealing against the decision of the District Court which dismissed the application for setting aside the dismissal order for being time barred and in doing so, the following are the grounds upon which the appeal has been preferred;

1. That the Honourable Magistrate grossly erred in law and fact for holding that the Miscellaneous Civil Application No. 01 of 2021 was time barred.
2. That he Honourable Magistrate grossly erred in law for importing section 18 of the Evidence Transactions Act, 2015 (sic) (on authenticity) which applies in evidence and not to the circumstances of this case.
3. That the Honourable Magistrate grossly erred in law and fact for failure to discharge his duty by tracing court's file the date the Miscellaneous Application No. 01 of 2021 was electronically filed

and when the payment were made which could tally with the documents attached produced in the Court by the appellant.

It is the appellant's prayer that this appeal be allowed with costs, the Magistrate's decision be set aside and Misc. Civil Application No. 01 of 2021 be heard on merits.

When the appeal was called on for hearing on 5th October 2021, it was ordered that it be disposed of by way of written submissions and a filing schedule was set. The parties conformed to the filing schedule by filing their respective submissions. The appellant filed his submission which was drawn by Mr. Marwa Samwel who was engaged for drawing only, while Mr. Steven Mhoja drew and filed the submission for the respondent.

It was submitted for the appellant with regard to the first ground of appeal that the said Misc. Civil Application No. 01 of 2021 was filed electronically on 21st December, 2020 at 15:37:54 pm via the Court's online case registration system followed by payments that were made on 22nd December 2020. He went on submitting that the said application was lodged before midnight as required by the law i.e rule 21(1) of the Judicature and Application of Laws (Electronic filing) Rules, 2018.

He contended further that filing through online system is well recognised as a means of filing a document in court and to cement on that contention he referred this court to the case of **Mohamed Hashil vs National Microfinance Bank**, Labour revision No. 106 of 2020 HC (unreported).

On the second ground of appeal, it was submitted that Misc. Civil Application No. 01 of 2021 did not involve Electronic Transaction Act, 2015 but the Judicature and Application of Laws (Electronic Filing) Rules, 2018 thus in that regard the Honourable Magistrate was wrong to import section 18 of the Electronic Transaction Act, 2015.

Submitting on the third ground of appeal regarding the failure of the trial Magistrate to trace the day the Misc. Civil Application was electronically filed he submitted that the Magistrate did not take time to peruse the court file to see the date the said application was electronically filed and the day the payments were made. It was further submitted on that point that, had he done that he would have come across that information and would therefore have discharged his duty and come up with the right decision.

Replying to what was submitted in chief, the counsel for the respondent submitted with regard to the first ground of appeal that, he

vehemently disputes that the application in question to have lodged within time, because according to him the same was lodged on 30th January 2021 therefore it was time barred.

He submitted that an application to set aside the dismissal order is required to be made within thirty days from the date the said order was made as provided under item 4 part III of the schedule to the Law of Limitation Act [Cap 89 R.E 2019]. He went on submitting that since the appellant's application was out of time, he was required to first pray for leave before lodging his application.

It was further submitted on that ground that, even though the appellant stated to have filed his application on 21st December 2020 and to have effected the payment the following day, it is on record that he presented his application for filing on 15th January 2021 and filed it on 30th January, 2021 which was out of time thus even the cited case of **Mohamed Hashil vs National Microfinance Bank** (supra) is distinguishable and cannot cover the circumstances of this matter.

With regard to the second ground of appeal, the counsel for the respondent submitted that the Honourable Magistrate was right to invoke section 18 of the Electronic Transaction Act, 2015 for want of authenticity of documents as the appellant purported to file the

application electronically and brought the documents allegedly printed out from an electronic device, then he was legally bound to prove that the procedure for tendering and accepting the said documents was dully adhered to. He was of the opinion that the said requirement was within the ambit of the law and that no one was prejudiced.

He cited the case of **Simbanet Tanzania Limited vs Sahara Media Group Limited**, Commercial Case No. 02 of 2016, HC at Dar es Salaam (unreported) in which the court referred to section 18(2) of the Electronic Transactions Act of 2015 explaining what must be considered in determining admissibility and evidential weight of a data message. He added that without adhering to the requirements of the law stated in the cited case, the applicant sought to tender the print outs purported to emanate from the payments made online.

Submitting on the third ground of appeal, counsel for the respondent cited section 110(1) of the Evidence Act stating that it was required of the applicant and not the court's duty to prove when the application was electronically filed in order to resolve the dispute as to when exactly the electronic filing was done. To do that, it was the respondent's view that the applicant ought to have obtained the affidavit of the Resident Magistrate in charge to support his allegations, failure of

which the court was entitled to draw an adverse inference. He cited the case of **Hemedi Saidi vs Mohammedi Mbilu** [1984] TLR 113 to that effect.

Winding up his submission, counsel for the respondent cited section 33(1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 stating that the appellant has failed to substantiate his allegations by failure to either summon material witnesses or by failure to produce evidence to prove that the application was filed within time. He thus prayed this court to draw adverse inference and rule in his favour on account of such failure by the appellant to prove that important fact by dismissing this appeal with costs.

In his rejoinder, the appellant submitted that according to the law governing electronic filing of documents in court, it is required that before submitting the document in court, it has to first be filed electronically in the JSDS account and given control number to pay for the filed document. Also that, according to section 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 a document shall be considered to have been filed if it is submitted through the electronic filing system before midnight East Africa time on the date it is submitted.

He reiterated his submission that the application in question was filed on 21st December 2020 at 15:37:54 pm via court's online case registration system and was assigned control no. 991400357272 and that on 22nd December 2020 the payment was made at 16:48:08. The hard copy was filed on 31st January 2021. He submitted that the application in question was filed after 21 days which was within the prescribed time of 30 days as provided by the Law of Limitation Act (supra).

It was the appellant's further submission that it is now settled that attachment of documents to the written submission is necessary if there is existence of a fact that needs proof and that he did that by attaching the JSDS electronic case registration printout and receipts to prove that the application was lodged in time. He cited the cases of **Winifrida Kokuleba Sylvery vs Frank Isdory & 2 Others**, Land Case No. 29 of 2019 (unreported) and **Gervas Masome Kurwa vs Returning Officer & Others** (1996) TLR 320 to that effect. He concluded his rejoinder submission by praying to this court to allow the appeal with costs, set aside the magistrate's decision and an order that the Misc. Civil Application No. 01 of 2021 be heard on merits.

From these submissions made by the parties, in support and against the appeal, the key question to be asked at this point requiring this court's determination is whether or not the grounds of appeal raised by the appellant have merit.

I will begin tackling the raised grounds one after the other. In the first ground of appeal, the appellant's complaint is that the Honourable Magistrate erred in holding that the Miscellaneous Civil Application No. 01 of 2021 was time barred. It was the appellant's submission that the application in question was not time barred as it was submitted online on 21st of December 2020, given a control number and the payment was made the following day on 22nd December 2020. The respondent however held a contrasting opinion to the effect that the application in question was filed out of time as the records show that the application was present for filing on 15th January 2021 and filed it on 30th January, 2021 it was thus time barred.

The law governing applications for setting aside dismissal orders is the Law of Limitation Act [Cap 89 R.E 2019] and in particular part III, item 4 of the schedule to the said law which provides that;

"for an order under the Civil Procedure Code or the Magistrates Courts Act, to set aside a dismissal of a suit- 30 days"

When one applies the above quoted authority and counting from the 30th November 2020 which was the day the dismissal order was made, it is without argument that the deadline for an application to set aside the dismissal order was 29th December 2020.

As already stated above while summarizing the arguments put forward by the counsel for the respondent, he insisted that the application in question was filed out of the prescribed time and in the said submissions he mentioned two different dates that is on 15th January 2021 and 30th January 2021.

The appellant however submitted that the application was filed electronically on 21st December 2020 before midnight as per rule 21(1) of the Judicature and Application of Laws (Electronic filing) Rules, 2018 and thus within the time prescribed by law. According to the above mentioned rule, which states?

"a document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the

date it is submitted, unless a specific time is set by the court or it is rejected”

Not only submitting hard copies for filing is recognized but also submitting them online through electronic filing. So, when parties submit their documents in court through online system those documents are deemed to have been filed. However, when they are submitted online, a party is required to submit also hard copies of the said documents.

Now back to the issue in this ground of appeal which is whether or not the application was filed within time. With the view to satisfying myself as to whether or not the application in question was filed within the prescribed time, I did pass through the electronic printout submitted by the counsel for the appellant which contains the name of the court in which the application was submitted, the type of the case submitted, names of parties, the date on which the application was submitted and time and status of the application as to whether or not it was submitted.

Also, a copy of the receipt showing among other things control number, the amount of fees paid, receipt number and the date on which the payment was made. Upon scrutiny of the said printouts, I have noticed that the application was indeed submitted on 21st December 2020 at 15:37:54 and the fees were paid the following day that is on

22nd December 2020 which was well within the time prescribed by law that is 30 days from the date the dismissal order was made.

Since, electronic filing is legally recognised as one of the means of filing the documents in court, then submitting the application on 21st December 2020 via online system followed by the payment of fees on 22nd December 2020 can undisputedly be considered as filing the application within time. The first ground is found to have merits, it is allowed.

On the second ground of appeal which carries the complaint that it was not right for the court to import section 18 of the Electronic Transactions Act, 2015 to the circumstances of the case, the answer to this issue has partly been answered when dealing with the first ground of appeal that as long as the evidence of the printouts has proved that the application was filed within the statutory prescribed time, then I strongly believe that section 18 of the Electronic Transactions Act (supra) cannot be used to question the authenticity of the said printouts as they originate from the court's system which its authenticity unquestionably reliable.

It may be possible and that is the fact that the printout has not been authenticated by logging in the system and there is not proof of

authentication attached with the application or submission but with the system which is controlled by the judiciary and the Hon. Magistrate could easily access then it is my view that, failure to authenticate the printouts not only un changes the fact that the application was filed within time but also it is curable. The second ground of appeal also found meritorious. It is allowed.

As to the third ground of appeal which raises the complaint that, the Honourable Magistrate grossly erred in law and fact for failure to discharge his duty by tracing court's file the date the Miscellaneous Application No. 01 of 2021 was electronically filed and when the payment were made which could tally with the documents attached produced in the Court by the appellant. I believe this has been dealt with and resolved when discussing the second ground of appeal. I wish to add no word on that.

In the upshot, this appeal is found to be meritorious and it is hereby allowed I declare that Miscellaneous Civil Application No. 01 of 2021 was filed within time as elaborated above. The decision of the District Court which dismissed Miscellaneous Civil Application No. 01 of 2021 is set aside thereby restoring the said application for the same to

be heard on merits before the same District Court. The costs of this appeal be in due cause.

It is accordingly ordered

DATED at **MWANZA** this 24th day of March, 2022.



J.C. TIGANGA

JUDGE

ORIGINAL