

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

MISC. LAND APPLICATION NO. 31 OF 2022

(C/F a Ruling of this court in Misc. Land Application No. 7 of 2022. Original Case Land Application No. 2 of 2021 before the District Land and Housing Tribunal for Moshi)

TIMAMU BILLY MZIRAY.....APPLICANT
VERSUS
SARIA RINGO..... 1ST RESPONDENT
DASTAN MZIRAY.....2ND RESPONDENT

RULING

Date of Last Order: 9.02.2023

Date of Ruling: 21.2. 2023

MASABO, J.:-

This ruling is in respect of a two limbed preliminary objection raised by the respondent. In the first limb they have asserted that the present application for leave is incompetent for being time barred and in the second they have asserted that the court has been wrongly moved. Hearing of the preliminary objection proceeded in writing. The respondents who were represented by Mr. Charles Mwanganyi, argued that leave is sought against a ruling of this court which was delivered on 1/6/2022. As per Rule 45 of the Court of Appeal Rules, 2009 the leave ought to have been sought in 30 days but the instant application was filed on 6th July 2022 which was approximately 36 days hence time barred. On the second limb of the preliminary objection, he submitted that this court has been wrongly moved under Section 47(1) of

the Land Dispute Court Act Cap 216 RE 2019] instead of Rule 45(1) of the Court of Appeal Rules.

On his part, the applicant while not disputing the argument that the application ought to be filed in 30 days, he has submitted that the application is not time barred as he submitted the same electronically on 30/6/2022 hence within time. Fortifying his argument, he reasoned that Rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, G.N. No. 148 of 2018, a pleading is deemed filed upon being submitted electronically. He further cited the case of **Mohamed Hashil v NMB Bank Ltd**, Revision No. 106 of 2020, HC Labour Division and **Pastor Baraka E. Mshuma v Stanley Eliphas Mra**, PC Civil Appeal No. 132 of 2021. HC (Dar es Salaam) which concurrently held in support of the argument that once a document is submitted electronically, it is deemed to have been filed. On the second point, he submitted that the court was properly moved under section 47(1) of the Land Dispute Courts Act as the application being challenged emanate from a land dispute, that is, Land Application No. 2 of 2021. He proceeded that even if it is found by this court defective, the defect is curable as per the Court of Appeal in **Bin Kuleb Transport Company Limited v Registrar of Titles**, Civil Application No. 522/17 of 2020.

I have dispassionately considered the submissions by both parties. I will now proceed to determine the preliminary objection starting with the 2nd limb in which the respondents have argued that the court has been wrongly moved. With great respect to the counsel, this limb is without merit considering that,

the chamber summons has cited several provisions including, Section 5(1) (a) of the Appellate Jurisdiction Act [Cap 141 RE 2019] which sets out the requirement for leave and Rule 45 (a) of the Court of Appeal Rules, 2009 which as per the respondents' counsel submission is the applicable law. There seem to be a lucid misdirection on Mr. Mwanganyi's side. Had he correctly directed his mind and carefully examined the chamber summons he would not have raised this limb of the PO. That said, I will not allow myself to belabor on this point. Suffice it to just add that, even if I were to find that the court has been wrongly moved the application would not be rendered incompetent by a wrong citation of the enabling law. This court, being a court of justice, is enjoined to dispense substantive justice. If this point was to fail, it was crucial for the respondent to demonstrate how the defect impends justice on his party. Since the respondents did not even attempt to demonstrate how their case would be prejudiced by the wrong citation it is obvious that the defect, if any, would not have prevented the dispensation of justice hence curable under section 3A and 3B of the Civil Procedure Code [Cap 33 RE 2019]. The second limb of the preliminary objection is thus overruled.

Reverting to the first limb of the preliminary objection, it is indeed trite that litigants should strictly comply with the time for institutions of respective court actions else the court's diary will be at a serious mess and there will be no finality to litigation. Non observance of time constitutes a fatal irregularity and attracts severe consequences ascribed under section 3 of the Law of Limitation Act [Cap 89 RE 2019] which provides for dismissal of matters filed

out of time. The respondent has argued and it is indeed true that, the time limitation within which to apply for leave to appeal to the Court of Appeal is 30 days. It is similarly correct that since the ruling sought to be challenged was delivered on 1st June 2022, the present application ought to have been made within 30 days reckoned from this day.

Institution of the same on 6th July 2022 would certainly entail that it was time barred. The Applicant has argued that the application was not filed on this date. It was electronically submitted on 30/6/2022. He has, in fortification, produced a printout from the Judiciary Statistics Dashboard System (JSDS) showing that the application was electronically submitted on 30/6/2022 at 16:34:36. Further, he has argued that after submitting the same electronically, it was not admitted until a week later and the hard copies submitted were stamped on 6th July 2022.

The respondents have argued that, I should not accept this argument as the print out shows the date on which the application was admitted and the applicant has himself admitted that the documents were admitted a week later on 6th July 2022. He has argued further that the printout should not be relied upon is that it has an inconsistency on serial No. 84 and 65 hence entertains a doubt on its authenticity. However, in my scrutiny of the printout, I was unable to discern the anomaly asserted as serial No. 65 bears Misc. Land Application No. 7 of 2022 between Anastazia Kimaro and Isaria Ringo and Dastan Mziray submitted on 4th February 2022 whereas in serial no. 84 is the preset application, Misc. Land Application No. 31 of 2022

between Timamu Billy Mziray v Isaria Ringo and Dastan Mziray, submitted on 30/6/2022 at 16:34:38. It need not be overstated that, to warrant a factual or legal finding in his favor as regards the asserted confusion, the respondent's assertion ought to have been accompanied by better particulars. Since none was provided, I have no basis upon which to make a legal or factual finding on the same.

Still on the date of submission of submission and filing, the counsel for the applicant has submitted that the appeal was ready and was electronically submitted on 30/6/2022. The submissions by the parties revolve the two prevailing schools developed by this court following the promulgation of the Judicature and Application of Laws (Electronic Filing) Rules, G.N. No. 148 of 2018 which ushered into our jurisdiction rules regulating electronic filing of court pleadings. Rule 21(1) which being contested state thus:-

21. -(1) 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.'

Whereas both parties agree that pleadings instituting court proceedings can now be filed electronically, they contend over the time at which the document so filed can be deemed to have been admitted and the application/matter it seeks to institute, duly instituted. The applicant is of the view that, the mere submission of the document electronically suffices

whereas the respondent, is of the view that, that alone do not suffice. For an application or matter to be deemed to have been instituted, it must have passed the subsequent steps, namely review that being admitted by a Deputy Registrar of the respective High Court Registry and payment of filing fees.

Their arguments revolve around the two divergent schools developed by this court while interpreting the rule above. On the one hand and in line with the applicant's argument, it has been held by this court in the cases cited by the applicant and in numerous other decisions that the provision above is concise in its literal meaning and need no interpretation other than that the submission of a document electronically in the JSDS suffices as proof that the pleading is filed or where it is instituting a proceeding, that the said proceeding has been duly instituted.

The second school on the other hand holds that, submission of the pleading whether done electronically or physically does not suffice as evidence that the said pleading has been cited. According to this school, for a pleading to be deemed to have been filed, there must be proof of payment of court fees. Summarizing these two divergent schools, this court in **Emanuel Bakundukize (Kendurumo) and Others v. Aloysius Benedictor Rutaihwa**, Land Case Appeal No. 26 of 2020 expounded the two positions as follows:

'The First school of thought in this court is of the opinion that the filing of an appeal/application is considered when

the appeal/application is electronically registered in this court, regardless of payment of the fees and date of filing hard copies (see: **Mohamed Hashil v. National Microfinance Bank Ltd** (NMB Bank) (supra). The reasoning of this school is that the electronic system is recognized by the law as a current means of filing documents in our courts as per the Electronic Filing Rules. The other school thinks that it is upon payment of court fees where registration is said to have been initiated (see: **Camel Oil (T) Ltd v. Bahati Moshi Masabile & BiloStar Debt Collector** (supra) and **Mailande Augustine Mpemba v. Pius Rwegasira & Two Others**, Land Appeal No. 23 of 2020). The reasoning of this school is that the law in Electronic Filing Rules has not changed the law, procedure and practice of payment of court fees to be the recognition of registration of suits in courts.'

Other decisions in favour of this school include: **John Chuwa v. Athony Ciza** [1992] TLR 233; **Camel Oil (T) Ltd v. Bahati Moshi Masabile & Bilo Star Debt Collector**, Civil Appeal No. 46 of 2020; **Misungwi Shilumba v. Kanda Njile**, (PC) Civil Appeal No. 13 of 2019 and **Adamson Mkondya & Another v. Angelina Kukutona Wanga**, Misc. Land Application, No 521 of 2018. Thus, since the fees in the present application appears to have been paid on 6th July, it is obvious that, as per this school to which I fully subscribe, the application was time barred.

Accordingly, I uphold the first limb of the preliminary objection and proceed to dismiss the application under section 3(1) of the Law of Limitation Act, for being barred by time. Costs on the applicant.

DELIVERED and **DATED** at **MOSHI** this 21st day of February 2023.

X



Signed by: J.L.MASABO

J.L. MASABO

JUDGE

