

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 395 OF 2022

HOOD TRANSPORT COMPANY LIMITED APPLICANT

VERSUS

WODEGHIORGHIS ASGHEDON 1ST RESPONDENT

NIKO INSURANCE TANZANIA LTD 2ND RESPONDENT

(Arising from the decision of this Court in Civil Appeal No. 103 of 2018)

RULING

3rd and 28th February, 2023

KISANYA, J.:

The applicant seeks an order for extension of time to file review against judgment and decree of this Court in Civil Appeal No. 103 of 2018. The application is brought under section 14(1) of the Law of Limitation Act [Cap. 89, R.E. 2019] and is supported by an affidavit deposed by her advocate one, Ignas Seti Punge.

Briefly stated, on 19th July, 2021, the applicant's appeal against the judgment and decree of the Resident Magistrate's Court of Morogoro at Morogoro in Civil Case No. 4 of 2012 was struck out with costs by this Court (Rwizile, J) in Civil Appeal No. 103 of 2018. Not amused, the applicant filed

Civil Review No. 14 of 2021. On 29th July, 2022, this Court dismissed the said review for being time barred. Thus, the applicant decided to lodge the present application which is being contested by the respondent. Apart from filing a counter-affidavit, the 1st respondent lodged a notice of preliminary objection on the following point of law:

"Following the dismissal of the applicants application for review namely, Civil Review No. 14 of 2021 by this Honourable Court on 29th July, 2022 (Hon. Rwizile, J) this application is incompetent for being res-judicata."

When the matter came up for hearing of the preliminary objection, the 1st respondent was represented by Mr. Evodius Rutabingwa, learned advocate while the applicant defaulted to appear without notice. As for the 2nd respondent, there was no proof that he was served by the applicant. In the circumstances, the preliminary objection proceeded ex-parte against the applicant.

In his submission in support of the preliminary objection, Mr. Rutabingwa submitted that following the dismissal of Civil Review No. 14 of 2021, the applicant is seeking to file another review and thus, attempting to re-open the matter. It was his argument that, having dismissed the original application for review, this court is *fanctus officio* and thus, any attempt to bring a fresh

application is incompetent for being res-judicata. The learned counsel further argued that the remedy available is to lodge an appeal to the Court of Appeal. To cement his argument, Mr. Rutabingwa cited the case of **East African Development Bank vs Blueline Enterprises Limited**, Civil Appeal No. 101 of 2009, CAT at DSM (unreported). Finally, he urged the Court to dismiss the application with costs.

After considering the submission of the learned counsel, chamber summons and affidavit, the main issue is whether the application is incompetent for being *res-judicata*.

It is not in dispute that, in the supporting affidavit, it was deposed that the applicant filed an application for review against the decision of this Court in Civil Appeal No. 103 of 2018. At this juncture, I find it appropriate to revisit the holding of this Court in Review No. 14 of 2021 at page 2 of the judgment as follows:

*"It is therefore crystal clear, that since the judgment to be reviewed was delivered on 19th July, 2021, filing application on September, 17th was out of 30 days required by the law. It is indeed out of time. **Under section 3 of the Law of Limitation Act, matters filed out of time, must be dismissed, as I hereby do. I do it with costs. This point***

disposes of the application, there is no need to deal with other grounds."

In the bolded expression, it is glaring that the applicant's application for review was dismissed for being lodged out of time. It is thus clear that the outcome of this application is to enable to applicant to lodge another application for review after the previous application was dismissed for being lodged out of time. The question that arises is whether the present application for extension of time to file review against the same decision (Civil Appeal No. 103 of 2018) is competent.

The law is settled that that dismissal of the matter implies that the matter in question was competent, determined and disposed of. I am fortified, among others, by the case of **Ngoni - Matengo Co-operative Marketing Union Ltd. v Alimahomed Osman** (1959) EA 577 where it was held that:

*"What this court ought strictly to have done in each case was to "strike out" the appeal as being incompetent, rather than to have "**dismissed**" it; **for the latter phrase implies that a competent appeal has been disposed of**, while the former phrase implies that there was no proper appeal capable of being disposed of. (Emphasis added)*

Being guided by the above position, I hold the view that the application for review against the decision subject to this application was determined and

disposed of by this Court in Civil Review No. 14 of 2021. That being the case, no proper application for review against the same decision is capable of being disposed of by this Court. On that account, I agree with Mr. Rutabingwa that the applicant is barred from lodging the present application which aims at bringing up the dismissed application for review. It is a trite law that a court cannot extend time to determine an application which was dismissed by it. In the case of **East African Development Bank** (supra) cited by Mr. Rutabingwa, the Court of Appeal had this say on the issue under consideration:

*"It follows that once an order of dismissal is made under **section 3 (1)** it is not open to an aggrieved party to go back to the same court and institute an application for extension of time. The remedy is to seek review before the same court or to lodge an appeal or a revision before a higher court. The rationale is simple. That is, as far as the court is concerned the issue of time limitation has been determined. So, a party cannot go back to the same court on the same issue. **It follows that, after the order of dismissal was made by Mandia, J. on 22/6/2007 it was not open to the appellant to go back to the same court and institute the application for extension of time before Sheikh, J. In short, the application before Sheikh, J. was res judicata.**"*

In the light of the foregoing, ~~that~~ the issue of time limitation subject to application for review of Civil Appeal No. 103 of 2018 was determined by this Court (Rwizile J.) in Civil Review No. 14 of 2021 on 29th July, 2022. Thus, the present application is *res judicata* as held in the case of **East African Development Bank** (supra)

For the reasons I have endeavored to give, I find merit in the preliminary objection and uphold the same. Consequently, the application is hereby struck out for being incompetent. The applicant shall bear costs of the application.

DATED at DAR ES SALAAM this 28th day of February, 2023.



S.E. KISANYA
JUDGE