IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISCELLANEOUS CIVIL CAUSE NO. 21 OF 2022

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE LAW REFORM FATAL ACCIDENTS MISCELLANEOUS PROVISIONS) ACT CAP 310 AS AMENDED IN 2019

AND

IN THE MATTER OF AN APPLICATION TO CHALLENGE THE PROMULGATION OF THE WILDLIFE CONSERVATION POLOLETI GAME CONTROLLED AREA) (DECLARATION) ORDER, G.N No. 421 of 2022

BETWEEN

NDALAMIA PARTARETO TAIWAP .....1ST APPLICANT

LATANG'AMWAKI NDATI.....2ND APPLICANT

MEGWERI MOKINGA MAKO .....3RD APPLICANT

EZEKIEL SUMARE KUMARI .....4TH APPLICANT

LATAJEWO LANGEU SAYORI .....3RD APPLICANT

VERSUS

THE MINISTER OF NATURAL RESOURCES AND TOURISM ...1ST RESPONDENT

THE ATTORNEY GENERAL 2NDRESPONDENT

RULING

15th March & 5th May, 2023

TIGANGA, J.

In this application, the applicants are individual citizens of the United Republic of Tanzania. According to the statement filed with this application, they are Masai by tribe and residents of Loliondo and Sale Divisions Ngorongoro District, Arusha Region.

The first respondent is the holder of the public office mandated to oversee matters of natural resources and tourism in the Government of the United Republic of Tanzania. While the second respondent is the Chief Legal Advisor of the Government of the United Republic of Tanzania and was joined in this application by virtual of section 18 of the Law Reform (Fatal Accident and Miscellaneous Provisions) Act [Cap 310 R.E 2002]

In this application, the reliefs sought are in two sets, **first** is an order for certiorari, for the court to call for, examine, quash, and declare the Wildlife Conservation (Pololeti Game Controlled Area) Declaration Order G.N No. 421 of 2022 to have been promulgated illegally, irrationally unreasonably, in violation of the principle of the natural justice and with procedural impropriety. **Second**, an order for a prohibition against the first

respondent from unlawfully evicting residents of 14 villages in the area covering almost 1502 Square Kilometers as Pololeti Game Controlled Area.

When the application was served to the respondent, they, through one Mkama Musalama, State Attorney from the office of Solicitor General, filed a notice of preliminary objection with one point of objection that, the application is bad in law for contravening Rule 9(1) of the GN No. 324 of 2014 which imposes the mandatory condition for the applicant to serve the application to the respondent within seven days from the date of applying.

At the hearing of the preliminary objection, the applicants were represented by Mr. Mpale Mpoki, Hamis Mayombo, Joseph Ole Shangai, and Yonas Masiaya, learned Advocates while the respondent, the objectors were represented by Miss. Jackline Kinyasi and Charles Mtaye both learned State Attorney.

Supporting the objection, Miss. Jackline Kinyasi submitted that, Rule 9 (1) of the Law Reform (Fatal Accident Miscellaneous Provision) (Judicial Review Procedure and Fees) Rule of 2014, GN No. 324 of 2014. She said the rule has imposed a mandatory requirement for the applicant to serve the

respondent with a copy of the application and the supporting documents within seven days from the date of applying.

She submitted that the application was presented for filing on 29/11/2022 and it was admitted on that date. However, the service of that application to the respondents was done on 10/02/2023 which if she was to count, from the date of filing, seven days lapsed on 06/12/2022, therefore he was late for 74 days.

She further argued that, if the law has imposed a mandatory requirement of service, there is no excuse, it must be complied with. In support of her contention she invited this court to borrow the wisdom in the decision of the full Bench of the Court of Appeal of Tanzania in the case of **Gideon Wasonga & 3 Others vs Attorney General & 2 Others,** Civil Appeal No. 37 of 2018 CAT- Dar-es-Salaam (unreported). According to her, the Court of Appeal discussed two issues; **one;** is the issue of the mandatory requirement of service of Notice of Appeal which I request this Court to borrow the wisdom of service of the application. That can be seen on page 17 where the Court of Appeal discussed and was interpreting Rule 84 (1) of the Court of Appeal Rules which like in this case, imposes a mandatory requirement to serve the Notice of Appeal within 14 days after lodging it.

The Court discussed and concluded on page 18 that, failure to comply with the mandatory rule requiring service to be effected is fatal and cannot be served by overriding objective principle.

She went further and said that, on page 19 of the judgment the Court held that, such non-compliance is not a technicality, but a mandatory procedure required to be complied with. In her view, as the case referred to, in the case at hand, the issue here is noncompliance with the mandatory provision of the law must be complied with and should not be ignored on the pretext that it is a technicality. In her further view, since it is a mandatory procedure then, it can be served by overriding of objective principle.

Second, was the issue of failure to serve the document, whether a pure point of law? On that, the Court held that, although that is the pure point of law, nevertheless the court will need to ascertain at what time the document was served. The ascertainment cannot be done in the abstract; it must be done by referring to the record available for the use of the court. That, in her view, is not referring to the evidence, it is satisfying oneself basing on the material available on record which includes the pleadings and annextures.

To cement her arguments, she cited the decision of the High Court in the case of **Ebenezer Kimaro & 16 Others vs Hamisi Walii & 4 Others,** Misc Civil Cause No. 16/2021, HC Arusha in which the issue of contravening Rules 9 (1), of the G.N No. 324 of 2014 was discussed. On page 9 of the ruling of the High Court, it was held that the rule imposes a mandatory requirement of which failure to comply becomes fatal and cannot be served by the principle of overriding objective, therefore the Court proceeded to strike out the application.

While concluding, she submitted that, since the applicant has failed to comply with the mandatory requirement, he ought to have applied for extension of time. She prayed the application to be struck out with costs.

In reply by Mr. Mpale Mpoki, for the applicant opposed the preliminary objection on the grounds that, first, the same is not the preliminary objection so-called. In support of his contention, he submitted that a preliminary objection has been defined in the case of **Mukisa Biscuit Manufacture Company Ltd vs West End Distributor Limited** (1969) EA 696. Sir. Charles Newbold, as applied in the decision of **Thadeo Fukuda Kweyamba vs Mary Kaijage,** Land Revision No. 57/2020 High Court Land Division Dar-es-Salaam, Hon. Mwenegoha, J, at page 3 of the decision held that:

"That the preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It can not be raised if any fact has to be ascertained or what is the exercise of judicial discretion.

In his view, for the preliminary objection to be worthy of a name, the court must bring the issues of law as opposed to evidence. Where ascertainment is required, it can only be made by referring to the pleadings. It fails to be a preliminary objection if the evidence is needed to ascertain the truth of the objection or where the same attract judicial discretion.

He contends that, on the pleadings filed in court in this case he does not think the Court will have an advantage to see at what time the service was effected. Therefore, if the pleadings are silent, then the court is called upon to rely on the statement which comes from the bar, as the evidence to ascertain the date of service. In his view, the respondent failed to show at what time they were served with the application because so saying would have been inventing evidence from the bar which is legally incorrect.

Distinguishing the applicability of the case of **Gideon Wasonga,** Mr. Mpoki submitted that, the case is distinguishable. According to him, in that case, the issue was a failure to serve the notice of appeal, unlike in this case

where the proof is not on the record. He said in the Court of Appeal, their Lordships had all the documents on the records of appeal one of which was the proof of service of the notice because it forms part of the record of appeal under Rule 96 (1) of The Court of Appeal Rules, that is why their Lordships would ascertain, the fact from the record they had.

On the contrary, in this case, there is no such proof on record. For that reason, the *ratio decidendi* in the case cited herein above is inapplicable in this case. Based on the same reason, he insisted that, for the court to know when the respondents were served, it needs evidence which has not been given and if it will be given then it will contravene the principle laid down in **Mukisa Biscuit case** (supra)

On the substantive part of the objection, he submitted that, there is no dispute that the applicant filed an applied on 29/11/2022. He also agrees that the law requires them to serve the documents to the respondent within seven days from the date of filing the application. The issue is why didn't they serve the respondent within seven days? On that, he refereed this Court to Order XLIII Rule 4 of the Civil Procedure Code, which requires all orders and other documents required by the code to be served on any person shall be served in the manner provided for the service of summons which should

be effected as required to be done under Order V providing for the service of summons.

He submitted further that, Order V Rule 2 of the Civil Procedure Code requires, every summons to be signed manually or electronically by the Judge or the Magistrate, or authorized officer. According to him, in this case, the summons was not served within seven days, because it was signed and sealed on 06/01/2023. Therefore, they would not have served what had not been completed by signature and Court seal as required by law.

In cementing the point, he referred to the Latin maxim of equity which says "*Lexi non-Cogit Ad impossibilia*" which means that the law does not compel a man to do what he cannot possibly perform. Protected by the maxim of equity, he submitted that, to require them to serve the documents within seven days while the documents were not completed by Court was to require the applicant to do what they could not possibly do. He said the issue of signing the document and sealing them is not their role, it is the responsibility of the court and the Court did not do so in time.

Further seeking refuge in equity, he relied on another Latin maxim of equity which says that *Actus Curiae Neminem Gravabit*, simply explained, says, no act of court should harm the litigant.

He submitted that, on the premises, it was not their fault for failure to sign the documents. He informed the court that, the principle is founded on the administration of justice. He said the maxim has been interpreted by the Court of Appeal of Tanzania in the case of **Yusuph Nyabunga Nyatumnya vs Mega Speed Linett Ltd & another,** Civil Appeal No. 85/2019, on page 12, and that the court was of the view that, factor to consider is whether the respondent has been prejudiced by that failure to serve them. In his view, in this case, the failure to serve the application to the respondents in time did not prejudice the respondents which is why they managed to file their reply. To support that contention, he submitted that, the element of prejudice is founded in the principle of overriding objective. If the court will find the application to be struck out, it will be done with the liberty to refile another application.

Further to that, he said in this case, the failure to serve that application does not go to the jurisdiction of the court. Unlike in the Court of Appeal where a Notice initiates an appeal. I pray the court overrules the preliminary

objection, because, the matter at hand is not a jurisdictional matter. He prayed the court to invoke the overriding objective principle and overrule the objection with cost.

In further opposing the objection, Mr. Joseph Oleshangai submitted that, Rule 9 (1) of the **Law Reform (Fatal Accident Miscellaneous Provision) (Judicial Review Procedures and Fees) Rules** of 2014, G.N No. 324 of 2014 cannot be read alone, it should be read with Rule 10 of the same Rules which gives the court discretionary powers where it finds that a person who was supposed to be served was not served, it may adjourn the hearing to allow that person to be served. He distinguished the decision of the case **Ebenezer Kimaro & 16 Others vs Hamisi Walii & 4 Others,** (supra) from the case at hand. According to him, in that case, the Court dealt with Rule 9 only but it ought to have gone to Rule 10 of the Rules. Since they have already served the application and the court has such discretion then the remedy available is not to struck out but to order that he be served.

In his further submission, he distinguished the case of **Yusuph Nyabunya Nyatulurya vs Mega Speed Linett Ltd & another,** in which it was held that where the failure of service has not prejudiced the respondent then the court may find that, the respondent be served.

On the issue of when the service was effected, he said it goes to the need of evidence to ascertain therefore it fails the test of being a pure point of law. On that ground, he submitted that, the preliminary objection filed by the respondent does not fit to be called a preliminary objection, because the only way to ascertain the truth is by inviting evidence. He prayed the same to be overruled with costs.

In rejoinder, Miss Kinyasi insisted on the preliminary objection raised and argued. She objected to what they said in reply. She said in the case of **Gideon Wasonga & 3 Others vs Attorney General & 2 Others** the issue was the service of documents generally. She referred the court to page 6 of the judgment where the court held that the issue was a failure to serve in time the notice of appeal, and the nonservice of the memorandum of appeal is the pure point of law that needs to be ascertained from the record. She submitted that she is not asking the court out of the record, she said they were served out of time. Since service has been provided to be done within a certain time, that is seven days, then it was the duty of the applicants to say whether they served the application within seven days, since they did not say then the court should have an opportunity, just like it did in the case of **Gideon Wasonga & 3 Others vs Attorney General & 2 Others,**

(supra) to ask the parties when were they served as long as the court deals with the pleading. In her view, based on the issue of service, and since the court discussed the issue of when was service done, that was not going out of the record.

Since the law provides mandatory requirements parties must comply with the law. She also referred the court to page 9 of the above-referred decision where the court discussed the issue, whether it was a pure point of law or not, and held that since the matter rests as a preliminary point of law, it rests on the mandatory requirement of the law, then parties have to comply with the law.

Distinguishing the applicability of Rule 10 of the **Law Reform (Fatal Accident Miscellaneous Provision) (Judicial Review Procedure and Fees) Rule** of 2014, of GN No. 324 of 2014, particularly the ground that the court has the discretion to adjourn the hearing and order that the respondent be served, she submitted that, Rule 10 discusses a very different scenario, it talks of the situation where the court thinks that, a person who ought to have been served but has not been served, unlike in our case where the service has already been effected but was effected out of time which the respondent said was fatal.

Opposing the distinction in the case of **Gideon Wasonga & 3 Others vs Attorney General & 2 Others** (supra) made by the counsel for the applicants, she said that, like in Gideon Wasonga's case where notice-initiated the proceedings, here, in this case, it is the chamber summons and affidavits also initiate the proceedings. She prayed the court to find that, the principle in that case is applicable in this matter at hand.

Further, opposing the arguments that she did not prove the day when the respondents were served, she said they were served on 10th February 2023. While regarding the Latin maxim cited based on the principle of equity, she also countered them with another maxim that, whoever goes to equity must have his hands clean. She said that, if the court had to base on the date the documents were signed that is on 26/01/2022 then, the counting had to start from 26/01/2022. But if we are to assume that, it was signed in on 26/01/2023, still we should take the date when the documents were presented for filing and when the application was filed.

She submitted that, the fact that the court delayed to sign the document, was the ground for applying for an extension of time to effect service and the ground would have been, the delay to sign and seal the documents. In the case of **Thadeo Fukuda Kweyamba vs Mary Kaijage,**

(supra) the court said the issue of service or not requires evidence, she however distinguished that case in the matter at hand. She said in that case the reason for disqualification of the preliminary objection is the issue of non-appearance inferred from failure to serve the submission as ordered by the court, unlike in the matter at hand where the objection is based on noncompliance with the mandatory requirement of the law.

Further to that, she reminded the court that, the decision in the case of **Thadeo Fukuda Rweyamba**, is of the High Court, it does not bind this court, but the decision of the case of **Gideon Wasonga,** is a decision of the full bench of the Court of Appeal. She prayed this court to follow the decision of the Court of Appeal. Furthermore, regarding the case of **Yusuph Nyabunya Nyatururya,** the issue was the date of delivering the Judgment, they allowed the parties to go and rectify the date and file supplementary records, unlike in this case where the law has already been abrogated.

On that ground, she prayed the court to allow their preliminary objection and find that, failure to comply with the mandatory requirement of the law is fatal. She prayed the matter to be struck out with costs.

I have considered the counsel's submissions on the issues which need my determination, that is whether the issue raised is a preliminary objection worthy of a name? and if yes, whether it has merits, and if yes, that renders the application fatally defective.

From the outset, I entirely agree with the proposition by both counsels on what entails the preliminary objection. Now based on **Mukisa Buscuits Manufacturing Company Ltd vs West End Distributor Ltd,** (supra), a preliminary objection should be raised based on pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. It can not be raised where any fact has to be ascertained outside the record on deciding it, or what is sought is the exercise of judicial discretion.

It should be pleaded or raised on a clear implication out of the pleadings. It should not require any support from the evidence. On that, also see the case of **Gideon Wasonga & 3 Others vs Attorney General & 2 Others,** (supra) which also was cited by the learned State Attorney and which relied on a number of decisions, including the case of **Karata Ernest and Others vs Attorney General**, Civil Revision No. 10 of 2010 CAT-Full bench, and **Shose Sinare vs Stanbic Bank Tanzania Ltd**, Civil Appeal No. 89 of 2020, both of the Court of Appeal.

It is the principle of law that, where the law requires a person in a mandatory term to do a certain function in a specified period, as a matter of law, that function entails the requirement of the law and must be performed as directed and within the prescribed time. Failure to do so may attract the other party to raise a point of law on the ground that, a certain function has not been performed or has been performed out of the prescribed time.

In this case, the law, that is rule 9(1) **Law Reform (Fatal Accident Miscellaneous Provision) (Judicial Review Procedure and Fees) Rule** of 2014, of GN No. 324 of 2014, requires in a mandatory term that, upon filing the application for judicial review, the applicant **shall** serve the respondent within seven days from the date of filing the application. In my considered view, failure to do so attracts objection to the application as the non-service abrogates the law. To appreciate what the law provides I find it apt to reproduce it here thus;

Rule 9(1)

> *"The applicant **shall within seven days after filing the application serve** a copy of the respondent together with supporting documents as specified under rule 8."* [emphasis added]

Rule 8 provides what documents should be filed in the application for judicial review. The documents are the chamber summons supported by the affidavit and a statement in respect of which leave was granted.

I say rule 9(1) of the Rules is a mandatory provision of the law because, section 53 (2) of the **Interpretation of the Laws Act** [Cap 1 R.E 2019] provides that, where in a written law the word "shall" is used in conferring a function, the such word shall be interpreted to mean that the function so conferred must be performed.

Now, one of the grounds raised by the applicant in the effort to defeat the preliminary objection is the allegation that there is no evidence on record proving that the application was not served to the respondents within seven days. On that, Mr. Mpoki argued that, the only information available is not even on the record but in the submission made by the learned State Attorney for the respondents during the hearing of the preliminary objection. In his view, the submission suffers two defects, **one,** it is not evidenced by the records but, it is based on the submission from the bar. He reminded the court that, submissions are never evidence, therefore cannot be accorded weight. **Two,** he submitted that, even if we take it to be evidence for the sake of arguments, the same cannot be relied upon because, the law in

Mukisa Buscuit's case confines the evidence to be used to ascertain the merits of the preliminary objection to be in the record of the court, not from outside.

Now, the issue is whether the record displays the date of the service. From the outset, there is no evidence on record showing the date on which the service was effected. However, there is enough evidence on the record and as contained in the submission by the counsel for the applicant that the application was not served to the respondent within seven days from the date of filling. The record shows that that has been submitted by Mr. Mpoki, the application was filed on 29th November 2022. From that date, seven days within which the application was supposed to be served to the respondents expired on 06th December 2022.

As part of his defence, Mr. Mpoki submitted that, the applicant could not have served the documents on time because the documents were signed on 26th January 2023. So he could not have served the documents which were not signed and sealed by the court. If any blame it was not supposed to be on the side of the applicant, but on the court. He invoked the doctrine of equity that a man should be compelled to do something which he cannot possibly do.

On the other hand, the learned State Attorney, agrees that the document may have been signed some days after the lapse of seven days, but in her view, that ought to have been the ground for an extension of time to serve the same out of time.

In my view, although the records are silent regarding the date on which service was effected, the fact that the documents were allegedly signed and sealed on 26th January 2023 proves that the same was served beyond seven days from the date of filing the application. That being the case, then the preliminary objection raised qualifies to be the preliminary objection in terms of the case authorities cited herein above.

The next issue is whether the raised preliminary objection has merits. On that, the learned State Attorney, insist that the law provides in a mandatory term that the application must be served within seven days, and if there were any reasons explaining why the applicants delayed serving the respondents then, including the failure of the responsible officer of the Court to sing and stamp the documents in time, then that would have been the ground for extension of time to serve the same out of time.

On his part, in opposing the preliminary objection, Mr. Mpoki argued that, the applicant could not have served the documents on time because

the documents were signed on 26th January 2023. So he could not have served the documents which were not signed and sealed by the court. If any blame it was not supposed to be on the side of the applicant, but on the court. He invoked the doctrine of equity that a man should be compelled to do something which he cannot possibly do. Not only that but also that no act of court should harm the litigant. Mr. Joseph Ole Shangai invited the court to cure the defect under rule 10 of the Rules, the argument which Miss Kinyasi dismissed that the same is not applicable in the circumstance of the case at hand.

I will first start with the applicability of rule 10 in the case at hand. To understand what it provides, I find it apt to reproduce it in extensor.

Rule 10

> *"Where the Court is of the opinion that a person who ought to have been served with a copy of the application has not been served, it may adjourn the hearing to allow that person to be served."*

From its wording, it is glaringly clear that, the same does not apply as a cure to the defect at hand, I hold so because it talks about a person who was supposed to be served but has not been served, and the discretion of the court to adjourn the hearing and direct the applicant to serve him unlike in

the present case where the respondent has already been served. Secondly, the issue at stake is service out of time, not nonservice. Therefore, I entirely agree with Miss Kinyasi that, the provision does not apply in the case at hand, it is distinguishable as it has been cited out of context.

I agree with Miss Kinyasi that, the law requires to serve the application within seven days from the date of filing any reasons preventing the applicant to serve the other party must be communicated to the court and probably to the other party by way of an application to ask for an extension of court. This means serving the said documents out of time without noncompliance which as a matter of law must attract objection. It must be noted as well that, the obligation to serve within time is of the applicant, if there is any hindrance in performing that duty then, the same ought to have been communicated, because the court could not know or assume that there was such hindrance, neither could the other party have guessed that there was such a hindrance.

Now, what was the right recourse after the applicant had realized that they were out seven days from the date of filing? In my view, there was only one option, that is to come to court and asked the court to extend the time within which to serve the respondents, which application would have been

made orally and exparte on the date when the case was scheduled for mention, which the applicant has not done. I agree that the court should not compel a person to do what he could not do, and the fault of the Court should not be left to injure the litigants. However, these defence were expected not to be raised at this stage after they have already served the respondent out of time, these in my view ought to have been the ground to tell the court to extend the time within which they were to serve the documents to the respondent. Failure to do so and proceed to serve the documents out of time is taking a risk of having the application declared to be served in noncompliance with the mandatory rule. That means I find the objection to be meritorious on the reasons said herein above.

Now having so found what then should be the right recourse? While the learned state Attorney has urged this court to strike out the application taking inspiration from the decision of the case of **Gideon Wasonga & 3 Others vs Attorney General & 2 Others,** (supra) when the Court of Appeal was interpreting the Court of Appeal Rules regarding the service of the notice of appeal, and the memorandum of appeal. He asks so on the ground that, since the Notice of Appeal initiates the appeal process in the Court of Appeal, equally the chamber summons, affidavit and the statement

initiates the proceedings in the application for judicial review. He asked the court to find just like the court of appeal, that, the matter cannot be served by the overriding objective principle, therefore it is struck out.

Mr. Mpoki on his part, asked the court to find the decision of the court of appeal, distinguishable and find that, the matter is cured by the overriding objective principle as the respondent has not been prejudiced by the noncompliance is why they managed to file their defence.

From the facts, of the case at hand and that of the case of **Gideon Wasonga & 3 Others vs Attorney General & 2 Others,** (supra), it is glaringly clear that the two cases are distinguishable. While the case at hand deals with rule 9(1) of the **Law Reform (Fatal Accident Miscellaneous Provision) (Judicial Review Procedure and Fees) Rules** of 2014, of GN No. 324 of 2014, in the case **Gideon Wasonga & 3 Others vs Attorney General & 2 Others,** (supra), the Court of appeal was interpreting the provision of Rules 84(1) and 97(1) of the Court of Appeal Rules, 2009. The second distinction is that, in the case at hand the procedure at stake provides for the procedure on how to access the Court in searching for public law remedy of certiorari, mandamus, and prohibition, the Court of Appeal Rules provides for the procedure on how to access the Court of

Appeal. In other words, the Court of Appeal in the case of **Gideon Wasonga & 3 Others vs Attorney General & 2 Others,** (supra), was not interpreting Rule 9(1) of the **Law Reform (Fatal Accident Miscellaneous Provision) (Judicial Review Procedure and Fees) Rules** (supra) Therefore, that gives me the room of thinking out of the confinement of the above relied on the decision. That being the case, I have been called upon to invoke the principle of overriding objective. Now what does it require me to do? To appreciate I find it apt to reproduce it here.

> *"**3A**.-(1) The overriding objective of this Act shall be to facilitate the just, expeditious, proportionate, and affordable resolution of civil disputes governed by this Act.*
>
> *(2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).*
>
> ***3B**.-(1). To further the overriding objective specified in section 3A, the Court shall handle all matters presented before it with a view to attaining the following-*
>
> *(a) just determination of the proceedings;*
>
> *(b) efficient use of the available judicial and administrative resources including the use of suitable technology; and*
>
> *(c) timely disposal of the proceedings at a cost affordable by the respective parties.*

(2) A party to civil proceedings or an advocate for such a party shall have a duty to assist the Court in further overriding the objective of this Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court."

In essence, the principle requires the court to embrace the spirit of making sure that substantive justice is attained as opposed to being swayed by the technicalities. The introduction of the principle of overriding objective in the administration of the justice system in Tanzania means that not every non-compliance renders the motion or matter fatally defective. There are other factors to be taken into account before concluding, the leading factor is whether the non-compliance has prejudiced the other party.

In this case, the respondent has not said that serving them out of time did in any way prejudice them. Mr. Mpoki said there is no evidence of prejudice on the part of the respondent, as they even managed to file their defence. I entirely agree with Mr. Mpoki, that there is no element of prejudice on the part of the respondents. That said, and given the nature of the case at hand, and the resultant order of striking out the matter should I find that the non-compliance is not served which would not be a bar to the further institution of the case, I find the non-compliance to be cured by the principle

of overriding objective. Though the objection was found to be meritorious, the same is cured. That being the state of affairs, I order the matter to continue on merit, the costs to be in the main application.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 15th day of May, 2023

J.C. TIGANGA

JUDGE