

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB-REGISTRY OF MWANZA
AT MWANZA

MISC. CIVIL APPLICATION NO. 135 OF 2022

(Arising from PC Civil Appeal No.24 of 2021)

ROBERT MAZIBAAPPLICANT

VERSUS

EMIL MAZIBA @ERASTO MAZIBARESPONDENT

RULING

June 6th & 30th, 2023

Morris, J

The history of probate from which this application geminates plaits a melancholy reading. The deceased's estate has been subject of courts proceedings since 1983. It is about four decades old. Long enough as the rhinoceros or camel's lifespan. It serves a clear example of negation of the principle that disputes must come to an end. More details of the historical account are given later in this ruling.

Through this application, the applicant above is pursuing certification of point of law. The application is made under section 5 (1), (2) and (c) of



the Appellate Jurisdiction Act, Cap 141 R.E. 2019. The applicant stands aggrieved by the decision of this Court in PC Civil Appeal No. 24 of 2021. He is seeking the Court to certify seven points of law for the attention of Court of Appeal. An affidavit of Masoud Shaibu Mwanaupanga supports the application. The same is countered by Emil Maziba @Erasto Maziba's affidavit.

The present court-case relates to the death of late Maziba Sengerema (the deceased) who died on 09/11/1983. Through Probate Cause No. 10/1983, one Henry Maziba was appointed by this Court to administer the estate of the deceased. Obviously, vide Probate Cause No. 72 of 1988 the applicant was also appointed as administrator of the estate by the Mwanza Urban Primary Court. The previous appointment had not been revoked or terminated. By Civil Revision No. 5 of 1995 the District Court of Mwanza, set aside the appointment of the applicant hereinabove.

Yet again, on 24/11/2017 *-per incuriam* as it turned to be; the Mwanza Urban Primary Court; in the set aside proceedings by the District Court, entertained and determined complaints by the respondent herein and other heirs against 'administration by the applicant' whose powers had long been revoked. In its decision, the Primary Court 'confirmed the



appointment' of the applicant and ordered him to expedite administration processes. The respondent challenged the subject confirmation vide Civil Revision No. 05/2018 at the District Court of Nyamagana. The said District Court took cognizance of the revocation decision in Revision No. 5 of 1995. It consequently nullified the decision of the Mwanza Urban Primary Court. That is, the applicant's confirmation stood revoked.

The applicant became aggrieved. He appealed to this Court vide PC Civil Appeal No. 24 of 2021. My brother, Mr. Justice F.K. Manyanda considered that neither administrator appointed by this court in 1983 nor the applicant-appellant who was appointed in 1988 had discharged his administrative functions. He was of the firm view that the matter had been in courts for a long time. He, thus, invoked his powers by revoking any existing previous appointment. In lieu thereof, he appointed the Administrator General to administer the estates of the deceased. Intending to challenge such decision before the Court of Appeal, the applicant is now seeking the certificate on points of law.

When the matter came up for hearing, I ordered the parties to dispose the application by way of written submissions. They religiously complied with the Order. I commend them. Advocate Masoud



Mwanaupanga acted for the applicant while the respondent was represented by Advocate Mnyiwala Mapembe. Apparently, in paragraph 4 (i), and (ii) of the counter affidavit; the respondent, rather un-procedurally, had raised a deposition which integrally touched on the issue of time limitation. That is, the application being filed out of time. Unsurprisingly, in reply submissions, the respondent's counsel argued on the parallel line that the application was indeed filed beyond time.

Mindful of the steady principle that any matter filed in court out of time raises a jurisdiction concern, I find it wanting to dispose this point first. I hastily make reference to ***Denis T. Mkasa v Farida Hamza (administratrix of the estate of Hamza Adam) & Another***, Civil Application No. 407 of 2020; ***John Barnabas v Hadija Shomari***, Civil Appeal No. 195 of 2018; and ***Muse Zongori Kisere v Richard Kisika Mugendi and 2 others***, Civil Application No. 244/01 of 2019 (all unreported) in this connection.

It was argued by the respondent that, the application was time-barred. That, the applicant had obtained the Court's leave for extension of time (Hon. Itemba, J.) dated 21/10/2022 for 21 days. The respondent argued that, although the application was electronically filed on

11/11/2022; the applicable fees were paid on 21/11/2022. To him, that was on 31st day of the extension time. That is, 10 days late. He submitted further that, the date of payment of fee constitutes the date of filing. He cited rule 21 of ***the Judicature and Application of Laws (Electronic Filing) Rules***, GN. No. 148 of 2018 and argued that the same did not change such legal requirement.

It was his stance that, even with introduction of the cited rule above, the position of law remains to be that the document is considered filed in court when requisite fee is paid. Reference was made to the case of ***UNTA Exports Ltd v customs*** [1970] E.A 648; ***NMB Bank PLC v Rubuye Agro-Business Company Limited and Another***, Misc. Civil Application no. 11 of 2023; and ***Bakena Said Rashid v Nashon William Bidyanguze and 2 Others***, Election Reference No. 1 of 2020 (both unreported).

The counsel for the respondent further appreciated the decisions of this Court holding that date of filing online is a date of filing. Such cases include ***Amandi Matei & Another v Zainabu Maulidi Jumbe (the administratrix of the estate of the late Roman P. Saiekio)***, Misc. Land Application No. 108 of 2021. However, he argued that the principle

of *stare decisis* obligates this Court to follow the most recent decision when there are two conflicting positions. He made reference to the Court of Appeal's holding in ***Zahara Kitindi and another v Juma Swalehe and 9 others***, Civil Application No. 4/05 of 2017 (unreported). He added that, the decision of in ***NMB Bank PLC' case*** (*supra*) is most recent having been delivered on 05/05/2022. Consequently, he prayed for the application to be dismissed with costs.

In reply, it was submitted by the applicant that, under rule 21(1) of ***GN No. 148/2018*** (*supra*); the filling date is determined by submission of the document online. To him, when case law is at variance with the statute, the latter takes precedent pursuant to the case of ***National Bank of Commerce v Jackson Sinzobakwila*** [1978] LRT 39. He further subscribed to the holding in ***Amandi Matei's case*** (*supra*) and ***Mohamed Hashil v National Microfinance Bank Ltd***, Revision No. 106 of 2020 (unreported).

I have impassively considered rival submissions of both parties. Not in dispute is the fact that there exist two schools of thought regarding the date of filling documents after promulgation of online filling system. This court is equally divided. One school of thought is of the view that, under

section 21 (1) of ***the Electronic Filing Rules***, electronically filed documents are considered to have been filed in court on the date the same are so submitted. Along such inclination are examples of ***Cata Mining Ltd v Obetho Joseph Werema*** (*supra*); ***Rose Ongara and 2 others v National Health Insurance Fund***, Labour Revision No. 313 of 2022; and ***Mohamed Shashil v National Microfinance Bank Ltd***, Labour Revision No. 106 of 2020, (all unreported).

The second school of thought favors the date of payment of court fee (as proved by exchequer receipt) to be the date of filing. This school taps the wisdom from ***John Edward Chuwa v Antony Sizya*** [1992] TLR 233; ***Maliselino B. Mbipi v Ostina Maritime Hyera*** (*supra*), ***Emmanuel Bakundukize (Kendurumo) and 9 Others v Aloysius Benedictor Rutaihwa***, Land Case No. 26 of 2020; and ***Bakema Said Rashid v Nashon William Bidyanguze and 2 Others***, Election Reference No. 1 of 2020 (all unreported).

Invited to join one of the two schools, I have to consider a number of factors before picking my preference. Admittedly, I so recently stated in ***Abeed Minazali Manji (Administrator of the Estate of the Late***



Nadir Minazali Manji) v The Registered Trustee of Daughters of Maria Kipalapala, Land Reference No.01 of 2023. **One**, midst of these two schools of thought, is the doctrine of overriding objective reinforced by ***the Written Laws (Miscellaneous Amendments) (No. 3) Act***, 2018. The doctrine enjoins courts to deal with cases justly; paying regard to substantive justice; and observing the Constitutional spirit in this respect.

Two, litigation is costly. Court fees are part of the package. Under ***the Court Fee Rules***, GN. No. 247/2018; parties are generally obliged to pay court fees. Consequently, to validate compliance, courts should work on proceedings that are duly filed and fully paid for. **Three**, the new (***the Electronic Filing) Rules*** were enacted while the principle in ***John Edward Chuwa's case*** (*supra*) was in existence. Thus, it is not illogical to reason that if it was imperative to consider payment date to override the submission date, the subject ***Rules*** should have legislated as such.

Four, ***the Electronic Filing Rules*** does not outlaw the orthodox physical filing of court documents. Hence, the said ***Rules*** preserve the laxity associated with physical filing of such documents. That is, e-filing

and manual filing systems coexist. So, the two schools of thought should not conflict anyhow. Principles suitable for the manual filing system, including the date of payment being considered as the date of filing; can and should continue being applicable. However, such principles are not expected to, in my view, suppress the twin IT-filing system which, too, has its unique perfectly operating protocols.

Five, to undermine e-filing system by using rules suitable in the about-to-be-vacated filing system, is to downplay advantages of the digitalization of the world affairs, courts operations inclusive. Without overinsistence, the objectives of introducing e-filing are, *inter alia*, for the court system to keep pace with development of ICT; save time of the parties (expedition in litigation is the name of the game); lessen costs (for transport to and from the registry, administrative works, stationery and human resources); enhance productivity and parties' peace of mind; and maintain an irreversible process in the interest of compliance, transparency and accountability.

All the foregoing usefulness combined, to a large extent, the current e-system works to the advantage of all stakeholders involved than otherwise. Fenwick W.A. and Brownstone, R.D. in "**Electronic Filing:**



What Is It - What Are Its Implications?", *Santa Clara High Technology Law Journal*, Vol. 19 pp. 181-227 (2002) underscore the fundamentals of e-filing in the below tonology;

"More courts are recognizing that they are 'service providers'...Courts and court staff are increasingly referring to parties and the public as being their 'customers' or 'clients.'...Most courts are trying, within severe resource constraints, to improve customer service. E-filing is believed to provide one of the greater opportunities to achieve such improvements."

Six, to strictly insist on the date of payment to be the only determinant factor, would be unrealistic a principle. I bring in my mind matters whose documents do not attract court fees. For instance, labour disputes; legal aid cases; proceedings for and against the Government; and fee-exemption under convention. That is, it will be imprecise for courts and parties to ascertain when exactly respective documents were filed.

Seven and last, e-filing technically involves digitized documents getting out of the party's mandate/control after submitting them on-line.

Consequently, the Court's registry takes over. So, time taken before the court generates the requisite control number for the party to pay (where applicable), is determinable on case-to-case basis. It would turn to be unfair if such time is also deducted from the party.

After having observed the pros and cons of each filing system and applicable legal consideration, I feel inclined to observe further that adequate flexibility is reflected in the phraseology of rule 21 (1) of ***GN No. 148/2018***. The couching of the rule echoes that, "a document shall be considered to have been filed." That suppleness of the rule is, to me, permissive for the court to consider circumstances such as lateness to pay; repetitiveness in delay of payment by a party; fluctuation of internet system; and expiry for control number, may be brought into the equation accordingly.

In view of the elucidation above, when a party files documents online, he must also be vigilant enough not to defeat or abuse the rationale of the electronic filing system. It is my construal that, if a party is claimed by the other to have filed the document electronically out of time, or when the court *suo motu* observes so; the court has to consider numerous factors. Aspects hereof include, **(1)** the day(s) wasted from the



day of generation of control number to the date of payment of fees; (2) availability or stability of internet connection in the locality, as far as IT experts may certify; and (3) party's reluctance to comply with other-but-related court orders.

It is now time to come back to the application at hand. Admittedly, I am adequately magnetized by the philosophy that the date of filing documents on-line should be considered to be filing date. Nevertheless, if a party manifestly undermines or takes advantage of such system at the expense of prejudicing the other; he should not be condoned by the court. The objective of paying the applicable fees timely and adequately calls for no overemphasis. Perhaps, I should register here my two cents hereof.

Firstly, payment of fees is a statutory obligation. Unless exempted, court proceedings should be paid for in terms of court (filing) fees. **Secondly**, court fees are amongst sources of revenue for the government. **Thirdly** and perchance the most important of all, payment of fees is technically a jurisdictional component. Matters for which fees are mandatorily payable, cannot be acted upon by the court unless the requisite charges are paid. That is, such matters to qualify for assignment to and eventual determination by the judicial officers; fees thereof must

be paid. **Fourthly**, where applicable, fees act as a reminder-prompt to litigants to seek courts' redress both with genuine claims and as a last resort.

The present application forms no exception: at all. Let the Court now analyze its responsiveness to the discussed attributes above. This matter was filed online and admitted on 10/11/2022. The control number for payment was generated on 11/11/2022. Payment of court fees was made on 21/11/2023. Ten (10) solid days lapsed after the applicant was cleared for payment. He did not act with vigilance expected in this regard.

In my view, therefore, although the submission of the application online was done timely; the delay to pay the fees was so inordinate and inexcusable. I, consequently, hold the firm position that this matter is a fit case to be considered as having been filed out of time for want of timely payment of fees. I have the reasons. The matter, which was evidently filed on the last day of the court-extended time, remained unattended by the applicant and/or his lawyer for almost two (2) weeks.

Further, the court is appreciative of the obvious fact that it is mandated to ensure timely disposal of cases. In addition, as stated earlier, this matter involves a four-decade-old estate of the deceased. Hence, the



applicant was least expected to act against expeditious disposal of his proceedings. Another undisputed fact is that, parties herein have always been represented by lawyers who are aware of principles of time limitation. Moreover, the applicant's *locus standi* herein, arguably, is tapped from his being the officer of the court (court-appointed administrator of estate). Consequently, he should promote timely dispensation of justice. It is also a law that administration of estate is not a perpetual project of the appointed individual(s).

In fine, for the reasons stated above, this application is found to have been filed inordinately late. It is, thus, time barred. On such basis, I will not determine the application for want of jurisdiction. It stands dismissed. Parties shall shoulder own costs each. It is so ordered. The right of appeal is fully explained to parties.




C.K.K. Morris

Judge

June 30th, 2023

Ruling delivered this **30th** day of **June 2023** in the presence of Mr. Emil Maziba @ Erasto Maziba, the respondent (online via 078 4934 665) and in the absence of the applicant



C.K.K. Morris

Judge

June 30th, 2023

