

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA
AT SONGEA**

MISC. CIVIL APPLICATION NO. 11 OF 2023

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF
CERTIORARI AND MANDAMUS**

BETWEEN

- 1. PUMZIKO PHILEMON HASSAN SAID**
- 2. HASSAN SAID**
- 3. BAKARI A MUSSA**
- 4. SAIDI JOBE**
- 5. HAMIDU JUMA**
- 6. ADAM MUSTAPHA**
- 7. SHABAN GAWAZA**
- 8. CHARLES SWILA**
- 9. MUSSA HASHIM**
- 10. BASILIUS MAPUNDA**
- 11. SHANI H MAPUNDA**
- 12. JAMES B MBAWALA**
- 13. HAKIA P KAHABI**
- 14. MICHAELY B MTITU**
- 15. IDDI P MWASHILIMBE**
- 16. BRASIUS BWABENA**
- 17. SADRO MFYAGISI**

APPLICANTS

18. **BENAE ZWOGA**
19. **WINFRID C MLOWE**
20. **EMACULATA LWAYO**
21. **MUHIBU R MUYA**
22. **AZADI MOYO**
23. **TWAIBU KOMBA**
24. **INNOCENT NJAU**
25. **CHRISPIN KOLUBA**
26. **MICHAEL MAPUNDA**
27. **SAMWEL M MWINUKA**
28. **FRANCE NGONYAJI**
29. **GRACE MSHANA**
30. **KALISTA MAPUNDA**
31. **REHEMEA MHAGAMA**
32. **IZACK ILOMO**
33. **AYUBU MGAYA**
34. **STEVEN NDOMBA**
35. **JESCA KOMBA**
36. **JACKSON PONERA**
37. **MICHAEL KAYOMBO**
38. **MARRY NOMBO**
39. **MUSA AMIDU**
40. **MICK NDIMBO**
41. **VERA MOYO**
42. **KASTORY MBEMBATI**
43. **GODWIN J KOMBA**
44. **NIKOLAUS MGENI**
45. **MSAFIRI THOBIAS**
46. **DICKSON CHIPETA**

APPLICANTS

47. GEOFREY MBISE
48. JUMA MOHAMED
49. ATHUMAN CHEYO
50. SALUMU ISSA
51. BRASIUS MLOWE
52. DOMINICK A MOYO
53. BERMA JUMA
54. DAVID MVULA
55. AHMAD DADI
56. MASHAKA MPUTA
57. ATHMANI LIPOMBA
58. ABDILLAH ABDALLAH
59. BOAZ MSIGWA
60. AHMAD M SIGWA
61. BAKARI HASSAN MAHEKA
62. RASHID K MFAUME
63. SHAFII NGOLYACHI
64. ELIAS FOBA
65. GEORGE NGONYANI
66. RAJABU RASHID
67. RASHIDI D YASSIN
68. SANGA MTOTO
69. JAMES MAKUMBULI
70. HENRY MAKUMBULI
71. DOMINICK ALEX
72. TWALIBU T LUANDA
73. IMAMU NCHIMBI
74. GEOFEREY T MAPUNDA
75. HAWA C KAFUKO

APPLICANTS

76. JUMA R PASSI
77. MIRAJI HEBILLA
78. DUA SHASHABANI MAKAU
79. HASSAN ZUBERI
80. SAIDI AMIRI
81. ABDALA KASIMU
82. JUMA J MTISHI
83. HASSANI NAMALECHE
84. HASSANI HURUKU
85. MOHAMED MNALI
86. PAULO E KOMBA
87. AFIDU R NGONYANI
88. LEORNARD G KIHIOYO
89. STEPHEN TONYA
90. HAMISSI R MWALIMU
91. SELEMANI NAMBILE
92. MAOUD ALLY
93. HAMISI FUNDI
94. HASANI SALUMU
95. JOSEPH XAVERY LUENA
96. RAMADHANI HARID
97. MAGRET NDAUKA
98. GOTFRID KOMBA
99. FADHILI IMANI
100. ELSAMO NJOVU
101. HASSAN NASSORO
102. MKWAWA MKWAWA
103. ABDALLAH NGATUNGA
104. GEOFREY H NJELEKA

APPLICANTS

105. HORACE G MKINGA
106. MOHAMED FURAHA
107. GRACE S NCHIMBIRA
108. SAID SAID ALLY
109. FLORIAN TEMBO
110. ISACK ALEX MOYO
111. HENULICK KINYUNYU
112. JACKSON SWALO
113. ALLY NZOMBI
114. ERASO DAMIAN
115. SHEDRACK CHAULA
116. HAJI HASSANI LICHOLONJO
117. GEORGE S STANLEY
118. ERICK LUENA
119. AMANI THABITI
120. SALUM Y NIHUKA
121. FRANCIS A MBAWALA
122. HAMAD R NGALIPA
123. MICHAEL A KOMBA
124. STEPHEN M MWILAPWA
125. SALUM AMAN
126. GODI NJOVU
127. JAMES B OLOMY
128. SUGWA M KELUKILWA
129. ALLY I MOHAMED
130. ALLY MOHAMED LIVETA
131. HALIMA A PILLY
132. RASHID KALIMBA
133. OSWARD ZAPARANI

134.	SAIDI YASINI MATOLA	APPLICANTS
135.	IZACK MNARI	
136.	HAMRUNI KWEMEYE	
137.	JENIPHER I LWIVA	
138.	ROSEMARY SMMEHWA	
139.	HAMISI S LALI	
140.	RASHID HABIBU	
141.	IDRIASA HALFAN BWAWALA	
142.	ERNEST MALIYATABU	
143.	YUSUPH DAIMU	
144.	FRANCIS MPAMBALYOTO	
145.	ADAM MHORO	
146.	JOHN J MAHUNDI	
147.	MTEULE MWALA	
148.	INNOCENT TEMBO	
149.	MICHAEL NOMBO	
150.	SAID RING'ORE	
151.	TIDO KOMBA	
152.	HAPPINESS CHALE	
153.	MOHAMED NANGOMWA	
154.	SALUM H MKWAMBO	
155.	SALUM LIHUNDI	
156.	SALEHE SAMLI	
157.	BATULOME MBEPERA	
158.	HASSAN ZUBERI	
159.	DITRAM MBAWALA	
160.	FOKAS O KOMBA	
161.	ISSA M LUAMBANO	
162.	KELVIN MABENA	

163. KASSIM KASSIM MPATE

VERSUS

THE REGIONAL COMMISSIONER

FOR RUVUMA REGION.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

Mansoor, J:

Date of RULING- 20/09/2023

163 applicants herein have applied for Judicial Review seeking for orders of certiorari against the respondents quashing the guidelines issued by the Regional Commissioner for Ruvuma in May 2023 which restricted transportation and sale of sesame, soybean and pigeon peas. They also applied for orders of mandamus compelling the Regional Commissioner for Ruvuma Region to remove the restrictions and barriers relating to transportation and sale of sesame, soybeans and pigeon peas. The Application is by way of chamber summons supported by the affidavit sworn and verified by Pumziko Philemon Mlelwa for himself and on behalf of the other 162 applicants. In the first paragraph of the affidavit Pumziko Philemon Mlelwa says:

"that I am the 1st applicant in this application and that I have been authorised by my core 162 applicants to swear this affidavit because of our numerousness and hence conversant with all facts I am about to depose herein below."

Against the application, the respondent took two objections on points of law. The first was that the application was filed beyond the time granted by the court. In their written submissions, the respondents' states that before this application was filed in court, the applicants herein had filed the similar application which was Misc. Civil Application No. 10 of 2023, this application was withdrawn by the applicants but the court had granted them leave to refile it, and the court also had granted them five days to file the fresh application. The five days were to be counted from 20th June 2023. The respondents argue that the applicants filed their application on 28th June 2023, which is 8 days from the date the order of the court was issued, hence time barred. In support of their arguments, the respondents relied on the case of **Tanzania Breweries Limited vs Edson Dhobe and 19 others,** **Misc. Civil Application No. 96 of 2000** read together with the case

of **Buruhani Omari vs Victoria Revelian (Misc. Land Case No. 90 of 2020,** and the case of **Micky Gilead Ndetura vs Exim Bank (T) Limited, Comm Case No. 4 of 2014,** in which it was insisted that *courts' orders must be strictly complied with and must be respected,, and that the courts should always exercise firm control over the proceedings.*

The Counsels for the respondents also said, the law of limitations knows no sympathy or equity, and since there was a delay of three days in filing the application, they urge the court to dismiss the application. To buttress their arguments, the counsels for the respondents relied on the case of **Erasto Mwahalega vs Elisante Munuo and 4 others, Land Revision No. 2 of 2021 (HC).**

On Electronic filing of cases, the counsels argue that the date of filing is reckoned to be the date of payment of fees and not the date submitting the application online, they rely on the case of **Rex Investment Limited vs Mkombozi Commercial Bank, Comm Ref No. 8 of 2023,** where Hon Mbagwa J said that the date of filing

is the date of payment of fees, and that the applicants paid the fees on 28th June, 2023, 8th day after the court order, thus time barred.

The respondents also argued that they are aware that there exist conflicting decisions regarding the date of filing of documents electronically, but they say the court is bound by the decision of the fellow judge of the High Court provided that it is the most recent decision, and that the most recent decision prevails. They derive this position from the holding in the case of **Ardhi University vs Kiundo Enterprises T Limited, Civil Appeal No. 58 of 2018**, where the Court of Appeal said *"where the Court is faced with conflicting decisions of its own the better practice is to follow more recent of its conflicting decisions..."*

Before I proceed on deciding on the merits of the first limb of the objection, I would like to say a little about the doctrine of stare decisis. Stare decisis is the doctrine that courts will adhere to precedent in making their decisions. Stare decisis means *"to stand by things decided"* in Latin.

When a court faces a legal argument, if a previous court has ruled on the same or a closely related issue, then the court will make their decision in alignment with the previous court's decision. The beauty in the stare decisis doctrine is that the High Court Judge is not bound by the decision of the High Court previously passed. The previous deciding-court must have binding authority over the court; otherwise, the previous decision is merely persuasive authority. Again, stare decisis is not an "inexorable command.", in developing the law, and before the same court, a judge may be persuaded by the decision of a fellow Judge, or he may have a different opinion altogether, and both could be correct.

Now, having said that the decision cited is only persuasive, the core issue to be decided under the e-filing system introduced by the courts, is what would be the date of filing of a document in court. The applicants say they submitted their application on line, and this was received by the court on 26 June 2023 at 13:27:34 hrs. The order of the Court was issued on 20th June 2023, which was a Tuesday. The order of the court expired on 25th June, 2023, which was a Sunday. Definitely to calculate the filing deadline, if the last day of the period

is a Saturday, Sunday, or holiday, the period continues to run until the next day that is not a Saturday, Sunday, or a holiday. The due date fell on a Sunday, 25th June 2023, then the filing date was on Monday, 26th June 2023. Now, the Applicant's Counsel says they submitted the application on line on Monday 26th June 2023 at 13: 27 hrs., and this is in compliance with Regulations 21 of the Judicature and Application of Laws (Electronic Filing) Rules 2018, GN No. 148 of 2018, which reads:

"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."

Under the Judicature and Application of Laws (Electronic Filing) Rules 2018, GN. No. 148 of 2018 ("the Electronic Filing Rules") at Page 4 of 11 Rule 21(1) of these rules provides that, *a document is taken to have been filed if submitted before the midnight according to East African Times*, this means that a document is filed once submitted electronically unless it is rejected unless there is a specific time given by the court, the rule does not talk about date of payment of fees, and

the court did not reject the application or did not give a specific time for filing it. This Court in a number of cases including the case of **Mohamed Hashil v. National Microfinance Bank Ltd (NMB) Revision No. 106 of 2020**, High Court of Tanzania, Labour Division (unreported) **and Kitumbo Security Company Limited v Vimajo & Sons Limited, Civil Appeal No. 12 of 2020**, High Court of Tanzania at Tabora (Unreported), the court has insisted that the date of filing the document is the date of submission of the document on line, and the time expires before midnight of the date. Upon filing the documents online, the Court is deemed to have received the document on the date it is submitted on line and the date of presenting the document for filing in court is the date the document is submitted on line, and if there is non-attendance of the document by the court staff or court registry, for any reasons whatsoever, be it the network problems, or that the system was down, that will not be the concern of the litigant. The electronic filing system rules do not have a requirement to submit hard copies of the pleadings after filing them electronically, but this is a mere practice of the court. Once the document is submitted on line, the electronic control number is issued,

and this would suppose that it would be issued on the same date, and thus filing fees would be effected or paid on the same day, and if at all there is a delay in issuing the control number, or a delay of checking the JSDS2 system by the staff so as to attend to the submitted document, that misnomer would definitely, not be the faulty of the person who submitted it, and it would be unfair to dismiss such application on reasons of limitations. Again, as held in the case of **National Microfinance Limited vs Levison Yohana Kiula, Reference No. 3 of 2021 (HC)**, where the Late Judge Utamwa held that, the objection as to the date of filing requires proof by production of evidence such as receipts and affidavits, as such, the objection disqualifies to be treated as a preliminary objection. I subscribe fully to that position, the Judge in the Case said, and I quote:

"Regarding the first limb of the PO, I am of the view that, it is clear in this matter at hand that, the parties do not dispute on the existence of the JSDS system and the electronic filing system currently applying in our courts. They do not also dispute on the guidance under rule 21(1) of the GN and the decisions in the Mohamed Hashil Case (supra) and the Kitumbo Case (cited

earlier). I therefore find that, indeed, the law as supported by these two precedents guides that, a document is deemed to have been filed in court if submitted electronically before the midnight as correctly contended by the applicant's counsel. It follows thus, that, under the circumstances of the matter at hand, to argue that the document at issue was filed on the date shown in the court's rubber-stamp (on the top of the hard copy of the chamber summons filed in court) needs evidence to disprove the allegation by the applicant's counsel that it was filed electronically before the date shown on the rubber-stamp. Evidence will also be needed to disprove the possibility that the same was filed electronically before the date shown in the rubber-stamp. This fact alone, therefore, disqualifies the concern raised by the respondent from being a fit PO in law. This view is based on the landmark cases of *Mukisa Biscuits Manufacturing Company Limited v. West End Distributors* [1969] E.A.701 and decisions by the CAT in *Karata Ernest and others v. Attorney General*, TCA Civil Revision No. 10 of 2010, at Dar es Salaam,

(unreported) and COTWU (T) OTTU Union and another v. The Hon Iddi Simba and others [2002] TLR. 88.

Apart from the fact that the issues raised by the respondent requires proof by production of evidence, thus disqualifies to be treated or determined at the preliminary stages, the law under Regulation 21 of the Judicature and Application (Electronic Filing) Rules, is clear that the document is filed in court once submitted electronically.

The first objection is therefore overruled.

The 2nd objection was abandoned, and arguing on the third objection that the application contravenes the provisions of Rule 8 (4) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure and Fees) Rules, 2014, the respondents argue that the application is supported by the affidavit of the 1st applicant, one **Pumziko Philemon Mlelwa** who swore the affidavit on behalf of himself and 162 others. The respondents' states that this is contrary to Rule 8 (4) of the above cited Rules, and that the applicant who swore the affidavit on behalf of the rests of the applicants ought to

have given reasons as to why the other 162 applicants could not swear the affidavit. The requirement of giving reasons as required in Rule 8 (4) of the Rules is essential and failure to comply is fatal. The respondent however says in their submissions that the applicant who swore the affidavit gave the reasons, hence in compliance of the Rule, they argue however that the reason given, that of numerous number of the applicants is not sufficient reasons as there is no harm for all the 163 applicants each to swear his own affidavit. The Counsel for the applicants said in his submissions that he has complied with the requirements of Rule 8(4) of the Rules as the applicant has given the reasons, and the reasons of numerous number of the applicants is sufficient for the affidavit in support of the application to be sworn in and verified by only one applicant representing himself, and the rests of the applicants. The Counsel for the applicants also states that the 2nd objection does not qualify to be decided as the preliminary point of law as it is not a pure point of law.

I have heard and considered the arguments of both counsels representing the parties herein, the provisions of Rule 8(4) provides as follows:

Rule 8(4) Where the applicant is unable to make the affidavit, the affidavit may be made by another person on the applicant's behalf, and it shall state why the applicant is unable to make the affidavit.

I agree that an affidavit is a sworn statement in writing made under oath or on affirmation before an authorised officer or Magistrate as defined in the case of **OTTU v. AG and Others, Misc. Civil Application No. 15 of 1997 HC at Dar es Salaam** (unreported).

Affidavits are governed by Order XIX, Rule 3 (1) of the CPC which provides that:

"Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications on which statements of his belief may be admitted: Provided that, the grounds there of are stated. "(Emphasis supplied).

Thus, an affidavit being a sworn written evidence in substitute of oral evidence, it must be confined to such statements as the deponent is able of his own knowledge to prove. See the case decided by the Court

of Appeal sitting in Mbeya, the case of **Juma Busiga v. Zonal Manager TPC (Mbeya), Civil Application No. 8 of 2004.**

An affidavit is facts deposed or rather a declaration of facts by the deponent. The facts mentioned in an affidavit must be true to the best knowledge of the deponent. In order to make it valid, it needs to be sworn in under oath before an authorised officer or magistrate or the Commissioner for oaths. However, the law permits other people to swear affidavit of another person provided that the reasons for swearing on behalf of others are given. As long as the reasons are given there shall be no need to adjudge on whether the reasons given are sufficient or not, there is no such requirements under the law governing affidavits, the only restrictions are that the facts deposed in the affidavit must be true to the best of the knowledge of the deponent, and if the facts deposed in the affidavit are from a different source other than the deponent the source of the information must be stated in the verification clause of the affidavit.

The law, for example allows an advocate to swear affidavit in the proceedings in which he appears for his client, provided that he deposes on matters which are in the advocate's personal knowledge only. This principle was settled in the case of **Tanzania Breweries Limited v. Herman Bildad Minja, Civil Application No. 11/18 of 2019 CAT at Dar es Salaam (unreported)**, the court held as follows:

"From the above, an advocate can swear and file an affidavit in proceedings in which he appears for his client but on matters which are within his personal knowledge. These are the only limits which an advocate can make an affidavit in proceedings on behalf of his client."

When an affidavit is taken on behalf of others, the reasons for doing so must be stated, and if an affidavit mentions another person or persons that other persons must also swear affidavits but the affidavit of such other person will only be needed if the information of such other person is material evidence because without his affidavit his evidence would be treated as hearsay evidence. This is stated in the

case of **Benedict Kimwaga vs Principal Secretary, Ministry of Health, Civil Application No. 31 of 2000**, Court of Appeal of Tanzania at Dar Es Salaam (unreported), that:


"If an affidavit mentions another person, then that other person has to swear an affidavit. However, I would add that that is so where the information of that other person is material evidence because without the other affidavit it would be hearsay. Where the information is unnecessary, as is the case here, or where it can be expunged, then there is no need to have the other affidavit or affidavits."

In the case at hand, since the applicants are many, about 163 applicants , and since the facts are known and within the knowledge of the 1st applicant who swore the affidavit on behalf of himself and the rests of the applicant, and again since Rule 8 (4) permits a person to swear the affidavits on behalf of another, and the reasons for doing so have been stated, I find that the objections taken by the respondents are frivolous as the applicants are in strict compliance of

Rule 8 (4) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Judicial Review Procedure and Fees) Rules, 2014.

Consequently, the objection raised by the respondents are overruled for lacking merits, with costs.

**DATED and DELIVERED at DAR ES SALAAM by Video
conferencing this 20th day of SEPTEMBER, 2023**

A handwritten signature in blue ink, appearing to read 'L. Mansoor', is written over the printed name.

**L. MANSOOR
JUDGE
20TH SEPTEMBER 2023**