

**IN THE HIGH COURT OF TANZANIA**  
**DODOMA SUB-REGISTRY**  
**AT DODOMA**

**LAND CASE NO. 36 OF 2022**

**GRACE F. MROSSO** (*Administrator of the Estate of the late Felix Tesha/Fidelis*

*Mrosso*..... **APPELLANT**

**VERSUS**

**GRACE FELIX TEMU**

(*The Administrator of The Late of Felix Jonathan Temu*).....**RESPONDENT**

**RULING**

*13<sup>th</sup> July & 25<sup>th</sup> September, 2023*

**HASSAN, J.**

In this case the Plaintiff prays the court to make orders against the Defendant, thus:-

- (a) A declaration that the Plaintiff is the lawful owner of Plot No. 54, Block 25, Majengo within Dodoma Municipality comprised in Certificate of Title No. 383-DLR.
- (b) A declaration that the defendant's occupation of the property is continuing trespass and the defendant be ordered to pay special

damages of Tshs 2,700,000/= and below is the chart showing the description the special damages by the Plaintiff;

- i. The property has 25 rooms which costs Tshs 30,000/= per each room amounting to Tshs 750,000/= per day.
  - ii. Tshs 750,000/= multiplied by 30 days equals to Tshs 22,500,000/= per month.
  - iii. Tshs 22,500,000/= multiplied by 12 months equals to Tshs 270,000,000/= per year. Tshs 270,000,000/= multiplied by 10 years (from the year the Ruling of the Assistant Registrar was issued to struck off the name of the defendant) equals to Tshs 2,700,000,000/=
- (c) An order that the defendant pay general damages at an amount of Tshs 1,000,000,000/=.
- (d) An order that the plaintiff be granted vacant possession of the disputed property and the defendant be evicted from the disputed property.
- (e) That the defendant be ordered to pay the costs of this suit.
- (f) Any other relief(s) this Honourable Court fit deem and just to grant.

Before hearing commenced, the respondent raised a preliminary objection on point of law to be determined by the court at the earliest as hereunder:-

*"1. That the defendant's written statement of defence is time barred."*

When the preliminary objection came for hearing, the plaintiff appeared in person whereas the Defendant had the service of Ms. Luciana Nyondo, Learned State Attorney. Parties herein prayed to proceed by way of written submissions. The Parties complied to the order of preference in filing their written submissions.

Submitting in support of the Preliminary Objection, the Respondent argued that, Order VII Rule 1(1) of the Civil Procedure Code, Cap 33, R. E 2019 states that,

*"Where a summons to file a defence has been served in accordance with Order V and the defendant wishes to defend the suit, he shall within twenty-one days from the date of service of the summons, file to the court a written statement of defence and enter appearance on the specified in the summons."*

He submitted further that, the Plaintiff filed her amended plaint on 15<sup>th</sup> November, 2022 and served the defendant on the same date, thus, the defendant had to file her written statement of defence on 5<sup>th</sup> December, 2022. That, as per the court records, the defendant filed her written

statement of defence on 2<sup>nd</sup> December, 2022. However, the payment of the document was done on 7<sup>th</sup> December, 2022.

To cement her submissions the Plaintiff cited the case of **John Chuwa v Anthony Ciza, [1992] TLR** where the court held that,

*"the date of filing application is the date of payment of fees and not that of receipt of the relevant documents in the registry."*

Thus, he argued that the Defendant's WSD was filed out of time since she made payment on the 7<sup>th</sup> day of December, 2022. That, in **Emmanuel Bakundukize & 9 others v Aloysius Rutaihwa, Land Case No. Appeal No. 26 of 2020** (unreported), the High Court dismissed the appeal for it was filed out of statutory time based on court fees payment.

The Plaintiff prayed the court to dismiss the WSD with costs and to enter *ex parte* judgement against the Defendant.

In Reply to the Preliminary Objection, the Defendant submitted that, the cited Order VII Rule 1(1) does not provide for what has been quoted by the Plaintiff and thus, it is not applicable under the premises of this case since Order VII is about Plaint and its particulars. The Defendant added further that, despite the absence of the summons or order from court requiring the Defendant to file defence to the amended Plaint within 21 days, the Defendant filed the Written Statement of Defence on the 2<sup>nd</sup> day

of November, 2022 which was on Friday. That, he was later on the 5<sup>th</sup> day of November, 2022 issued with control number and made payment within time.

He argued that, the issue here is the date of filing thus, since WSD was filed online as per the current position in the case of **Mohamed Hash v National Microfinance Bank Ltd, Revision No. 106 of 2020** (unreported).

Therefore, since defendant presented her WSD on the 2<sup>nd</sup> day of November, 2022, it was thus done in time. To that ends, the Defendant prayed the court to dismiss the preliminary objection for want of merit with costs.

In Rejoinder, the Plaintiff submitted that, she intended to cite Order VIII Rule 1(1) of The Civil Procedure Code, Cap 33, R. E 2019 to support the preliminary objection and not Order VII Rule 1(1) of the Civil Procedure Code, Cap 33, R. E 2019. That, it is a typing error and she prayed the error to be cured by the provision of Section 3A of the Civil Procedure Code, Cap 33, R. E 2019 relating to the Oxygen Principle that, mere omission or wrong citation of the law does not render the application incompetent.

The Plaintiff submitted further that the Defendant failed to state when the actual payment was made. That, as per the exchequer receipt within the court file, the payment was made on the 7<sup>th</sup> day of December, 2022.

That, in **Emmanuel Bakundukize & 9 others v Aloysius Rutaihwa** (supra) the High Court dismissed the appeal for it was filed out of statutory time based on court fee payment, and the court ordered that, the date on which payment was made is considered as the date on which the document was filed regardless that the document was filed online. Thus, the WSD was filed out of time as per the exchequer receipt within the court file.

The Plaintiff prayed the preliminary objection be sustained and the WSD be dismissed with costs.

I have carefully gone through the records and submissions of both parties. The issue to be determined by this court is whether or not the WSD was filed out of time. There is no dispute that the Defendant was served with the amended plaint on the 15<sup>th</sup> day of November, 2022 and she filed in the court her WSD on the 2<sup>nd</sup> day of December, 2022. The record shows that payment was made thereto on the 7<sup>th</sup> day of December, 2022 that is 22 days after she was served with the amended Plaint.

The position of the law is settled that, the date on which fees for filing documents/pleadings is paid in court, is the actual date the application is taken to have been filed. Decisions of the court speaks loudly on this position, **See Salum Saidi Mtiwe and Another Vs Ibrahim Mohamed Chingo and Another, Civil Appeal No. 26 of 2013 High Court at**

**Dsm (Unreported); John Chuwa Vs Antony Ciza [1992] TLR 233**, just

to mention few. In **John Chuwa v Antony Ciza** (supra) the court held:-

*"the date of filing is the date of payment of fees and not that of receipt of the relevant documents in the registry".*

In **Bakema Said Rashid Vs Nashon William Bidyanguze and 2 Other, Election Reference No.1 of 2020 HC at Kigoma** (Unreported)

the court had this to say as per the position of the law in electronic filing of documents in court:-

*"To my knowledge, the registry practice on filing documents is that even when documents are filed electronically, they are attended during office hours where the Deputy Registrar approves them for payment of fees, then a bill is generated at the registry office and sent to the client for payment in form of a control number. This mode of payment and practice is still in practice as the chief Justice has not prescribed new mode of payment under rule 34 of the Electronic Filing Rules for purposes of the electronic filing of documents."*

In the instant case the Defendant presented her WSD at the court registry on Friday the 2<sup>nd</sup> day of December, 2022 the 17<sup>th</sup> day after she was served with the Plaint. She was issued with a control number on the 5<sup>th</sup> day of December, 2022, the 20<sup>th</sup> day. She did not make payment up until on the 7<sup>th</sup> day of December, 2022, the 22<sup>nd</sup> day, thus one day out of time with no reason thereof.

That being said, I am inclined to agree with the Plaintiff that the Defendant's WSD was filed out of time contrary to Order VIII Rule 1(1) of the Civil Procedure Code, Cap 33 R. E 2019. The same is hereby expunged from the record of this suit and the matter proceed exparte.

Ordered accordingly.

**DATED** at **DODOMA** this 25<sup>th</sup> day of September, 2023.



**S. H. HASSAN**  
**JUDGE**  
**25/09/2023**

