

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

MISC. CIVIL APPLICATION NO. 4 OF 2023

*(An appeal originating from the decision of Emaoi Primary Court, Civil Case No. 17 of 2020, and the
Decision of Arumeru District Court in Civil No. 9 of 2022; Hon I. T. Nguvava- SRM dated 8th August
2022)*

ZAKAYO MEVALARIAPPLICANT

VERSUS

MAIKO ELIASRESPONDENT

RULING

01/08/2023 & 12/10/2023

GWAE, J

The applicant, Zakayo Mevalari has brought this application under section 14 (1) of the Law of Limitation Act, Cap 89, Revised Edition, 2019 (LLA). He is after an order of the court for the following reliefs

1. An enlargement of time within which to appeal to the court against the whole decision of the District Court of Arumeru dated 8th August 2022 in Civil Appeal No. 9 of 2023 between the parties above
2. Costs be paid by the respondent

3. Any other reliefs as may be deemed fit and just to grant by the court.

Subsequent to the pronouncement of the District Court's decision on 5th August 2022, the applicant is found desirous to appeal against that decision, which upheld the judgment and decree of Emao Primary Court but has found himself out of the time. Hence, this application supported by his sworn affidavit whose reasons for delay are; sickness (January 2022 to date) substantiated by a medical chit appended therein. He further averred that, following his sickness, he was unable to obtain copies of judgment and decree for appeal purposes. He went on stating that after being availed with the judgment of the District Court he noted that, the same is tainted with illegality.

Challenging the application, the respondent filed his counter affidavit, which is to the effect that, the applicant's reason of sickness is cooked, as his medical sheet does not contain dates of his admission and length of period he underwent medication. He also resisted the application on the ground that the reason of the alleged late supply of the certified copies of judgment and decree of the District Court is unfounded since the applicant has failed to indicate when he applied for the same.

During hearing of the application, Mr. Emmanuel Ole Kokani, the learned counsel appeared representing the applicant while the respondent appeared in person, unrepresented. The court ordered, this application be disposed of by way of written submission.

In arguing this application, the applicant's counsel merely reiterated what is contained in his affidavit. Nonetheless, he urged this court to make reference to the following cases; **Mutaza Mohamrd Raza Virani** and **Mrs Rubab Mohamed Raza vs. Mehbood Hassali**, Application No. 448/01 of 2020, where the Court of Appeal stressed that;

"Sickness is a condition which is experience by a person who is sick. It is not a shared experience. Except for the children who are not yet in a position to express their feelings, it is the sick person who can express his/her condition whether he/she has strength to move, work and do whatever kind of work he is required to do

The applicant's counsel in his endeavors to demonstrate the issue of illegality in the decision intended to be challenged in the court argued that, the District Court decided the issue which did not answer the real cause of action namely; breach of the contract between the parties. He then asked this court to refer to the case of **AG vs. Oysterbay Villas Limited and another**, Civil Application No. 2999/2016nwith approval with approval of the famous decision in **Principal Secretary, Ministry**

of Defence (1992) TLR 182 where it was held that, the court may extend even time where the issue of illegality is alleged.

Through his written submission, the respondent has canvassed the preliminary objection grounded on wrong citation of the provision of the law notably; section of 14 (1) of the Law of Limitation Act (supra) instead of section 25 (1) (b) of the Magistrates Courts Act, Cap 11, Revised Edition, 2019. Following the pinpointed wrong citation, the respondent sought an order striking out the application for being incompetent in the eye of the law. He also argued that the applicant's application is supported by incurable affidavits since the same contains conclusion and extraneous arguments.

As to the merit or otherwise of the application, the respondent resisted this application by asserting that, the applicant has failed to account for the delay of 187 days and that his sick sheet prepared on 3rd January 2023 is all about previous days. He also challenged that, the applicant has also failed to account for the days of delays from when the medical chit was prepared to the date of filing of the application that is on 7th March 2023.

The respondent went on arguing that, the medical chit appended by the applicant is all about the attendance to Mount Meru Referral

Hospital but the same does not indicate dates on which he underwent medical treatments.

Regarding the respondent's PO, I am of the view as that of the respondent that, the applicant ought to have cited the specific piece of legislation dealing with appeals to the High Court for matter arising from primary courts. It is section of 25 (1) (b) of the Magistrates Courts Act (supra) which is applicable and not Law of Limitation Act (supra), Law of General Application. Section 43 of the Law of Limitation Act clearly prohibits use of its provisions once there is a provision on limitation of time provided by other written law unless contrary appears in such written law. Section 43 of the Act provides;

"43 This Act shall not apply to-

(a) Criminal proceedings

(b) Applications and appeal to the Court of Appeal

(c) To (e) not applicable

(f) Any proceeding for which a period of limitation is prescribed by any other written law, save to the extent provided for in section 46".

The wordings of the above quoted provision of the Law of Limitation Act are couched to the mandatory requirement with effect that, where there is a specific piece of legislation, which provides for limitation of time, provisions of such specific Act of Parliament shall be applicable and not

the general Law of Limitation Act. I am alive of the principle of overriding objective and the fact that, mere wrong citation paragraph or sub-section cannot render the application incompetent as was demonstrated by the Court of Appeal of Tanzania in the case of **Joseph Shumbusho vs. Mary Gracd Tigerwa**, Civil Appeal No. 183 of 2016 (unreported). However, I am of the considered view that, the application at hand is distinguishable from the former application before the Court of Appeal since in the said application before the Court of Appeal, the applicant cited wrong sub-Rule of the Rules of the Tanzania Court of Appeal, 2009. Nevertheless, in the latter application, the applicant has cited completely a wrong law and not specific provision of the applicable law. Therefore, in my decided view, the principle of overriding objective is not applicable in the present situation where the applicant has cited provisions of inapplicable law.

It follows therefore; the assertion by the learned counsel for the applicant that, the provisions of the Law of Limitation do not preclude application of the Law of Limitation is unfounded. I am holding that view for an obvious reason that, under section 43 of the Law of Limitation Act, there is a clear and unambiguous impedes applications of provisions of the Law of Limitation Act where there is a specific written law like the case here.

While on one hand, the introduction of the principle of the overriding objective in our laws was intended to enable expeditious hearings and determinations of cases on merit. Nonetheless, the principle cannot be applied blindly by citing wrong law in the chamber summons. Parties to the proceedings or their advocates are therefore urged to exercise due diligence in applying provisions of the applicable law. It is fundamentally required to apply the correct law and not incorrect law. The applicant's wrong citation of inapplicable law, in my firm view, goes to the root of the matter.

I am however not persuaded if the applicant's affidavit is incurable defective for containing conclusion and extraneous matters as wroglly contended by the respondent. The applicant's affidavit, in my considered view is in accordance with the law as it contains facts and not extraneous matters.

Before I type off, I find it worth noting that, provisions of the Civil Procedure Code Cap 33, Revised Edition, 2019 (CPC) are not applicable in matters originating from Primary Courts. In our present application, the parties' counsel have attempted to urge this court to invoke the provisions of the CPC namely; section 95, Rule VII Rule 17 of the Code, that is wrong in this application, which emanates from primary court. Section 2 of the CPC provides;

"Subject to the express provisions of any written law, the provisions of this Code shall apply to all proceedings in the High Court of the United Republic, courts of resident magistrates and district courts".

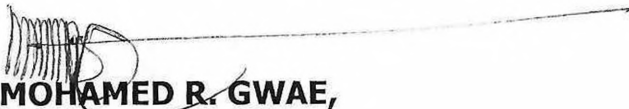
According to the wording of the above quoted provision, it goes without saying that the provisions of the CPC are not applicable in primary courts. Having sustained the respondent's PO, I am therefore not supposed to determine this application on merit since the application at hand is incompetent.

In the upshot, the respondent's point pertaining wrong citation of law is sustained. Therefore, the application is incompetent for citation of wrong law or inapplicable law. The application is thus struck out with costs.

It is so ordered

DATED and DELIVERED at ARUSHA this 12th October 2023




MOHAMED R. GWAE,
JUDGE