IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF MANYARA

AT BABATI

MISC. CIVIL APPLICATION NO. 39 OF 2023

(Arising from Decision in Misc. Civil Appeal No. 15 of 2023 District Court of Babati at Babati, Originating from Civil Case No. 2 of 2023 Mwada Primary Court)

JACKSON MREFU.....1ST APPLICANT

MENYEE MREFU.....2ND APPLICANT

VERSUS

EVA MNYALO.....RESPONDENT

RULING

29th & 29th December 2023

Kahyoza, J.:

Eva Mnyalo, the respondent, sued **Jackson Mrefu** and **Menyee Mrefu** (the applicants) at Mwada Primary Court for a claim of compensation to a tune of Tzs. 7,420,000/=, for destruction of her property and costs of the suit. The trial court found in favour of the respondent and awarded her Tzs. 3,710,000/=. On the appeal, the district court confirmed the judgment and decree of the primary court and dismissed the appeal.

The applicants were unhappy with the outcome of the appeal. However, they failed to appeal on time. They resolved to institute an application for extension of time, which this Court baptized as Misc. Civil application No. 36 of 2023. They sought to appeal out of time. They filed

the application for extension of time under certificate of urgency. The Court fixed the application for hearing on 23.11.2023. Unfortunately, on the date fixed for hearing the applicants and their advocate did not enter appearance. The Court dismissed the application for want of prosecution.

Determined to appeal, **Jackson Mrefu** and **Menyee Mrefu** (the applicants) lodged the instant application, seeking for extension of time to appeal against the decision of the district court. The instant application is a replica of Misc. Civil Application No. 36 of 2023, which this Court dismissed for want of prosecution. More still, it is the same advocate who filed the dismissed application who lodged the instant application. Before hearing the application, I explored from the parties as to the competence of the current application. I invited parties to submit orally on the same. The first applicant, who was unrepresented, submitted that this application was properly filed. The second applicant, who is unrepresented, had nothing to submit.

The respondent, who was also not represented, submitted that this application was not properly instituted before this court, as the applicants were required to apply for restoration of their dismissed application and not to file a fresh application.

The pertinent issue before me is **whether this application is competent**.

On the outset, I wish to make an observation that the proper enabling law in which an application for extension of time is sought, in matters originating from primary court is rule 3 of **the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules**, GN. No. 312 of 1964 which provides: -

> *"**An application for leave to appeal out of time** to a district court from a decision or order of a primary court or **to the High Court from a decision or order of a district court in the exercise of its appellate or revisional jurisdiction shall be in writing, shall set out the reasons why a petition of appeal was not or cannot be filed within thirty days after the date of the decision** or order against which it is **desired to appeal**, and shall be accompanied by the petition of appeal or shall set out the grounds of objection to the decision or order:*
>
> *Provided that where the application is to a district court, the court may permit the applicant to state his reasons orally and shall record the same." (Emphasis added)*

Given the above elucidation, it is obvious that the **Law of Limitation Act,** [Cap. 89 R.E. 2019], cited by the applicants is inapplicable.

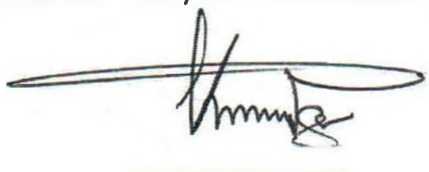
I wish to state the obvious facts, firstly, that there is no dispute that the applicants at first filed an application for extension of time, which this Court dismissed for want of prosecution. Later, instituted the second application seeking for the same order. Secondly, the above cited Rules

are silent as to what step should be taken upon a dismissal of such an application. However, rule 17 of the cited Rules speaks of re-admission as a remedy to appeals dismissed for non-appearance and it is upon sufficient cause that the same can be re-admitted. I find refuge in the said rule that, in an event that an application under rule 3 is dismissed for want of prosecution, then a recourse is to file an application seeking for the restoration of the same. Filing a replica application to the dismissed one is procedurally incorrect. A dismissal of an application or appeal is a determination, unless it is set aside it brings an application or an appeal to an end. It is the rule of practice that a matter, which has been determined to its finality by a competent court must not be reopened. The applicants had no right to reopened the application for extension of time which this court dismissed but to apply for restoration.

In the end, I find the current application incompetent, misconceived and an abused of the court due process. Consequently, I hereby strike it out with costs.

It is ordered accordingly.

Dated at **Babati** this 29th day of **December**, 2023.



J. R. Kahyoza, J.

Court: Ruling delivered in the presence of the parties. B/C Ms. Fatina Haymale (RMA) present.

J. R. Kahyoza

Judge

29.12.2023