

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

CIVIL REVIEW NO. 1 OF 2023

*(Originating from judgment of the High Court of Tanzania Dodoma, in DC Civil Appeal
No. 18 of 2022)*

HENRY JONATHAN MWAMPONDELE.....APPLICANT

VERSUS

JULIA BARAKA KIBOGA..... RESPONDENT

RULING

Date of last order: 18/3/2024

Date of ruling: 22/3/2024

KHALFAN, J.

The applicant filed the instant application for the court to review its judgment in DC Civil Appeal No. 18 of 2022 dated 23/11/2022. The memorandum of review consists of four grounds as follows:

1. *That, this honourable court misdirected itself by ordering this suit to be remitted to the trial court for determination while the same court had already decided on the same issues.*



2. *That, this honourable court misdirected itself by ordering that the subordinate court deal with only distribution of matrimonial assets instead of the High Court which ought to deliver its verdict.*
3. *That, the order of retrial on the specific issue will render to have two judgments from the same court.*
4. *That this honourable court erred in law by not setting aside judgment and proceedings before issuing orders.*

When the application was called on for hearing, Mr. Godfrey Wasonga learned advocate, represented the applicant while the respondent did not enter appearance despite being dully served. The court *suo motu* raised a concern whether the application for review was filed within time.

I therefore invited the learned advocate for the applicant to address the court on the above raised issue.

In his arguments, Mr. Wasonga readily conceded that in terms of item 3 part III of the schedule to the Law of Limitation Act [CAP 89 R.E 2019], (hereinafter referred to as the LLA), an application for review of judgment or order has to be filed within 30 days. But he prayed for the court to withdraw the application.



Having gone through the arguments, it is not in dispute that the judgment subject of the application at hand was delivered on 23/11/2022 while the instant application for review was filed in court on 18/8/2023. It follows therefore that the instant application was filed after expiry of more than seven months.

In terms of item 3 part III of the schedule to the LLA, an application for review of judgment or order has to be filed within 30 days. Therefore, by filing the instant application after the lapse of more than seven months and without seeking leave of the court for extension of time, the application at hand is time barred.

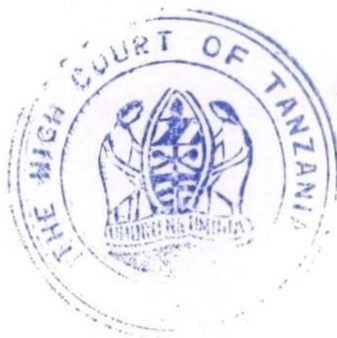
The next issue for determination is whether I should proceed to grant the prayer for withdrawal by the learned advocate for the applicant or proceed to strike out the same. I have carefully considered the prayer however, with respect, since there was an issue already raised by the court regarding the competence of the application, before anything, the issue raised by the court should be determined first. The Court of Appeal, while facing an akin situation in the case of **Meet Singh Bhachu v. Gurmit Singh Bhachu** Civil Application No. 144/02 of 2018 Court of Appeal of Tanzania at Arusha (unreported) observed thus:




"...it seems to us settled that **one cannot withdraw an incompetent appeal or application.** This is because it has been the practice of this Court, which appeals to logic, that **once a preliminary objection has been raised, it must be heard first, and the other party is precluded from doing anything to pre-empt it...**" [Emphasis added]

I subscribe to the above authority. Consequently, I decline to grant the prayer for withdrawal of the application and I proceed to strike out this application for being time barred. Since the point was raised by the court *suo motu* and taking into account that the application stems from matrimonial dispute, I will not make an order as to costs.

It is so ordered.




F. R. Khalfan
JUDGE
22/3/2024