

IN THE HIGH COURT OF TANZANIA

DODOMA SUB - REGISTRY

AT DODOMA

MISC. LAND APPLICATION NO. 75 OF 2023

(Originating from Land Appeal No. 69 of 2023 from High Court

of Dodoma and Land Application No. 47 of 2019 Iramba

District Land and Housing Tribunal)

MAGRETH NAKEMBETWA KADUNKU.....APPLICANT

VERSUS

KITUNDU MSFNGIRESPONDENT

(On behalf of the Kinikyili Clan)

RULING

06.05.2024

HASSAN, J.:

The applicant Magreth Nakembetwa Kadunku appeared before the court aggrieved by the decision of this court delivered on 28/08/2023, to dismiss the Land Appeal No. 69 of 2022 for want of prosecution. Thus, the applicant sought for an order to restore the same under Order XXIX rule 19 of the Civil Procedure Code, [Cap. 33 R.E 2019]. Her application was made

by chamber summons together with an affidavit deponed by learned advocate Emmanuel Sululu.

In response to aforesaid application, the respondent filed a counter affidavit fore fronted by point of preliminary objection. To wit:

“That that purported application is time barred since it was filed after expiration of 30 days’ time limit allowed by the law for readmission of an appeal dismissed for want of prosecution. Thus, filing was on 16th October, 2023, fifty days after the day of dismissal on 28th August, 2023.”[sic].

Coming on the 6th May, 2024, when the application was called on for hearing, learned counsel Mr. David Malugu appeared for the applicant who was himself absent. Whereas, on the other hand, Mr. Kitundu Msengi entered presence in person unrepresented by legal counsel.

To commence hearing of preliminary objection (PO), the counsel for the applicant over-lapped to the bench and readily conceded to the P.O raised. That, it is true that the application was filed beyond 30 days’ time scale allowed by the law. To that note, he pointed out Part III item 9 of the

Law of Limitation Act to have been violated. In the end, he prayed the court to dismiss the application without costs.

On his part, the respondent joined hands with the applicant's submission that, the application has to be dismissed for being filed out of time. However, he vehemently contended on the issue of costs, where he prayed for the order of costs in his favour. On that, he reasoned out that, to attend the matter, he had incurred costs of which, the applicant has to recompensate. Detailing on the same, it includes transportation fare from where he lives at Kiomboi Singida to Dodoma town. He also included accommodation expenses that he had incurred.

Having gone through the submissions, indeed, in computing the time from when dismissal order was issued, to the date the application for restoration was lodged, it definitely went beyond the time pegged by the law. It is apparent that, under Part III item 9 of the Law of Limitation Act, time limit for readmission of appeal which was dismissed for want of prosecution is thirty days.

Now, looking on the instant application, it is clear that, the dismissal order for non-appearance of appellant was made on 28/08/2023. Whereas,

the application for readmission of the appeal was filed on 16/10/2023. The period of which, its almost 49 days. Therefore, given that a point of time limitation touches jurisdiction of the court, thus, the courts lacks jurisdiction to entertain matters for which, litigation period has expired. Which means, when it appears, it should not be lightly paired. See for instance, in the case of **DPP v. Bernard Mpangala & 2 others**, Criminal Appeal No. 28 of 2001 CAT (unreported) it was held:

"Admittedly, limitation is a legal issue which has to be addressed at any stage of proceedings as it pertains to jurisdiction. However, parties have to be given a right of hearing....."

See also in **Granitech (T) Company Limited v. Diamond Trust Bank Tanzania Limited and 4 others**, Civil Application No. 447/16 of 2021 CAT (unreported) where the court had emphasized on timely commitment, it says:

*"For proper and timely administration of justice, **there must be strict deadlines in filling legal documents.** The deadlines are set to maintain order and efficiency in*

the legal process. Therefore, there must be genuine reasons which prevents someone from meeting a dead line of which forgetfulness is not among those reasons.”

In the circumstance, knowing that parties have been afforded opportunity to submit their case, and hence, they readily admitted to the anomaly. In such a case, where the application for re-admission of appeal was filed beyond the period of 30 days, the appeal become indecisive. To that end, I struck it out with costs.

Ordered accordingly.

DATED at DODOMA this 06th day of May, 2024.

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S. H. HASSAN

JUDGE

06/05/2024

This ruling delivered this, 6th day of May, 2024 in the presence of both parties.



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S. H. HASSAN

JUDGE

06/05/2024