

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DODOMA

(MASABO,J., KAGOMBA,J. AND MUSOKWA,J.)

CIVIL APPEAL NO. 6438 OF 2024

BETWEEN

MPALE KABA MPOKI.....APPELLANT

AND

THE ADVOCATES COMMITTEE.....RESPONDENT

(Arising from Advocates Committee Application No. 10 of 2023 between the Attorney General versus Boniface A.K. Mwabukusi, before the National Advocates Committee at Dar es Salaam)

RULING

2nd May & 4th June, 2024

KAGOMBA, J.

The appellant is a learned counsel with Roll No. 506 who was representing his client, namely; Boniface A.K. Mwabukusi, in Application No. 10 of 2023 between the Attorney General and the said appellant's client. Records indicate that on 20th November, 2023, in the course of the proceedings before the respondent, and while representing his client, the appellant committed a professional misconduct as a consequence of which he was suspended by the respondent from legal practice for a period of six (6) months thenceforth.

Being aggrieved by the said decision, the appellant has appealed to this Court to see to it that the impugned order of the respondent is quashed and set aside, among other reliefs. However, before the said appeal could be heard and determined, the respondent filed a notice of preliminary objection challenging the competence of the appeal based on the following two points of law: -

- 1. That, the appeal is hopelessly time barred hence the Court has no jurisdiction to entertain the same; and*
- 2. That, the appeal is untenable in law for non-joinder of parties who appear in the proceedings and order which is subject of this appeal.*

On 2nd May, 2024, when this matter came for hearing, this Court ordered the preliminary objection to be disposed by way of written submissions, and the parties complied with the Court's scheduling order. Mr. Sanga, learned State Attorney made the submissions for the respondent while Dr. Rugemeleza Nshala and Mr. Jeremia Mtobesya, both learned Advocates, made the reply submissions for the appellant.

In his opening general submissions, Mr. Sanga, gave comfort to the Court and his counterparts that the preliminary objection was on pure points of law and in conformity with the conditions set out in the case of **Mukisa**

Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd [1969]

1 EA 696. He also laid comfort that in disposing the two points of objection, the law allows reference to be made to the pleadings and annexures attached thereto. In support of this position, he cited the case of **Moto Matiko Mabanga vs. Ophir Energy Plc and 6 Others**, Civil Appeal No. 119 of 2021, Court of Appeal, Dodoma, and the cases referenced therein.

In specifically addressing the first point of the preliminary objection, Mr. Sanga referred to section 5 of the Law of Limitation Act, [Cap. 89, R.E. 2019] (Henceforth "Law of Limitation"), which provides that the right of action accrues on the date on which the cause of action arose. His main contention here is that the time limit within which to lodge an appeal against the decision of the respondent is thirty (30) days from the date of the impugned Order, as per Section 24A of the Advocates Act, [Cap. 341 R.E. 2019] (Henceforth the "Advocates Act") read together with Rule 17 of the Advocates (Disciplinary and Other Proceedings) Rules, 2018 (Henceforth "the Advocates Rules, 2018"), and that the allowable time has been exceeded by the appellant.

He elaborated that the number of days spent by the respondent for preparing necessary documents for appeal purposes, as certified by the

respondent in line with rule 17(4) of the Advocates Rules, 2018 are, by law, excluded.

With the above position in mind, Mr. Sanga contended that in the present appeal, the cause of action arose on 20th November 2023, when the appellant was suspended by the respondent, hence, according to the provision of section 24A of the Advocates Act, the time for the appellant to file his appeal came to an end on 20th December, 2023.

Learned State Attorney was quick to expound that, on 20th November 2023, the appellant requested from the respondent copies of the impugned order and proceedings, ostensibly for processing his appeal, and the same were eventually supplied to him on 21st February, 2024, with a certificate of delay that knocked off 103 days caused by the said delay.

According to Mr. Sanga, counting from 21st February, 2024 the 30-days period allowed for the appellant to file his appeal ended before 22nd March, 2024, while the appeal was filed on 25th March, 2024. He argued that the appeal was filed after 33 days, in contravention of the provisions of section 24A of the Advocates Act and Rule 17 (4) of the Advocates Rules, 2018.

Citing the decision of the Court of Appeal of Tanzania ("CAT") in **Fatuma Mohamed vs. Chausiku Sema**, Civil Appeal No. 225 of 2017

(unreported), the learned State Attorney submitted emphatically that where a certificate of delay is in place, the law requires the computation of days to commence from the last day excluded in the said certificate.

As to the legal effect of filing a suit out of time, Mr. Sanga referred to section 3(1) of the Law of Limitation which calls for dismissal of such a suit. He also referred to the cases of **Yussuf Vuai Zyuma vs. Mkuu wa Jeshi la Ulinzi TPDF and 2 Others**, App. No. 15 of 2009 (CAT) (unreported); **Moto Matiko Mabanga** (*supra*); and **Fortnatus Lwanyantika Masha and Another vs. Claver Woshi Motors Ltd**, Civil Appeal No. 144 of 2019, (CAT) (unreported), in that regard.

Citing the decision of the CAT in **Mondorosi Village Council and 2 Others vs. Tanzania Breweries and 4 Others**, Civil Appeal No. 66 of 2017 (unreported), Mr. Sanga preemptively argued that the principle of overriding objective under section 3 of the Civil Procedure Code [Cap. 33, R.E 2019] (Henceforth "CPC") is incapable of curing a time-barred suit. He thus prayed for dismissal of the appeal for being time-barred.

Turning to the second limb of the preliminary objection, Mr. Sanga submitted that the proceedings from which the impugned decision of the respondent emanate, contain different parties, namely, the Attorney General

and Boniface A.K. Mwabukusi, who were left out in the appeal. Citing the decision of the CAT in **Salim Amour Diwani vs. The Vice Chancellor Nelson Mandela African Institute of Science and Technology and Another**, Civil Application No. 116/01 of 2021, the learned State Attorney was emphatic that parties in the proceedings must remain consistent in subsequent proceedings unless there is a reasonable cause to change them, and such a change has to be effected with leave of the Court.

Again, the learned State Attorney, preemptively, argued against invocation of the principle of overriding objective, submitting that the same cannot be applied to circumvent mandatory provisions of the law. The case of **Dodhia vs. National and Grindlays Bank Ltd**, [1970] EA 195, was cited in this regard.

In the end, the learned State Attorney prayed for dismissal of the appeal, with costs.

In their reply, with regard to the first limb of the preliminary objection, Dr. Rugemeleza Nshala and Mr. Jeremia Mtobesya, both learned Advocates, relied on the provisions of the Judicature and Application of Laws (Electronic Filing) Rules of 2018 (Henceforth "the Electronic Filing Rules, 2018") which govern the electronic filing of documents in Courts.

It was their contention that according to Rule 21(1) of the Electronic Filing Rules, 2018 the time of filing a document in court is reckoned from submission of the said document on the judiciary electronic filing system. According to the learned Advocates, the instant appeal was filed via the judiciary dashboard system on 22nd March, 2024 hence within the 30-days period prescribed by the law.

The learned Advocates strongly opposed the assertion made by their counterpart that the date of payment of court fees should be considered as the date on which this appeal was filed. They submitted that the court fees with regard to this appeal was paid on Monday 25th March 2024, because the day when the appeal was electronically filed, i.e 22nd March, 2024, was Friday, ostensibly, arguing that the payment process could not be completed on that day. The case of **Makoye J.N Wangeleja vs. Tanzania Institute of Education & Another**, Misc. Cause No. 20 of 2021, High Court Main Registry at Dar es Salaam (unreported), was cited to their support.

Regarding the second limb of the preliminary objection, the learned Advocates for the appellant submitted that the matter before this Court is unique in that, in this matter, an advocate who was not a party to the proceedings, was suspended in the course of the proceedings. In this

connection, they faulted the respondent's State Attorney for failure to cite any authority relevant to the circumstances of this particular appeal.

In addition, the appellant's Advocates were of the view that joining the Attorney General and Boniface A.K. Mwabukusi in this appeal would neither be proper nor legal and would cause them unnecessary inconvenience. The case of **Salim Amour Diwani** (*supra*) relied upon by the respondent was distinguished in that, the added party was not a party in the proceedings below and therefore, it was unprocedural to join him at the appellate level.

It was their further argument that impleading the Attorney General and Boniface A.K. Mwabukusi in the appeal was not necessary because its outcome will not affect them in any way. Referring to the provision of Order IX Rule 1 of the CPC, the learned Advocates hold the view that the misjoinder or non-joinder of such parties would not defeat the appeal.

In conclusion, they found the two points of preliminary objection devoid of merit and prayed that the same be dismissed with costs.

Rejoining, Mr. Sanga, by and large, adopted his submission in chief. He added that the respondent did not have prior knowledge of the fact that the appellant lodged the appeal electronically on Friday 22nd March, 2024 and paid the court fees on Monday 25th March, 2024. He left such facts to

be confirmed by the Court. He also distinguished the case of **Makoye J.N. Wangeleja** (*supra*) cited by the appellant, for being on a matter different to the instant one.

On the appeal being filed timely electronically, Mr. Sanga's rejoinder is that such filing did not absolve the appellant from the requirement to pay court fees, for a document is deemed to be duly filed in Court upon payment of the fees. He clung to his position that the appeal is, thus, time barred.

Referring to the Court Fees Rules, G.N. No. 189/2015, which have been revoked under Rule 11 of the Court Fees Rules, 2018, GN No. 247 of 2018 (Henceforth "Court Fees Rules, 2018") and the Electronic Filing Rules, 2018, the learned State Attorney rejoined that the two sets of rules were enacted under the same law and that the Electronic Filing Rules, 2018 did not abolish Rule 7 of the Court Fees Rules, 2015 hence, the two sets of Rules complement each other.

It was Mr. Sanga's views that the provisions of Rule 21 (1) of the Electronic Filing Rules, and Rule 7 of the Court Fees Rules, 2015 are very clear, and if the Court deems those provisions to be problematic, then the purposive approach to interpretation should be invoked. According to him, the purpose of the Electronic Filing Rules, is to ensure that pleadings which

have been filed are acted upon promptly, thereby speeding up the case process. It is his contention that failure by the appellant to pay the necessary court fees timely, despite the alleged timely filing of the documents electronically, defeats the purposes of the law.

Rejoining on the second limb of the preliminary objection, the learned State Attorney dismissed the arguments advanced by his counterparts for being mere speculations. And that marked the end of the submissions.

The above rival submissions ultimately give raise to two main issues for our determination; **Firstly**, whether the appeal is time barred hence the Court has no jurisdiction to entertain the same. And, **secondly**, whether the appeal is untenable in law for non-joinder of parties who appear in the proceedings and the order subject of this appeal.

The first issue questions the jurisdiction of this Court and in determining it the Court has first to establish the date when the appeal was filed in Court, and then determine whether the filing was done out of time.

From the above rival submissions, two different dates have been mentioned to be the dates of filing of the appeal. While the State Attorney for the respondent mentioned 25th March, 2024 as the date the appeal was filed, the appellant's Advocates reckoned that the filing was done

electronically in the afternoon of Friday 22nd March, 2024 afternoon, even though the payment was made on Monday 25th March, 2024.

Our perusal of the Court records can confirm the appellant's version, that the appeal was lodged in this Court on Friday 22nd March, 2024 but the appellant paid the necessary court fees on Monday 25th March, 2024. This being the scenario, the crunch issue is whether what the appellant managed to do with his appeal on Friday 22nd March, 2024 amounts to filing of an appeal in the eyes of the law. Counsel for both parties have submitted authorities to support their rival positions. Our reading of the submission by the appellant's Advocates is that the Court needs to look no further than the Electronic Filing Rules, 2018 particularly Rule 21 which provides:

"21.-(1) A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected".

Apparently, the learned Advocates for the appellant do not seem to give considerable thoughts on non-compliance with the requirement of Rule 3 and 5 of the Court Fees Rules, 2018 and its consequences. These provisions state:

"3. The fees for any matter shall, unless otherwise expressly provided, be paid in accordance with these Rules".

*"5. For the purposes of this Part, **fees specified in the First Schedule to these Rules shall be paid to the High Court**, a court of a resident magistrate and district court in respect of proceedings and matters other than those for which specific fees are prescribed under any other written law". [Emphasis added].*

On the other hand, the learned State Attorney is minded that both sets of Rules have to be considered in determining the date of filing as the same complement each other.

Indeed, there are two set of Rules governing the issue of electronic filing as correctly mentioned by Mr. Sanga herein above. The Rules were promulgated to purposely govern electronic filing and court fees payment.

It is true, again, as submitted by Mr. Sanga that the said Rules are meant to complement each other and the same must be interpreted harmoniously, to achieve the purpose for their respective promulgation.

The above position was well-expounded by this Court in the landmark Ruling by Hon. Mlyambina, J in **Maliseno B. Mbipi vs. Ostina Martine Hyera**, Misc. Civil Application No. 08 of 2022, High Court, Songea District

Registry, where it was emphasized that the two Rules are to be read together in establishing the relevant date of filing of documents in Court. Similar position was taken in a plethora of other decisions of this Court including **Timamu Billy Mziray vs. Saria Ringo & Another**, Misc. Land Application No. 31 of 2022, High Court, Moshi District Registry, as well as in **Msafiri Omary Sadala vs. Salima Mohamed & Another**, Misc. Civil Application No. 10 of 2021, High Court, Dodoma; to mention but a few.

As it stands, the law applicable for determining whether a document was timely electronically filed in this Court or not is to be deduced from the provisions of rule 21(1) of the Electronic Filing Rules, 2018 and rules 3 and 5 of the Court Fees Rules. According to rule 21(1) of the Electronic Filing Rules, a document shall be considered to have been so filed, if it is submitted through electronic filing system within the time set by the law. Whereas, in terms of rule 3 and rule 5(1) of the Court Fees Rules (Supra), a document is considered to be filed in Court when court fees are duly paid in accordance with the scale provided by the law.

Reading harmoniously the above two pieces of subsidiary legislation and applying the highly persuasive decisions of this Court cited immediately above, we have no doubt that the proper position of the law is that a

document is considered electronically filed in this Court, not merely upon timely submission on the system, but having been so timely submitted, when its prescribed court fees are duly paid and such payment exhibited by an exchequer receipt or other legally acceptable receipts to that effect.

In this regard, the appeal at hand which was lodged via the electronic filing system on 22nd March, 2024 but without the corresponding court fees being paid until 25th March, 2024, is deemed to have been filed on the later date when the appropriate court fees were evidently paid.

Based on the above deliberations, it is apparent that counting from 21st February, 2024 when the proceedings and Ruling of the respondent were made available to the appellant, to 25th March, 2024 when the appeal was duly filed upon payment of appropriate court fees, a total of thirty-four (34) days had elapsed, which is beyond the prescribed time of thirty (30) days provided for under Section 24A(1) of the Advocates, Act [Cap 341 R.E 2002] as aforesaid. Hence, the appeal is time barred.

We would add that, it was the duty of the appellant to realize that the filing of his appeal in Court could only be effective upon payment of the Court fees, except if the same were duly waived. *Ipsa facto*, the appellant was expected to put into consideration the time required for processing of

court fees payment as an inseparable requirement for the due filing of his appeal. It appears to us that he missed the boat.

For the above reasons, the first ground of the preliminary objection, is meritorious and the same is sustained. Hence, the first issue is answered in the affirmative. As a consequence, determination of the second ground of objection becomes inconsequential.

In the end, the appeal is hereby dismissed for being time barred. The respondent shall have its costs.

Dated at Dodoma this 4th day of June, 2024.



A handwritten signature in blue ink, appearing to be "J. L. Masabo".

**J. L. MASABO
JUDGE**



A handwritten signature in blue ink, appearing to be "A. S. Kagomba".

**A. S. KAGOMBA
JUDGE**



A handwritten signature in blue ink, appearing to be "I. D. Musokwa".

**I. D. MUSOKWA
JUDGE**