

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA SUB-REGISTRY**

**AT MUSOMA**

**CIVIL APPLICATION NO. 4114/2024**

**BETWEEN**

**MAPESA SAID MATAMBO.....1<sup>ST</sup> APPLICANT**

**MARIJANI SAID MATAMBO.....2<sup>ND</sup> APPLICANT**

**AND**

**ROSE ALLY NYABANGE.....RESPONDENT**

**RULING OF THE COURT**

*28/05/2024 & 19/06/2024*

**Kafanabo, J.:**

This is an application for revision made by chamber summons and supported by a joint affidavit of the Applicants. The application is made under sections 79(1)(c), and 95 of the **Civil Procedure Code, Cap. 33 R.E. 2019** and section 44(1)(a) and (b) of the **Magistrates' Court Act Cap.11 R. E. 2019**.

The application was made inviting the court to call for the records of Resident Magistrate's Court of Musoma in Miscellaneous Civil Application No. 06/2021, regarding the decision made on 30<sup>th</sup> March 2022 for the court to satisfy itself as to the legality, regularity, and appropriateness of the said decision as the Applicants claim that it is tainted with illegality.

However, before the matter was heard on merits, the Respondent's counsel raised a preliminary objection that the Application is time-barred. The Court ordered the hearing of the preliminary objection to proceed orally. At the hearing, Mr. Daudi Mahemba, learned Advocate, represented the Applicants, and Mr. Evance Njau learned Advocate, represented the Respondent. Since it was the Respondent's counsel who raised the preliminary objection he had the right to address the court first.

In support of the preliminary objection, the Respondent's Counsel submitted that the application before the court is out of time because the decision being challenged was delivered on 30/03/2022 before Hon. Marley, SRM. The application for revision was filed on 29/02/2024 which is the period of more than two years. According to item 21 of the Schedule to the **Law of Limitation Act, Cap. 89 R.E. 2019**, the application was supposed to be brought within sixty (60) days from the date of the impugned decision. The application was supposed to be filed in court, not before 20/05/2022. Nonetheless, the time which had lapsed is more than six hundred (600) days.

The learned counsel for the Respondent also submitted that he is aware of section 21 of **the Law of Limitation Act**(supra) as regards the exclusion of time in respect of which the Applicants were prosecuting other cases in court in good faith. However, the Applicant has never accounted for each day of the delay from 30<sup>th</sup> March 2022 to the date he filed the present application. The only remedy was for the Applicants to apply for an extension of time in which the Applicants could explain the days of the delay. The Court cannot account for the days of the delay on the Applicants' behalf.

It was further submitted by Mr. Njau that the application for revision was previously filed on time in this court, but was struck out by the Court on 02/08/2023. The Applicants went further in filing an Application for extension of time which was withdrawn on 30/11/2023. All these applications were done negligently and not in good faith because the Applicants were being represented by an advocate. Section 21 of the **Law of Limitation Act** (supra) cannot be used to cover the Applicants' negligence. Moreover, from 30/11/2023 to 29/02/2024 more than eighty-five (85) days had lapsed, and the same have not been accounted for, and there was no application for an extension of time by the Applicants. Therefore, the learned counsel submitted that according to item 21 of the Schedule to the **Law of Limitation Act** (supra), the Application is time-barred, and the Applicants should follow the procedure of applying for the extension of time.

In response to the Respondent's Counsel's submission, the Applicants' learned Counsel concurred with the Respondent's Counsel that the application for revision should be filed within 60 days, as per the law, from the date of the decision sought to be challenged. In the present case, the decision of Misc. Application No. 6 of 2021, the subject matter of this application for revision, was delivered on 30/03/2022.

The Applicants' counsel submitted that after the said decision, on 11/05/2022 the Applicants filed an application for revision which was No. 02/2022. The application was filed on the 42<sup>nd</sup> day since the decision sought to be challenged was delivered. However, the Application was struck out on 02/08/2023, and after being struck out, the Applicants then filed an application for an extension of time vide Misc. Civil Application No. 23/2023

on 09/08/2023. At the time, seven days had lapsed since the application for revision No. 02/2022 was struck out. However, the Applicants realized that they were within time after they had excluded the days in which they were pursuing their rights in court based on the same course of action. After that, on 30<sup>th</sup> November 2023, the Applicants withdrew Application No. 23/2023. The certified order of the court was availed to them on 04/12/2023. Another application for revision was filed in this court on 07/12/2023. Thereafter, the Applicants obtained a control number and paid court fees on 14/12/2023 for case No. 1477/2023 as per paragraph 24 of the Applicants' affidavit.

The Applicants' counsel submitted that the application of revision No. 1477/2023 was setback by the challenges of e-filing of the new eCase Management System. There was no complete affidavit in the system that supported the Application. Therefore, the Applicants prayed to withdraw the matter with leave to refile. The court granted the Application and the Applicants were given 14 days of refiling the same from 19/02/2024. The Applicants filed the application on 27/02/2024 which was within 14 days as ordered by the Court. All those actions were diligently done by the Applicants, there was no negligence whatsoever as submitted by the Respondent's Counsel.

It was further submitted by the Applicants' Counsel that the Respondent's counsel recognized the application of section 21 of **the Law of Limitation Act** (supra) in which days spent in court based on the same cause of action are excluded in computation of time for purposes of limitation. The cases of **Geita Gold Mining Limited vs Anthony Karangwa (Civil Appeal No. 42 of 2020) [2023] TZCA 28 (20**

**February 2023)** and the **Registered Trustees of St. Anita's Greenland Schools (T) & Others vs Azania Bank Limited (Civil Appeal No. 225 of 2019) [2023] TZCA 59 (24 February 2023)** were cited in bolstering the learned counsel's submission.

It was thus submitted that the Applicants were not supposed to apply for an extension of time as the initial application for revision was filed within 42 days, well within time. Further, when the Applicants applied for an extension of time the applicants were within 49 days. Therefore, the Application is within time, and the Applicant's Counsel prays that the preliminary objection be dismissed with costs and that the Application for revision be determined on merits.

In rejoinder submissions, the Respondent's counsel reiterated his submissions in chief and added that no application was filed on 07/12/2023, according to the record the Application was filed on 26/01/2024 and it is not known to the Respondent as she was not served with the same. He also submitted that leave to refile an application was granted to file the same within 14 days, but the Applicants filed the same on 29/02/2024 and not 27/02/2024. Moreover, since the application for revision was withdrawn in August 2023, another application was filed on 29/02/2024, the Application was filed out of time.

After considering the parties' rival submissions and a review of the affidavit in support of the application, it is clear that the preliminary objection is hinged on the timelines and the interpretation of section 21 of the **Law of Limitation Act**(supra).

Commencing with the applicable law, the advocates for both parties locked horns on the interpretation and applicability of section 21(1) of the **Law of Limitation Act, Cap. 89 R.E. 2019**. The said section provides that:

*"In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is incompetent to entertain it."*

In the present case, the Applicants, by their joint affidavit explained how they have been in court corridors pursuing their rights. The affidavit discloses that since 30/03/2022, when the decision they sought to challenge was delivered, they have been in court pursuing the matter founded on the same cause of action. Therefore, it is a firm view of this court that the above section fits squarely on the facts of the present case because the Respondent's counsel could not persuade this court to agree with him that the Applicants were either negligent or prosecuting other legal proceedings in bad faith.

Moreover, the Court of Appeal cases of **Geita Gold Mining Limited vs Anthony Karangwa (Civil Appeal No. 42 of 2020) [2023] TZCA 28 (20 February 2023)** and the **Registered Trustees of St. Anita's Greenland Schools (T) & Others vs Azania Bank Limited (Civil**

**Appeal No. 225 of 2019) [2023] TZCA 59 (24 February 2023)**  
considered applicability of section 21 of the **Law of Limitation Act**(supra).

In the said cases, it has been made crystal clear that a party who has been pursuing his rights diligently through other civil proceedings based on the same cause of action as the one in question, then time spent in such proceedings shall be excluded when computing the period of limitation. The Court of Appeal in the said decisions also made it clear that no extension of time is required for a party to justify the exclusion of time spent in pursuing other proceedings based on the same cause of action.

Reverting to the present case, the timelines as gathered from the affidavit supporting the Application and submissions of the parties are as follows:

1. The decision sought to be challenged by an application for revision was made on 30/03/2022.
2. On 11/5/2022 within the prescribed time the Applicants filed Civil Revision No. 2/2022 in the High Court of Tanzania at Musoma. This was within 42 days from 30/03/2022. Then 18 days remain from the 60 days prescribed by law.
3. The Application was heard on 01/8/2023 and the same was struck out on 2/8/2023 for being incompetent. At this juncture, as argued by the Applicants, section 21 of the Law of Limitation Act(supra) applies.
4. That 9/08/2023, the Applicants filed Miscellaneous Civil Application No. 34/2023 praying for an extension after Revision No.2/2022 was struck

out on 2/8/2022. This was the 49<sup>th</sup> day of the sixty days eleven days remain.

5. On 30/11/2023 the Applicants withdrew their application for an extension of time after realizing that they were still within the prescribed time for applying for revision in the High Court.
6. The Application for revision (1477/2024) was filed in this court on 07/12/2023 which makes it 56 days. That is, from 30/11/2023 to 07/12/2023 is seven days which makes a total of 56 days spent after the exclusion of time pursuant to section 21(1) of the Law of Limitation Act. It should also be clearly stated that the date of submission of a document through electronic filing is the date of filing of a document. Rule 21(1) of the **Judicature and Application of Laws (Electronic Filing) Rules, 2018** provides that:

*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.*

7. The said application filed on 07/12/2023 was found to be incompetent and thus was withdrawn with leave to refile within 14 days from 19/02/2024. The Applicants filed the application on 27/02/2024 which was within 14 days.

Under the circumstances of this case, and in light of the foregoing, this court finds that this application for revision was made timely and thus no



extension of time was required. It follows that the preliminary objection raised by the Respondent's counsel is hereby dismissed with costs.

It is so ordered.

**Dated at Musoma** this 19<sup>th</sup> day of June 2024.



  
**K. I. Kafanabo**  
**Judge**

The judgment was delivered in the presence of Mr. Evance Njau, Advocate holding the brief of Mr. Daudi Mahemba for the Applicants and in the presence of Mr. Evance Njau, Advocate for the Respondent.

  
**K. I. Kafanabo**  
**Judge**  
**19/06/2024**