

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR-ES-SALAAM SUB-REGISTRY)**

AT DAR-ES-SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 40 OF 2023

STANBIC BANK (T) LTD APPLICANT

VERSUS

GM CROSS AFRICA LIMITED 1st RESPONDENT

VALANCE SIMON MATUNDA 2nd RESPONDENT

CHARLES JOHNSON MKONGO 3rd RESPONDENT

(Arising from Civil Case No. 137 of 2015)

RULING

Date: 18/09/2023 & 15/03/2024

NKWABI, J.:

Review relief in Courts of law is absolutely a justification of what was said by Sister Marie Therese de Lescure at a conference on 10th November 1949 that: *"Human frailty can take us by surprise, alas! Whoever we may be."*

The applicant in this application won Civil Case No. 137 of 2015 in this Court but cannot execute the decree owing to, according to her, errors apparent on the face of the record (decree and judgment) of the Court. To circumvent that hurdle, she has preferred this miscellaneous application because she is out of the prescribed time to file an application for review. The application has been taken at the instance of CRB Africa Legal law firm. It is supported by affidavits of Loishiye Sikoi and Albert Lema.

At the outset, I wish to intimate that the chamber summons is made under section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2019 and any other provisions of the law.

The respondents filed a counter affidavit to resist the application. I ordered the application be disposed of by way of written submissions. The applicant had her submissions drawn and filed by Mr. Albert Lema, learned counsel. The reply submission was drawn and filled by Mr. Florence Aloyce Tesha, also learned counsel for the respondents. I beseech to appreciate both learned counsel for their up to the speed submissions.

As for the orders that are sought by the applicant in this Miscellaneous Application, I will let the chamber summons speak for itself thus:

1. That, this honourable Court be pleased to extend time to the applicant to file an application for review of judgment and decree in Civil Case No. 137 of 2015 delivered by Hon. Rumanyika, J. on 24th June 2021 dated 16th March 2022.
2. That costs of the Application to follow the event, and
3. Any other reliefs/ orders this honourable Court may deem fit and just to grant.

In order not to consume much of the precious time of the Court without reason, I will dwell only with what appears to be a preliminary objection raised by the counsel for the respondents in the reply submission. The counsel for the respondents, therein, intimated that the respondents have preferred an appeal to the Court of Appeal of Tanzania, thus this Court has no mandate to extend time to alter the judgment and or the decree. There is a notice of appeal already lodged in the Court of Appeal. He cited among other cases the case of **Arcado Ntagazwa v. Buyogera Bunyambo** [1997] T.L.R. 242. He prayed I dismiss this application in its entirety with costs.

Mr. Lema was of a different stand point. He stated that the notice of appeal does not hinder this Court from rectifying its own mistakes/errors that are apparent on the face of the record because it has a general inherent power to control its proceedings and rectify mistakes in the judgments and decrees. For fairness, he urged, this application be granted as the rectification that is intended to be prayed for will benefit the respondents too as they will have complete set of records.

It is trite law, which has not been disputed by Mr. Lema, that once a notice of appeal has been filed in the Superior Court, this Court ceases to have jurisdiction to entertain the matter save for few matters such as applications for extension of time to lodge a notice of appeal and for certificate that there is a point of law for the Court of Appeal to consider. See **Matsushita Electric Co. Ltd v. Charles George t/a C.G. Travers**, Civil Application No. 71 of 2001 (unreported), CAT where it was accentuated that:

"Once a Notice of Appeal is filed under Rule 76 (now Rule 83 (1) of the Rules) then this Court is seized of the matter in exclusion of the High Court except for applications specifically provided for, such as leave to appeal or provision of a certificate of law."


I am of the view that it is wastage of time for this Court to grant an application for review while, this Court has no power to review its decision on account of there being a notice of appeal lodged in the Court of appeal and there is no any suggestion that the same has been withdrawn or struck out. I do not see the need to discuss the merits of this application in the circumstances.

In the final analysis, the objection that this Court has no power to entertain this application is seconded. This application is struck out with costs.

It is so ordered.

DATED at **KIGOMA** this 15th day of March, 2024.




J. F. NKWABI
JUDGE