

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 331 OF 2021

SALMIN MBARAK SALIM

t/a EAST AFRICA INVESTMENT **APPLICANT**

VERSUS

RAS INVESTMENT **RESPONDENT**

(Arising from the decision of the High Court Land Division in Reference Application
No. 07 of 2020)

RULING

Date of Last Order: 07/10/2021

Date of Ruling: 25/10/2021

A. MSAFIRI, J:

This is the Ruling in respect of the instant application filed under Order XLII Rule 1(1)(b) & (3) and sections 78(1)(b) and section 95 of the Civil Procedure Code, Cap 33 RE 2019. The applicant is moving this Court to review its decision in Reference No. 07 of 2020 dated 03rd May 2021. The grounds for review as set out in the memorandum of review are as follows:

- 1. The Honourable Court erred apparently on face of record in awarding the Respondent TZS. 6,000,000/= as instruction fees without making any remarks/reasoning on the Applicant's ground and argument that in the Bill Costs No. 186 of 2019, the Respondent did not produce EFD receipt, manual receipts or*

any other receipt/document which the Applicant submitted to be mandatory requirement and was main point by the Applicant in objecting the award of instruction fees.

- 2. The Honourable Court erred apparently on face of record in making decision that attendance and filing fees remain intact without assigning reasons of differing from the Applicant's argument and submissions on the issue.*
- 3. The Honourable Court having found that the instruction fees awarded to the respondent was exorbitant and at high side (sic) not commensurate to the work done by Respondent and proceeded to tax of TZS. 3, 000,000/= erred apparently on face of Record in awarding the Respondent TZS 6,000,000/= as instruction fees without considering that one sixth of the total claimed amount of TZS. 27,105,000/= in the bill of costs has been taxed off.*
- 4. That the High Court made an error apparently on the face of record in failing to declare that the Respondent is entitled to no costs after one sixth of the total claimed amount of TZS 27, 105,000/= in the bill of costs has been taxed off.*

Based on the above grounds, the applicant prayed to this Court to rectify its Ruling and order that; an Application for Review be allowed; the Respondent is entitled to no costs; costs of this Application in due courses (sic) and any other order(s) the Honourable Court may deem fit. On 06th September 2021, the counsel for respondent raised the point of preliminary objection in law that, the Application for review before this Court is timed barred.

On the date of hearing of the preliminary objection, the applicant was represented by R.B Shirima, learned counsel, while the respondent enjoyed the legal services of William Mang'ena learned counsel. The hearing of the raised objections was conducted by way of written submissions.

Submitting in support of preliminary objection, Mr Mang'ena stated that, according to the Law of Limitation Act, the prescribed time for filing an application for review is 30 days from the date of delivering the Judgment intended to be reviewed. Therefore, failure to adhere to the law of limitation of time as provided by the Act, the matter has to be dismissed according to section 3(1) of Cap 89 R.E 2019.

He argued that the judgment to be reviewed was delivered on 3rd May 2021 and this Application was filed on 19th July 2021 which is about 77 days lapsed after delivery of the judgment. Therefore, the application has been delayed for almost 47 days after the exclusion of 30 days of review.

Replying to the submission on respect of the Preliminary Objection above, Mr. Shirima contested the objections and prayed for the objection to be overruled on the sense that the Application was filed within time and Item 3 of Part III of the Schedule to the Law of Limitation Act, Cap. 89 was adhered to. According to him the judgment on Reference No. 07 of 2020 to be reviewed was delivered on 03rd May, 2021. And the current application was filed on 06th July 2021 and not on 19th July 2021 as claimed by the Applicant. The disputed date 19th July 2021 is the date the respondent was served with memorandum of review and not the filing date. He submitted that the applicant delayed only 34 days counting from 1st June 2021 after expiration of 30 days of filing review. He has justified

that within those 34 delays, the Applicant was processing to be supplied with the certified decision for review where by on 04th May 2021, he requested to be supplied with the copy of the decision of the Court and the same was supplied to him on 18th June 2021. On this note he is on opinion that those days delayed are justifiable under Section 19 (2) of the Law of Limitation Act which call for exclusion of days delayed while waiting to be supplied by the decision of the Court.

In rejoinder, Mang'ena has maintained what he submitted earlier in support of the objection and added that the condition set under Section 19 (2) above are not automatic as there must be evidence on record proving that the applicant's delay was necessary delay and the respondent must have knowledge of the same. Since the record is silent, the applicant situation does not warrant him to benefit the same from the exclusion provided under the Law of Limitation Act.

From the aforesaid submissions, the issue before me is whether this Application is time barred. According to their submissions and since the Applicant does not disputes the delay, the crux is whether section 19 (2) of the Law of Limitation Act can be applied automatically in this matter? And whether the period that the applicant was waiting to be supplied with the copies of proceedings by this Court is exclusive in counting the duration for lodging the Review.

It is trite law and in accordance with Item 3 of Part III of the Schedule to the Law of Limitation Act, Cap. 89 that, the time limit for filing of Civil Application is 30 days after the delivery of the decision to be reviewed. The applicant does not dispute delay and he argued that the delay was due to the fact that he was waiting to be supplied with the copy of the said decision intended to be reviewed. He argued that when the

judgment was delivered on 03rd May, 2021, on 04th May 2021 he made a request to be supplied with the copy of the decision to the Court and the same was supplied to him on 18th June 2021. In his opinion counting from the date when he was availed with the said decision to the filing of this matter on 06th July 2021, the applicant delayed 34 days.

In his rejoinder, Mr. Mangéna contested that Section 19 (2) of the Law of limitation Act is not automatic, the applicant had to seek for the leave of the court for an extension of time not otherwise. I do agree with Mr. Mangéna for the reason that, anything including delay to be supplied with the necessary documents like copy of decree/judgment by the court can be regarded as a good reason for the delay but the same should be by leave of the court through the application for extension of time. One can be supplied with those documents on the last dates towards the expiry of the prescribed period for lodging the review and fail to lodge the review on time due to the scarcity of time.

It is my view that once the time to lodge the review or any other application is lapsed, the person who intends to file the same has to seek leave of the court by filing application for extension of time and the computation of time reckons from the date that the judgment has been delivered. On other hand if the applicant wished the reasons for delay to be regarded in this review, he should have sworn in the affidavit and accompany the same to his memorandum of review but the record is silent until it has been brought to attention by way of preliminary objection. The provision that the applicant's counsel has relied upon, that is section 19(2) of the Law of Limitation Act (supra), actually allows the applicant to lodge the application after the supply of the copy of proceedings but that is not

automatic. It is applicable upon the applicant/appellant getting leave of the court meaning there must be an application prior thereto.

Having said all that I find the preliminary objection to have merit that the application for review has been brought out of time.

However, taking on board the overriding objective principle and the matter at hand, in my opinion, the applicant delay is sympathetically on the sense that counting from 18/06/2021 when the applicant was supplied with the copy of the decision to the date of filing this Application on 06/07/2021 almost 34 days lapsed, if I exclude 30 days of filing review, the applicant has delayed for 4 (four) days only. This is tolerable and curable under the overriding objective principle under Article 107A (2)(e) of the Constitution of the United Republic of Tanzania 1977 and section 3A of the Civil Procedure Code (supra).

Accordingly, the point of preliminary objection is hereby overruled without costs and hence, the court will proceed with hearing of this Application on merit.

It is so ordered.

Dated at Dar es Salaam this 26th of October 2021.


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A. MSAFIRI

JUDGE

