

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

LAND REVISION NO. 06 OF 2023

**1. TANZANIA RASTAFARI MOVEMENT (TARAMO)
(Formally Familia ya Jamii ya Rastafari Tanzania) APPLICANTS**

2. SABURI A. OMEGA (MURVIN W. THOMPSON)

VERSUS

**1. EVELYNE SIMON LAIZER
(As an Administratrix of the Estate of the Late
JOSHUA NAPHTALI MKHULULI @ KEN EDWARDS)**

2. FAMILIA YA JAMII YA RASTAFARI TANZANIA

3. JACQUIELINE A. MWASAKYENI

..... RESPONDENTS

4. KHALFAN JUMA KOMBO

RULING

Date of Order: 28/3/2023

Date of Ruling: 04/4/2023

A.MSAFIRI, J.

The applicants are seeking for an order of this Court to revise the proceedings and decision of the District Land and Housing Tribunal for Kinondoni in Land Application No. 334 of 2021, and consequently set them aside with necessary orders subsequent thereto.

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The application is supported by the joint affidavit of the applicants. The 1st respondent has objected this Application by filing her counter affidavit. The rest of the respondents are yet to file their counter affidavits. In the said counter affidavit by 1st respondent, she has raised a preliminary objection to the effect that;

- a) The Application is hopelessly time barred.*
- b) That the affidavit in support of the application is incurably defective for being wrongly signed and verified.*
- c) That this Application is incompetent for joining 4th respondent who was not party in Land Application No. 334 of 2021.*

It is trite law that once a preliminary objection has been raised, the Court has to hear and determine it first before proceeding with the matter on merit. At the hearing of the preliminary objection, the 1st respondent was represented by Mr. Rajab Mrindoko, learned advocate, while the applicants were represented by Mr. Felician Martin, learned advocate.

Having heard the submissions from the rival parties which I have considered along with authorities which have been referred to this Court in the course of their submissions, it is my view that the major issue is whether the raised preliminary objections are meritorious.

Starting with the first limb of objection on which the 1st respondent averred that this application is time barred, Mr. Mrindoko has argued that, the Judgment and decree sought to be revised was delivered on 18/11/2022 while the instant application was filed in this Court on 07/02/2023. That, by that time this Application was out of time by 19 days because 60 mandatory

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days has expired on 16/01/2023. He said that the only remedy available in the circumstances is to dismiss this Application as provided under Section 3 of the Law of Limitation Act, Cap 89 R.E 2019.

Mr. Martin, vehemently argued that this application is within the time. That this application was filed through E-filing (electronic filing) on the JSDS System of the Judiciary. That, the case was submitted in Court on 18/01/2023, and it was admitted on 26/01/2023. He submitted further that as per Regulation 21 (1) of the Electronic Filing Rules, the case should be regarded as filed in Court on the date it has been submitted into the system.

He said that, the impugned judgment was delivered on 18/11/2022. Counting from that date, 60 days were complete on 18/01/2023. The certification date was on 21/11/2022, and so, since the Application was filed on the date of the deadline, i.e. on 18/01/2023, this Application is within time.

The counsel for the applicant attached with this Application, a printout which shows the date of submission of the application in the filing system and the date it was admitted.

In rejoinder, Mr. Mrindoko responded that, even if this Court will consider the electronic filing system, this application was filed on 18/01/2023 and by that time, the application was already late for two (2) days. He pointed that, as per the Law of Limitation Act, time starts to be counted from the date of delivery of decision.

The Judicature and Application of Laws (Electronic Filing) Rules, 2018 Regulation 21 (1) provides that;

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A document shall be considered to have been filed if it 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.

The position of the law as to how the above quoted Rules are supposed to be used in relation to the procedure of filing a document in Court was reiterated by Hon. Arufani, J in the case of **Gillian Tegisa & 2 Others vs. Mgeni Said Ngurungu**, Land Appeal No. 24 of 2021, HC Land Division (Unreported) where he quoted with approval the case of **Mwaija Omary Mkamba vs. Mohamed Msuya**, Land Appeal No. 142 of 2020, HC Land Division at DSM (Unreported). In the latter case it was stated that, **the Rules are guiding procedures for filing documents in Court electronically and does not remove the position of the law that, where court fees is required to be paid for a document to be filed in the court, a document is deemed to be filed when court fees is paid. (emphasis supplied).**

It was stated further in the case of **Stephano Mollel &Forty Others vs. A1 Hotel and Resort Ltd**, Revision Application No. 90 of 2020, HC at Arusha (Unreported), that, submission of document through electronic filing does not do away with the requirement for payment of filing fees.

This position of the law was initially set in the case of **John Chuwa vs. Anthony Ciza** [1992] TLR 233 where the Court of Appeal held that;

*".....According to the learned judge, **the date of filing the application is the date of the payment of the fees and not of***

the receipt of the relevant documents in the registry. Mr. Akaro, learned advocate for the appellant, conceded that before me and I cannot fault the learned judge there.” (emphasis added).

Guided with the position of the law set in the above cited authorities, it is clear that, although Rule 21 (1) of the Electronic Filing Rules states that a document is deemed to have been filed in Court when it is submitted through electronic filing system, the filing process is said to be complete when the court fees is paid.

In the application at hand, basing on the electronic filing printout which was produced in Court and not objected by the 1st respondent, this application was submitted on 18/01/2023 at 23:43:00. The impugned judgment was delivered on 18/11/2022. However the court fees was paid on 07/02/2023. This is shown on Exchequer Receipt No 24531971 which a copy is attached with this Application.

According to the exchequer receipt, this application was filed in this Court on 07/02/2023 being well out of mandatory 60 days. Even if this Court will count the days from the date the impugned judgment was certified, which was on 21/11/2022, still the matter is hopelessly out of time. Basing on this, I sustain the first limb of preliminary objection.

The second limb of objection is that, the affidavit in support of the application is incurably defective for being wrongly signed and verified. Mr. Mrindoko submitted that the 1st applicant is a legal entity which is supposed to be represented by its principal officer. That, the affidavit supporting the Application has been signed by two applicants but neither of them has stated

their position in the legal entity or whether they have been appointed by resolution to represent the 1st applicant.

He added that, there is no compliance with Order XXVIII Rule 1 of the CPC because the affidavit has been signed by two applicants but neither of them has stated their position in the legal entity. That, the affidavit is defective for being signed and verified by persons who have no legal mandate to do so, hence it is fatal to the case.

Mr. Felician for the applicants responded that, this point of objection is misplaced, because the cited Order XXVIII Rule 1 of the CPC provides for the procedure in Companies while the 1st applicant is a Non-Governmental Organisation (NGO). He added that, in the joint affidavit of the applicants, it shows that the deponents are duly authorized to state the facts on behalf of the 1st applicant.

Mr. Mrindoko rejoined that, the 1st applicant is an institution governed by the constitution, so it is not different from the Company. That, this means that the NGO has secretary, Principal Officers, Treasury, Chairman, etc. He argued that the joint affidavit does not show the legal positions of the deponents in the organization, and that there is no any documentary proof that the deponents were mandated to depone on behalf of the 1st applicant.

Having heard the submissions from the parties on the second limb of objection, I took time to read the joint affidavit by the applicants.

The opening statement reads as follows;

*"We, SABURI A. OMEGA (MURVIN W. THOMPSON) &
DHULKIFLI LIVINGSTONE KIMARO, Tanzanians,*

Aelle.

adults, Rastafarians and the residents of Mbezi Beach, DSM, do hereby take an oath and solemnly states as hereunder:-....”

By this opening statement, the position of one DHULKIFLI LIVINGSTONE KIMARO is not clear in this Application. This is because the 1st applicant is TANZANIA RASTAFARI MOVEMENT (TARAMO) formally known as Familia ya Jamii ya Rastafari Tanzania and the 2nd applicant is SABURI A. OMEGA (MURVIN W. THOMPSON).

The whole contents of the joint affidavit does not disclose the position of DHULKIFLI LIVINGSTONE KIMARO in this Application and where he has derived the power to depone on behalf of the applicants. In short, the person named DHULKIFLI LIVINGSTONE KIMARO has no legal capacity to take oath for the applicant as his position was not disclosed.

I also read paragraph 1 of the joint affidavit which reads as follows;

- 1. "That, we are among the Applicants in an instant application, duly authorized to state the facts on behalf of the Applicants, hence conversant with the averment of facts about to be deposed."*

This paragraph shows that the deponents are among the applicants. But going with the contents of the affidavit and the chamber summons, there are only two applicants in this Application i.e. TANZANIA RASTAFARI MOVEMENT (TARAMO) (Formally Familia ya Jamii Rastafari Tanzania), the

1st applicant and SABURI A. OMEGA (MURVIN W. THOMPSON) the 2nd applicant.

Hence, I agree with the submissions by the counsel for the 1st respondent that, the affidavit supporting this Application has been signed and verified by the persons who has no legal mandate to do that, and by this Court's observation, the person who has no legal mandate in this application is DHULKIFLI LIVINGSTONE KIMARO.

The counsel for the applicant has argued that, the 2nd applicant has stated the facts on his own capacity as the 2nd applicant, while DHULKIFLI KIMARO has deposed on behalf of the 1st applicant as he is the current secretary of the 1st applicant.

However, this fact of DHULKIFLI KIMARO being the current Secretary of the 1st applicant was submitted from the bar. There is no any proof from the affidavit that Mr. KIMARO is a Secretary of the 1st applicant, so the Court cannot regard this argument. I find the second limb of objection to have merit and I sustain it.

The third limb of objection is that the Application is incompetent for joining 4th respondent who was not party in Land Application No.334 of 2021 at trial Tribunal. This point need not take much time of this Court. This is for the reason that the applicants through their counsel has conceded to this point. In his submission, Mr. Martin has conceded that it is true that the 4th applicant was not part to Application No. 334 of 2021 at the District Tribunal.

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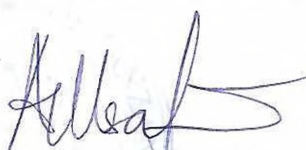
He prayed that the name of the 4th respondent be struck out of this application as the error cannot make the application incompetent. He prayed for the Court to invoke the principle of overriding objective.

The Court could have invoked the said principle only if this was an only error made by the applicants in the application. However, the Court can not invoke the overriding principle where there is a glaring procedural error in the application. **[See the Court of Appeal case of Mondorosi Village & 2 others vs. Tanzania Breweries Limited & 4 others, Civil Appeal No. 66 of 2017, CAT at Arusha (Unreported)]**

The Court has sustained the first limb of objection on the limitation of time. Having found that this Application is out of time, the next question is what are the consequences in the circumstances?

Section 3(1) of the Law of Limitation Act, provides that any proceedings instituted after the period prescribed in the second column opposite to the first column shall be dismissed.

Guided by the above provision, I hereby dismiss this Application for being filed out of time. The 1st respondent shall have her costs of the Application.



A. MSAFIRI

JUDGE

04/04/2023