

TANZANIA / JUDGMENT

MISC

COURT  
TANZLII

DECIDED  
9 July 2024

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB-REGISTRY AT MUSOMA MISCELLANEOUS  
CAUSE NO. 0429 OF 2024 REFERENCE NO. 20240109000000429 IN THE MATTER OF AN  
APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION. AND IN  
THE MATTER OF THE MINING ACT, [CAP123 R.E 2019] AND IN THE MATTER OF KANUNI ZA  
WAJIBU WA WAMILIKI WA LESENIZA MADINI KWA JAMII ZA MWAKA 2023 GN. NO. 409 OF 2023  
(MINERAL RIGHTS HOLDERS SOCIAL RESPONSIBILITY) REGULATIONS, GN NO. 409/2023  
BETWEEN GODFREY MWTTA KEGOYE.....  
1stAPPLICANT GOTORA CHARLES CHICHAKE.....  
2ndAPPLICANT PAUL ISACK BAGENI.....  
3rdAPPLICANT DAUDIITEMBE NYAMHANGA.....  
4thAPPLICANT BOGOMBA RASHID CHICHAKE.....  
5thAPPLICANT VERSUS MINISTER FOR MINERALS..... 1st  
RESPONDENT THE ATTORNEY GENERAL..... 2nd RESPONDENT

RULING

5th & 9th JULY, 2024 M. L, KOMBA. J.: Page 1 of 6 This is a ruling on a Preliminary Objection (PO)  
raised by State Attorney who represented both respondents in regard to application by applicants  
for orders of certiorari and prohibition against respondents following publication and execution  
of KANUNI ZA WAJIBU WA WAMILIKI WA LESENI ZA MADINI KWA JAMII ZA MWAKA 2023 GN  
409 YA MWAKA 2023 (Mineral Rights Holders Social Responsibility Regulations, GN No. 409 of  
2023. The application preferred under section 2(3) of Judicature and Application of Laws Act  
(Cap 358 R.E 2019, Section 18 (1) and 19 (3) of Law Reform Fatal Accidents and  
Miscellaneous Provisions Act Cap 310 R.E 2019 and Rule 5(1) and (2) of the Law Reform  
fatal Accidents and Miscellaneous Provisions) Judicial Review (Procedures and Fees) Rules  
2014 GN No. 324 of 2014. Upon filling of the same, Mr. Kitia Turoke, State Attorney for  
respondent raised a preliminary objection and prayed it to be heard on the date scheduled  
for hearing of Application that; 'This application is unmaintainable for being time bared'  
As custom, PO has to be determined first as was in Khaji Abubakar Athumani vs Daudi  
Lyakugile TA D.C Aluminium & Another, Civil Appeal NO. 86 of 2018, CAT at Mwanza. Page  
2 of 6 When the date fixed for hearing was scheduled, parties agree the PO to be disposed  
of by way of written submissions. Mr. Kitia Turoke, a State Attorney presented the written

submissions for the respondents in support of the objection whereas on behalf of applicants, Mr. Kassim S. Gilla and Kevin C. Mutatina both learned Advocates filed reply in opposing the Objection. Both parties adhered to the filing schedule as directed. In his submission, State Attorney submitted that under Rule 6 of Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, application of this nature has to be filed within six (6) months after the date of its publication. He further informed this court that KANUNI were published on 23rd June, 2023. Referring the application by applicants, it was his submission that applicants are applying for leave of this court to file judicial review challenging the enforcement of the Mineral Rights Holders Social Responsibility Regulations, GN No. 409 of 2023 which was published on 23rd June 2023. Basing under rule 6 the application is time bared as it was supposed to be filed by 23rd December 2023 and supports his submissions by decision of the court in Emma Bayo vs the Minister for Labour and Youths Development & Other, Civil Appeal No. 79 of 2012 where the court insisted High Court to make sure Page 3 of 6 the suit is filed within six months. So far as the cited rules does not prescribe the consequences for the application which is filed out of time, he urges this court to utilize section 46 of the Law of Limitation Act, Cap 89 R. E 2019 when the limitation of time does not provide in any written law then Cap 89 shall apply as if such period of limitation had been prescribed by Cap 89. He went further submitting that under section 3(1) of Cap 89 where the proceedings is instituted out of prescribed time and without leave of court the remedy is dismissal as was decided in Hezron M. Nyachiya vs Tanzania Union of Industrial and Commercial Workers and Another, Civil Appeal No 79 of 2001. He prayed application to be dismissed with costs. On the other side, Mr. Gilla in opposing the PO raised by respondents was very brief in his submission that application is filed within time as per dictates of rule 6 Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN No. 324 of

2014. Their contention was based on the fact that application was filed online through the Judicial electronic filing system on 20th December, 2023 and was given admission No. 000093556 and bill reference JUD2023122258776 and control number 991401037738 which was Page 4 of 6 generated on 22nd December, 2023 while the payment was made in the following day, that is 23rd December, 2023. He further submitted that position of the law under Rule 21 (1) and (2) of the judicature and Application of Laws (Electronic Filing) Rules, GN No. 148 of 2019 that a date and time of filing a document through judicial filing system is at the time when the said document is electronically submitted on the system, to which on their part is on 20th December, 2023. In addition, it was his submission that the fact that payment was made on 23rd December, 2023 that proves the application was filed within time as per the requirements of Rule 6 of the Judicial Review Procedure and Fees (supra). He lamented that the issue that application was filed on 09 January 2024 remains to be allegation without backup and prayed the PO to be dismissed with costs. I have carefully made a close follow up of submission by parties, my task is to decide where PO has merit. First of all, there is no doubt that applicants are applying for leave of this court to file

judicial review, application which is guided by Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN No. 324 of 2014 and in rule 6 the time to file is within six months. I further agree with submission Page 5 of 6 by state Attorney that when the law does not provide time limitation, Cap 89 shall come into play via section 46 and section 43. The issue now is when was the application was filed. I had time to read submission by parties and the digital case file in electronic Case Management System (ecms) which is a system used by Judicial of Tanzania in filing and deciding cases from 06 November, 2023. In that system, in digital case file I found the application with reference No. 20240109000000429 was admitted on 20th December, 2023 and payment was made and the paid stamp was pressed on the receipt on 23rd December, 2023. Without further ado and without venturing in Electronic Filing Rules, GN No. 148 of 2019, so far as payment was done and receipt was issued on 23rd December, 2023, I find the application was filed within time and the PO is hereby overruled with costs. It is so ordered.

M. L. KOMBA Judge 09th July, 2024 Page 6 of 6

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