

TANZANIA / JUDGMENT

Kaserkandis Construction Ltd

COURT
TANZLIIDECIDED
21 March 2025

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA MUSOMA SUB-REGISTRY AT MUSOMA LAND APPEAL No. 000031989 REFERENCE NO. 202412191000031989 (Arising from the decision of this court in Civil Case with reference No. 20231122000025852 of 2023) BETWEEN KASERKANDIS CONSTRUCTION LTD..... APPELLANT VERSUS TARIME DISTRICT COUNCIL..... 1st RESPONDENT THE ATTORNEY GENERAL..... 2nd RESPONDENT

RULING

1stb & 21st March, 2025 M, L, KOMBA, J.: Above named respondents instituted a Summary Suit, Civil Case with reference No. 25852 of 2023 in the High Court of Tanzania, this sub registry against the Applicant, claiming for payment of a total sum of TZS 309,037,031.57 being service levy which was supposed to be paid to the 1st Respondent for a diverse period of time from the year 2010 to December, 2022; and TZS 50,000,000.00 being exemplary damages. That, on 06th February, 2024 the court's summons was issued for service to the Page 1 of 9 Applicant who did not make appearance neither filed application to defend. This court on 19/06/2024 delivered a Summary Judgment. Applicant was dissatisfied by the procedures hence this application where in chamber application prayed for;

1. That, this Honorable Court be pleased to set aside the Summary Judgment dated 19th June, 2024 in Civil Case with Reference No. 25852 of 2023 which proceeded summarily against the Applicant.
2. Costs of this Application be provided for.
3. >4/7/ other relief (s) this Honorable court may deem fit and just to grant. Chamber summons that initiates this application, indicates to be made under Order xxxv Rule 8 and Section 95 of the Civil Procedure Code, Cap 33 R.E 2022 and any other provision of law. when the matter was ready for hearing, State Attorney who represented Respondents, Mr. Frank Kashumba raised a preliminary objection that the matter is hopelessly time barred. It being a point of law this court decided to entertain before proceed to determine application. Applicant had a legal service of Mr. Ondijo Silvanus Leonard, an advocate while respondents were represented by Mr. Frank Kashumba, State Attorney. Page 2 of 9 When given the floor. Mr. Kashumba was brief that application with reference Number 31989 of 2024 which

intends to set aside summary judgment which issue on 19/06/2024 is time barred as it was filed beyond the prescribed time by law as was filed after 150 days (19/12/2024) while Part III of the Law of limitation Act, Cap 89 R.E 2019 requires application of this nature to be filed within 30 days. It was his firm position that application was filed out of time. In that regard, he prayed this court to dismiss the application. Supporting application Mr. Silvanus insisted that application was filed on time as this court (Kafanabo J.) granted 20 days from 28/11/2024 within which he could file the same. According to his calculation the time granted expired 18/12/2024. He went on submitting that basing on Order 43 XXXXIII rule (2) of the Civil procedure Code, Cap 33 R.E 2022 (the CPC) Chamber summons indicated the application was filed as per this court order issued on 28/11/2024 by Kafanabo J. and prayed this court to take judicial notice of that order via Misc Civil Application No. 20894 of 2024. about the date of filing his application he lamented on the submission by State Attorney that the matter was filed on 19/12/2024 while according to Mr. Sivanus record it was filed on 15/12/2024 and therefore it was filed Page 3 of 9 within time. He prayed this court to read Judicature and Application of Laws (Electronics Filing) Rules 2018 to ascertain when the electronically filed document is deemed to have been filed. In his further submission, counsel admitted that he failed to attach the order which was mentioned in his chamber application while insisting that failure to attach the order may be cured under overriding objectives as per section 3A (1) and (2) and section 33B (1) of the CPC Cap 33. Given circumstance as submitted and for the interest of justice to ensure expedition of matter he prayed the objection to be overruled and the matter to proceed on merit. During Rejoinder Mr. Kashimba informed this court that what was submitted by counsel was new facts which were not testified in his affidavit that applicant was granted time and challenged the chamber summons in which counsel for applicant referred, that it just mentioned Kafanabo J. without indicating number of the case and therefore, it is not right for this court to take Judicial Notice for matter which were supposed to be done by the applicant. He then clarified that in judicial portal this application with reference number 31989 of 2024 was filed 19/12/2024. He the reiterates his prayer that application has to be dismissed. Page 4 of 9 I have carefully made a close follow up of submission by parties, my task is to decide whether PO has merit. First of all, there is no doubt that applicant filed an application praying this court to set aside its summary judgment delivered on 19/06/2024. Chamber application is supported by affidavit sworn by the principal officer of the applicant (Denis Jacson Bushi). State Attorney submitted that the application was supposed to be filed within 30 days but applicant filed it in December 2024 and therefore it filed out of prescribed time. This is Preliminary Objection and the gist of Preliminary Objection on points of law can be traced form the famous case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] E. A 696 which defines what is a preliminary objection and prescribes when it can be raised. It is noteworthy that; 'A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion Page 5 of 9 Am called to determine if the matter is filed on time or else provision of the Law of Limitation Act may come into play. As hinted, chamber

summons and affidavit did not indicate that applicant was given time and the submission and explanation by counsel for applicant was attacked by State Attorney that counsel did not depone in his affidavit that he was given time. I find that was submission from the bar. Reading chamber summons and its affidavit. No where applicant indicated that he was given time apart from mention Order by Honorable Kafanabo. In Selcom Gaming Limited vs Gaming Management (T) Limited & Gaming Board of Tanzania, quoted with approval by the court in Mzartc Trading Company Ltd vs Exports Trading Company Ltd (Civil Application No. 12 of 2015) [2015] TZCA 383 (9 December 2015) it was observed that: - "A preliminary objection is in the nature of a legal objection not based on the merits or facts of the case, but on stated legal, procedural or technical grounds. Any alleged Irregularity, defect or default must be apparent on the face of the application." In the case at hand, chamber summons and affidavit show that the matter was filed in December 2024 challenging the decision which was delivered Page 6 of 9 in June 2024. It is clear that there is the problem in filing and that is procedure. Counsel submission was base by word of mouth that applicant was given 20 days. How could this court believe that assertion without a proof. Mere mentioning that it was the order of this court is not enough to prove applicant was given 20 days and not less days. Applicant was supposed to attach the said order and depone in his affidavit. Attaching judgment/order/decrece complained of is important and necessary to allow this court to determine if it has jurisdiction to entertain the matter. It is settled practice in our legal system that a party who initiates an application must attach copies of judgement/decrece/ order to be acted upon. See Mohamed Rabii Honde (as the administrator of the Estate of the late RABII ISMAIL HONDE) vs Hamida Ismail Honde and 11 others, Civil Application No. 461 of 2017 CAT at Iringa (unreported), Benedict Mabalanganya vs Romwald Sanga, Civil Application No. 1 of 2002 and The Board of Trustees of the National Social Security Fund (NSSF) vs Leonard Mtepa, Civil Application No. 140 of 2005. In the latter case of The Board of Trustees of the National Social Security Fund (NSSF) (supra) for instance, it was decided that; Page 7 of 9 he must make available to the court copy of the proceedings of the tower court or courts as well as the ruling and, it may be added, the copy of the extracted order of the High Court. An application to the Court for revision which does not have all those documents will be incomplete and incompetent. It will be struck out.' Further in Chrisostom H. Lugiko vs Ahmednoor Mohamed Ally, Civil Application No. 5 of 2013 (All unreported) where the Court of Appeal stated that: 'we are unable to say anything meaningful in relation to Land Application No. 25 of 2007 because we are not seized with all the proceedings relating to the said application. As such, we cannot step in and make an order of revision over something we do not have the full picture.' From the above excerpt, this court cannot proceed in determination of the main application without satisfying itself if it has jurisdiction to do so as the matter was filed on time. That may be proved by order of this court which was not attached neither deponed and I find it is not the duty of this court to take judicial notice as it was the duty of the applicant. So far as the record of this court in ecmsdrwN the application was filed on 15/12/2024, that is more than 30 days as per Law of Limitation Act. Counsel for applicant admitted that he did not attach the order and find refuge in overriding objective under section 3A and 3B of the CPC. I find the PO Page 8 of 9

raised has merit. Basing on decision in The Board of Trustees of the National Social Security Fund (supra) and considering circumstance of this case where the order of Kafanabo J. was mention not in details, I find prudent for the applicant to correct the omission and therefore the application is hereby struck out. DATED at Musoma this 21st day of March, 2025. M. L. KOMBA Judge Page 9 of 9

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/339400/source_file/58be398bbcf721b/Kaserkandis_Construction_Ltd.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/kaserkandis-construction-ltd-v-tarime-district-council-summaryjudgment-tanzlii-2025>

Prepared on 14 October 2026 · Esheria