

TANZANIA / JUDGMENT

Ruling Shitungulu Final

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TANZLII

DECIDED
4 December 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA GEITA SUB-REGISTRY AT
GEITA MISC. CIVIL APPLICATION NO. 443 OF 2025 (Arising from Misc. Civil Application No.
29675 of 2024 of the High Court of Tanzania, Geita Sub Registry at Geita) NCHEGE SHITUNGULU
.....APPLICANT VERSUS JOSEPH DAUDI KADO (Administrator of
the estate of the late DAUDI KADO BONGE).....1ST RESPONDENT
MALANGAHE LUKANYAHILU.....2ND RESPONDENT

RULING

Date of last order & Ruling: 08/04/2025 MWAKAPEJE, J.: The applicant, Nchege Shitungulu, has approached this Court via a chamber summons pursuant to Order IX, Rule 3, and Section 95 of the Civil Procedure Code, Act of Cap. 33 R.E. 2019, seeking the restoration of Miscellaneous Civil Application No. 29675 of 2024, which was previously dismissed for want of prosecution by this Court on 4 December 2024. The application is accompanied by an affidavit of the applicant. In the affidavit, the applicant stated that, he filed the Miscellaneous Civil Application No. 29675 of 2024 praying before this Court, the applicant be pleased to extend the time within which to file an appeal out of time Page 1 of 8 against the decision of the District Land and Housing Tribunal for Mbogwe at Mbogwe in Land Application No. 15/2023. He further stated that the application was called for a hearing on 4 December 2024, at which he appeared in person. He was asked to proceed with the hearing by the Court, however, he contended that he was not aware of how to proceed, and as a result, the application was dismissed for want of prosecution. He further explained in his affidavit that the failure to proceed with the hearing on 4 December 2024 was his own fault, as he was unaware of the court process and how to submit the facts, despite being present in court on that day. He additionally stated that it is in the interest of justice and the principle of fair hearing that the order of dismissal be set aside and the parties be heard on the merits. In reply, the 1st respondent raised a preliminary objection that the application is time-barred, as it was filed outside the time limit, specifically within 30 days, contrary to Part III, item 9 of the Schedule to the Law of Limitation Act, Cap 89, R.E. 2019. He contended that Miscellaneous Civil Application No. 29675 of 2024 was dismissed on 4 December 2024, whereas the present application was filed on 7 January 2025. Furthermore, both he and the 2nd respondent in their respective counter affidavits opposed the application, contending that at the hearing, the applicant was fully informed of what was before the Court and was Page 2 of 8 aware that the application was scheduled for hearing on 4 December 2024; however, the applicant

declined to proceed with the hearing of his application. Additionally, they stated that the applicant claimed the absence of his advocate, but in his affidavit, he never provided facts to show cause as to why his advocate did not appear on the date the matter was fixed for hearing. The respondents further stated that the applicant denied himself the right to be heard as he refused to proceed with the hearing of his application; therefore, the Court cannot be held responsible. The 1st respondent raised a preliminary objection on the point of law that the application is time-barred as it was filed outside the time limit, within 30 days, contrary to Part III, Item 4 of the Schedule to the Law of Limitation Act Cap 89 R.E. 2019. The Miscellaneous Civil Application No. 29675 of 2024 was dismissed on 4 December 2024, while this application was filed on 7 January 2025, the date the filing fee was paid. This application was argued orally. At the hearing, Mr Stephano John, a learned Advocate, appeared for the Applicant, while the respondents appeared in person without legal representation. In submitting on the preliminary objection, the 1st Respondent submitted that the application was filed out of time. He argued that the applicable court procedures required the application to be filed within 30 Page 3 of 8 days, which was not done. On that basis, he prayed for the preliminary Objection to be upheld and the application dismissed. The 2nd Respondent associated himself with the submission made by the 1st Respondent and had nothing further to add. In response, Mr. Stephan John, for the Applicant, opposed the PO. He submitted that the application was filed within time. He informed the court that the original matter had been dismissed for want of prosecution on 4 December 2024. The current application, he stated, was filed on 3 January 2025 through the electronic case management system (e-CMS). He relied on Rule 21 of the Judicature and Application of Laws (Electronic Filing) Rules, 2018, GN. No. 148 of 2018, which provides that a document is deemed filed on the date of its electronic submission. Accordingly, counsel argued that the application was filed within time and prayed that the Preliminary Objection be dismissed with costs. In rejoinder, the 1st Respondent maintained that the Applicant's claims were without merit. He reiterated that the time limit had already lapsed by the time the case was filed, and he urged the court to dismiss the application. The 2nd Respondent reiterated his concurrence with the submission of the 1st Respondent. Page 4 of 8 After carefully evaluating the submissions advanced by both parties, this Court preferred to begin with the preliminary objection. The central issue for determination is whether the preliminary objection is meritorious. It is the position of the law that an applicant seeking the restoration of an appeal dismissed for want of prosecution must file the application within thirty (30) days from the date of dismissal, as far as item 9 of Part III of the Schedule to the Law of Limitation Act, Cap. 89, R.E. 2019 is concerned. The record indicates that the applicant's Miscellaneous Civil Application No. 29675 of 2024 was dismissed for want of prosecution on 4 December 2024, as the applicant had decided not to proceed, and his advocate was awaiting the hearing date. However, he submitted the application for restoration through the e-CMS on 3 January 2025, and made the requisite payments on 7 January 2025. Of recent and to the coming into operation of the Judicature and Application of Laws (Electronic Filing) Rules, 2018. G.N. 148/2018 has sparked debate in this Court regarding the issue of when a matter is considered duly filed in court: is it when it is electronically submitted into the system according to Rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, or upon payment of the necessary fees as far as Rules 3 and 5 of the Court Fees

Rules, GN No. 247 of 2018? Page 5 of 8 In the cases of Misungwi Shilumba vs Kanuda Njile (PC Civil Appeal 13 of 2019) [2020] TZHC (28 August 2020), Emmanuel Bakundukize and 9 Others vs Aloysius Benedictor Rutaihwa (Land Case Appeal 26 of 2020) [2021] TZHC 2634 (6 April 2021), Mwanja O.Mkamba vs Mohamed S. Msuya (Misc. Land Appeal 142 of 2020)

[2021] TZHCLandD 461 (27 August 2021), and Chris George Kasalile vs Tanzania Institute of Education & Another (Misc. Cause 26 of

2022) [2022] TZHC 11389 (9 August 2022), to mention a few, it was determined that a case is considered duly filed in court upon payment of the necessary fees, which position I subscribe to. Further this Court in the case of Daniel Haji Mayuya vs Weron Micro Credit Company Limited and Another (Civil Revision No. 10919 of 2024) [2024] TZHC 7510 (26 August 2024), referred the case of John Chuwa vs Antony Cisa [1992] TLR 223, where it established that a document is considered filed once necessary fees are paid. Additionally, in the former case, this Court, considering that payment of fees is a crucial step in the filing process, indicating commitment and seriousness on the part of the party, stressed that without payment of fees, the court cannot process or consider the case. Therefore, the Judicature and Application of Laws (Electronic Filing) Rules, 2018, GN. No. 148 of 2018 and Court Fees Rules, GN. No. 247 of 2018 should be construed in conjunction. Page 6 of 8 This notwithstanding, the Court of Appeal in the case of NMB Bank PLC vs Fabiola Deogratus Maami t/s Fabiola Curio Shop (Civil Application No. 152/02 of 2024) [2024] TZCA 854 (5 September 2024), on the interpretation of Rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018, G.N. No. 148 of 2018 stated that the date of issuance of the control number marks the official filing date of an application before the Court. In light of the applicable legal position, the applicant in the present application was issued a control number for payment on 7 January 2025 and effected payment on the same date, four days after the lapse of the prescribed 30-day period. Notably, the applicant has not provided any explanation for the delay or accounted for his whereabouts between 3 January 2025 and 7 January 2025, when the payment was ultimately made. Therefore, I agree with the respondents that this application was out of time. In that regard, since the application is time-barred, this Court lacks jurisdiction to entertain it and consider other grounds. In the case of NBC Limited & Another vs Bruno Vitus Swalo (Civil Appeal No. 331 of

2019) [2021] TZCA 122 (20 April 2021), it was stated that: ".....The objective is to address the issue whether or not the suit instituted by the respondent against the appellants was time barred as complained by the appellant in ground two (2) of appeal. The reason for considering this issue first is simple. It is that courts are enjoined not to entertain matters which are time-barred. Page 7 of 8 Limitation period has an impact on jurisdiction. Courts lack jurisdiction to entertain matters for which litigation period has expired." [Emphasis supplied] It follows, therefore, that an application filed out of the prescribed time, without prior leave for extension, is incompetent and liable to dismissal as far as section 3(1) of the Law of Limitation Act is concerned. Consequently, this application is dismissed with costs. It is so

ordered. DATED at GEITA this 08th day of April 2025. G.V. MWAKAPEJE JUDGE Page 8 of 8

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