

TANZANIA / JUDGMENT

petro deemay vs mandoo ami

2023 tzhc 22597 14 november 2023

COURT
TZHCDECIDED
14 November 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI REFERENCE NO. 1 OF 2023 (Arising from the decision of the Mise.
Application No. 203 of 2022, originating from Land Application No. 63 of 2020 at the District Land
and Housing Tribunal for Babati at Babati) PETRO
DEEMAY.....APPLICANT VERSUS MANDOO
AMI..... RESPONDENT

RULING

07th & 14th November, 2023 Kahyoza, J. Petro Deemay initiated legal proceedings against Mandoo Ami in the District Land and Housing Tribunal (DLHT), seeking a declaration as the rightful owner of the contested land. On June 14, 2022, the DLHT dismissed the application, for want of prosecution and awarded costs. Subsequently, Mandoo Ami sought taxation of the costs, resulting in the DLHT assessing them at Tzs. 7,300,000/= on April 4, 2023, in the presence of both parties. Dissatisfied with the taxation decision, Petro Deemay filed a reference to this Court, challenging the ruling of the taxing master. However, prior to the commencement of the hearing, Mr. Shirima, the advocate representing Mandoo, raised a preliminary objection, contending that the reference was filed beyond the stipulated time frame. In response, Mr. Festo, the petitioner's advocate, raised an objection. The issue is whether the application is time barred. Mr. Shirima contended that, according to order 7 (1) of the Advocates Remuneration Order G.N No. 263/2015, an application challenging a ruling of the taxing officer must be filed within 21 days from the date of the ruling. He argued that Petro Deemay filed the application on 19.05.2023, whereas the ruling was delivered on 04.04.2023. For that reason, the application was filed out of time, Mr. Shirima concluded. In response, Mr. Festo, representing Petro, asserted that following the tribunal's delivery of the ruling on 04.04.2023, Petro applied for a copy, which he obtained on 02.05.2023. Mr. Festo argued that the time spent obtaining the ruling should be considered deductible under section 19 (2) of the Law of Limitation Act, [Cap. 89. R. E. 2019]. He emphasized that his client did not delay in filing the application and pointed out that, according to Order XXXIX rule 1 (1) of the Civil Procedure Code, [Cap. 33 R. E. 2019], the applicant was required to attach a copy of the ruling. Mr. Festo concluded by requesting the dismissal of the preliminary objection, along with costs. 2 In his brief rejoinder, Mr. Shirima countered the applicant's

argument, stating that the contention that his client delayed in applying for reference due to the tribunal's delayed provision of the ruling was not a valid basis for an extension of time. He highlighted that the applicant acquired a copy of the ruling on 02.05.2023 and submitted the reference application on 19.05.2023, hence he delayed for a two-week period from obtaining the copy. It is indisputable that a party dissatisfied with a taxing officer's decision must apply for reference within 21 days, as stipulated by Order 7 (1) of the Advocates Remuneration Order. Order 7 (1) of the Advocates Renumeration Order, states that- "7. -(1) Any party aggrieved by a decision of the Taxing officer, may file reference to a judge of the High Court.

- (2) A reference under order (1), shall be instituted by way of chamber summons supported by an affidavit and be filed within 21 days of from the date of the decision." In the present case, the taxing officer taxed the bill of costs on 04.04.2023, hence the application for reference was required to be filed before 21 days expired. The deadline, therefore, fell on 26.04.2023. However, as April 26, 2023, coincided with a public holiday, the 21-day period 3 extended to 27.04.2023. Consequently, the application was lodged after the lapse of the 21-day timeframe. Mr. Festo, the applicant's advocate, contended that the time spent obtaining the ruling should be considered deductible in the calculation of the 21 days, emphasizing the necessity to attach the ruling in accordance with Order XXXIX, rule 1 (1) of the Civil Procedure Code. However, I respectfully disagree with Mr. Festo's interpretation of the law. The provision cited by Mr. Festo pertains to appeals, specifying that an appeal should be in the form of a Memorandum signed by the appellant or their advocate. The present application, being neither an appeal nor initiated by a memorandum, does not fall under the purview of this provision. Furthermore, applications for reference under Order 7 (1) of the Advocates Remuneration Order do not mandate the attachment of a ruling. I am unconvinced that the applicant faced a legal obligation to attach the ruling, and thus, section 19 (2) of the Limitation Act, (the LLA) does not apply. While acknowledging that the applicant may have required the ruling for constructing the application for reference, this does not establish a legal requirement to attach the ruling. Consequently, the applicant should have sought an extension of time rather than relying on provisions such as 4 section 19 (2) of the LLA and Order XXXIX, rule 1 (1) of the CPC, which are inapplicable. In the end, I find that the applicant instituted the current application out of time. Consequently, I struck out the application for being time barred. I order accordingly. Dated at Babati this 14th day of November, 2023. J. R. Kahyoza 7x 7 Judge Court: Ruling delivered in the virtual presence of Mr. Festo advocate and Mr. John Shirima advocates for the applicant and respondent, respectively, who were inactive. B/C Ms. Fatina Present. J. R. Kahyoza Judge 14/11/2023 5

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