

TANZANIA / JUDGMENT

RACHEL ZEPHANIA RULING

COURT
TANZLII

DECIDED
25 September 2024

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

IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA LAND REVISION
NO. 12825 OF 2024 (Arising from Misc. Land Application No. 45C of 2021 in the District Land and
Housing Tribunal for Mwanza at Mwanza) RACHEL
ZEPHANIA.....APPLICANT VERSUS MARY
JOSEPH.....RESPONDENT

RULING

5th and 25th September, 2024 KAMANA, J. When this application for revision of the decision of the District Land and Housing Tribunal (DLHT) for Mwanza sitting as executing court was in the preliminaries, Ms. Mary Joseph, the respondent, raised two preliminary objections. One, the application was filed out of time contrary to this Court’s order dated 30th April, 2024. Two, the application is incompetent for citing a non-existing law. As practice dictates, the preliminary objections were argued first. The same were disposed of by way of written submission. Submitting in support of the first preliminary objection, the respondent contended that on 30th April, 2024, this Court 1 (Kilekamajenga, J) when determining Misc. Land Application No. 114 of 2023 granted the application with thirty days to file the present application. She added that according to the decision, the thirty days were to be counted from 30th April, 2024. The respondent argued further that per the decision of the Court, the applicant was required to file the instant application by 30th May,

2024. Since the application was filed on 31st May, 2024, she held the view that the application was filed out of time. The respondent urged this Court to dismiss the application in line with section 3 of the Law of Limitation Act, Cap. 89 [RE.2002]. Strengthening his arguments, she cited the case of Stephen Masato Wasira v. Joseph Sinde Warioba and Attorney General [1991] TLR 334. Concerning the second objection, it was the respondent’s contention that by moving the Court under section 41 of the Land Dispute Settlement Act, Cap. 216 [RE.2019], the applicant made her application incompetent since the said law does not exist. She argued that it is an established principle that the wrong citation of the law, section, subsection or paragraph renders the application incompetent. The case of Godfrey Kimbe v. Peter Ngonyani, Civil Appeal No. 41 of 2014 was cited to buttress the arguments. Having taken that position, the respondent asked this Court to dismiss the application with costs. 2 Replying to the first objection, Mr. Demetrius Mtete, learned Counsel for Ms.

Rachel Zephania, the appellant, contended that his client filed the application within the time prescribed by the Court. He amplified that the application was filed on 28th May, 2023 at 1745 Hrs. A copy of admission details was attached to the submission. On the second objection, Mr. Mtete held the view that wrong citation of the law is not fatal. He argued that under section 3B of the Civil Procedure Code, Cap. 33 [RE.2019], a wrong citation is curable in the spirit of facilitating a just, expedient and proportionate dispensation of justice. Having taken the position, the learned Counsel asked this Court to overrule the objections with costs. In order to determine the first preliminary objection, I thought it necessary to have a perusal of the decision of this Court in Misc. Land Application No. 114 of 2024. According to the said decision which was delivered on 30th April, 2024, the applicant was ordered to file the present application within thirty days from the date of the said decision. This in my opinion meant that the thirty days were to be counted from 1st May, 2024 to 30th May, 2024. In his submission, the respondent contended that the application was filed on 31st May, 2024 beyond the prescribed time limit. On the other hand, Mr. Mtete contended that the application was filed on 28th 3 May, 2024 which was within the prescribed time limit. He attached a copy of the admission details. Due to the conflicting arguments, I thought it prudent to consult the digital case file. According to the file, the application was submitted on 30th May, 2024 and was given admission number 35622 on the same day. It is further depicted in the file that the application was filed on 31 st May, 2024 as Land Revision No.12825 of 2024. According to the Exchequer Receipt, the Payment Control Number was issued on 31st May, 2024. So far as a copy of the admission details is concerned, the admission number is quite different from the one depicted in the file. Further, the admission number assigned to the case at hand differs from the admission number reflected in the copy of admission details. It is an established principle that the case is taken to have been filed when the payment control number is issued. This position was recently stated by the Court of Appeal in the case of NMB Bank Plc v. Fabiola Deogratias Maami t/s Fabiola Curio Shop, Civil Application No. 152/02 of 2024-CAT (Unreported). It was stated as follows: ‘.....in terms of rule 21 of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 the time for the filing accrues from the date that the control 4 number for payment of the necessary fee was generated in the system.....’ From the records as I have stated, the Payment Control Number was issued on 31st May, 2024. Given that, in line with NMB Bank Plc’s case, since the application was filed on 31st May, 2024, it was filed beyond the prescribed time limit. It should be noted that before the decision of the apex Court in NMB Bank Plc’s case, the suit was considered to have been filed upon the payment of fees. See: John Chuwa v. Anthony Ciza [1992] TLR 233 (CAT). Assuming that this is still the position, the application is caught in the web of being time-barred as the applicant paid fees on 31st May, 2024 which is beyond the prescribed time limit. Having taken that position, it is my holding that by filing the application on 31st May, 2024, the applicant filed the same beyond the time granted by this Court in Misc. Land Application No. 114 of 2023. That being the position, I see no reason to delve into the second preliminary objection. The application is dismissed with costs. Order accordingly. Right To Appeal Explained. DATED at MWANZA this 25th of September, 2024. 5

KS KAMANA JUDGE 6

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/319327/source_file/7b6b8213f36b0fb7/RACHEL_ZEPHANIA-RULING_.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/rachel-zephania-v-mary-joseph-LimitationofActions-tanzlii-2024--6a3ea5243b1caa9129819c8c>

Prepared on 13 October 2026 · Esheria