

TANZANIA / JUDGMENT

ahmed mohamed suud another vs mohamed suud others 2022 tzca 199 21 april 2022

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21 April 2022

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IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM (CORAM: MKUYE, J.A.. LEVIRA, J.A. And MAIGE, J.A.^ CIVIL APPLICATION NO. 12/17 OF 2019 AHMED MOHAMED SUUD..... 1st APPLICANT HUSSEIN SALUM SUUD..... 2nd APPLICANT VERSUS MOHAMED SUUD..... 1st RESPONDENT IBRAHIM SALUM SUUD.....2nd RESPONDENT THE BOARD OF DIRECTORS DR. LIVINGSTONE MEMORIAL..... 3rd RESPONDENT (Revision from the proceeding, Judgment and Decree of the High Court of Tanzania at Dar es Salaam) (Makuru, 3.) dated the 23rd day of November, 2018 in Land Case No. 2 of 2013 RULING OF THE COURT If f h March, & 21stApril, 2022 MKUYE. 3.A.: Before us is an application for revision made under Rule 65(1), (2)

- (3) and 4(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The applicants seek to have the judgment of the High Court in Land Case No. 2 of 2013 by Hon. Makuru, J. (as she then was) revised. The brief background of the matter leading to this application goes thus: Suud Omari, who incidentally passed away on 10th February 1991 was a lawful owner of land (suit land) measuring sixty (60) hectares located at Kingani in Bagamoyo District. Suud Omari was also a father of Mohamed Suud (the 1st respondent) while the 1st and 2nd applicants are siblings of the 1st respondent's late brother, one, Salum Suud Omari. Initially, the 1st respondent was appointed the administrator of the estate of his late father (Suud Omari). However, later it appears as it can be discerned from the record of appeal that the 1st applicant, Ahmed Mohamed Suud, was appointed in that capacity. On the other hand, Hussein Salum Suud, the 2nd applicant was appointed an administrator of his late father, Salum Suud Omari, but he later relinquished his appointment and in his place Ibrahim Salum Suud, the 2nd respondent, was appointed. Then, the said 2nd respondent sold the suit land to the 3rd respondent, Dr. Livingstone Memorial at total sum of Tshs. 59,000,000/= for the purpose of conducting an animal zoo business at the suit land. However, it also appears that the 1st respondent was not happy with the sale transaction because despite the fact that he was the lawful heir of the estate of his late father (Suud Omari), he never got a share of

the proceeds of sale. Hence, he instituted civil proceedings in the High Court against the Ibrahim Suud (the 2nd respondent) and the 3rd respondent which was prosecuted by one of his daughters acting under a power of attorney where he sought for setting aside the purported 2 sale of the suit land; a declaration that the 1st respondent is a lawful owner of the right of occupancy as the heir and administrator of the estate of the deceased (Suud Omari); and that the purported sale be nullified and the suit land be returned to the 1st respondent. Upon hearing the evidence from both sides, the High Court was of a finding that, since the appointment of the 1st respondent had not been revoked, the purported sale of the suit land by the 2nd applicant to the 3rd respondent was a nullity for not being a lawful administrator of the deceased's estate and, hence, had no good title to pass. In the end, the 1st respondent was declared the lawful owner of the suit land. The applicants, being not parties to the suit at the High Court, have lodged this present application for revision on nine (9) grounds, however, for a reason to become apparent shortly, we do not intend to reproduce them. When the application was called on for hearing, the applicants had the services of Mr. Barnabas Luguwa, learned advocate; whereas the 1st respondent was represented by Mr. Sylvester Shayo and Mrs. Benadeta Shayo, both learned advocates; and the 2nd and 3rd respondents were represented by Mr. Alphonse Katemi, also learned advocate. 3 Before the hearing of the application could commence in earnest, we required the parties to address us on the competency of the application regard being whether or otherwise it was lodged within time. Mr. Luguwa submitted that the application was lodged within time. He explained that they presented it on 22nd January 2020 whereupon it was received by, one, R. Komba as shown on the stamp affixed at the bottom of the front page of the notice of motion. He contended that, thereafter, the same was sent to Mr. Kayoza, Registrar of the Court of Appeal (as he then was) who admitted it on 22nd January, 2020 but they were not able to be availed with a control number to enable them pay the requisite fee. He contended further that they were issued with a control number on 23rd January/ 2020, the date when they effected payment of the prescribed fees and the Registrar stamped it on that date as shown at the top of the front page of the notice of motion. He was of the view that, since the application was presented in Court on 22nd January, 2020 and had no control over the issuance of the control number which was difficult to be issued due to network problems, the Court should take it that the application was lodged within time. In response, Mr. Shayo submitted that the record shows that the application was lodged on 23rd January 2020. He pointed out that in terms of Rule 18 of the Tanzania Court of Appeal Rules 2009 (the Rules), a document is taken to have been lodged on the date when it is signed and dated. He added that, though the record shows that the notice of motion was received by R. Komba on 22nd January 2019, that situation is not covered by Rule 18 of the Rules as she is not a proper officer envisaged under that Rule. He contended further that, if the network was problematic the applicant ought to have invoked Rule 10 of the Rules and apply for extension of time to lodge it. In which case, he was of a view that, as the application was lodged out of time, the remedy is to strike it out and implored to the Court to do so. Mr. Katemi, submitted that under the Rules, the application was required to be filed within sixty (60) days. Since the same was signed on 23rd January 2019, it means it was lodged within 61 days. He was of the

view that, perhaps the application for extension of time under Rule 10 of the Rules would have cured the problem. In rejoinder, Mr. Barnabas contended that Ms. Komba who received the application is covered under Rule 18 of the Rules as it allows even another officer appointed for that purpose. He said, after receiving the document she stamped it. On being prompted by the Court as to when the process of filing is completed, he said, the filing process is completed after payment of the filing fees. In the end, he beseeched the Court to consider that technicalities should not defeat the substantive justice. He then, urged the Court to consider invoking the overriding objective principle and restrain from striking out the appeal. We have considered the rival submission on the issue we have raised and we think the issue to be determined by this Court is whether or otherwise the application was filed within time. Applications for revisions are governed by Rule 65 of the Rules. In terms of Rule 65 (4) of the Rules, the party who seeks the revision is required in mandatory terms to lodge the application within sixty (60) days from the date of the decision sought to be revised. This position has been reiterated in numerous decisions of this Court. Just to mention a few, they include *Tanzania Breweries Limited v. Herman Bildad Minja*, Civil Application No. 11/18 of 2019; and *M.B Business Limited*

- v. *Amos David Kassanda and 2 Others*, Civil Application No. 48/17 of 2018. For instance, in the former case of *Tanzania Breweries Ltd*, (supra), the Court categorically stated that: "It is trite law that an application for revision must be lodged within sixty days from the date of decision sought to be revised. (See Rule 65 (4) of the Rules)." In this matter, we note that there is a stamp affixed at the bottom of the front page which contains the name of R. Komba with his/her signature dated 22nd January, 2019. As it is, the said stamp does not clearly show its purpose. It is not known whether or otherwise it is intended to indicate the date when the document was received or not. Moreover, the stamp does not even show if it belongs to this Court. On the other hand, at the end of 3rd page of the notice of motion, it clearly shows that the same was lodged in the Registry of the Court of Appeal at Dar es Salaam on 23rd January 2019 with the endorsement of the Registrar. Apart from that, the Exchequer Receipt shows that payment was made on 23rd January 2019 through control No. 061146. The issue in controversy is that, while Mr. Luguwa is of the argument that the application was lodged within time as it was received by one R. Komba on 22nd January 2019 as shown on the stamp affixed at the bottom of the front page of the notice of motion, Mr. Shayo argues that the date to be reckoned is when the application was endorsed by the Registrar and the requisite fee paid. Fortunately, this issue is not novel in our jurisdiction. In numerous cases this Court has pronounced that a document is taken to have been lodged on the date when it was endorsed and upon payment of the required fee. As was rightly argued by Mr. Shayo, Rule 18 of the Rules also gives guidance as to the lodgment of documents in Court. The said Rule stipulates as follows: "Whenever any document is lodged in the Registry, sub registry of the Court or in the registry of the High Court, or tribunal under or in accordance with these Rules, the Registrar, or Deputy Registrar, or the Registrar of the High Court or any other officer of the Court appointed for that purpose, as the case may be, shall forthwith cause it to be endorsed showing the date and the time when it was

lodged" [Emphasis added] But again, according to Rule 119 of the Rules, the fee is required to be paid at the time of lodgment of the document. The said provision of law states as follows: "119(1) The fee payable on lodging any document shall be payable at the time when the document is lodged." This implies that, going by the dictates of Rule 18 and 119 of the Rules, the document would be taken to have been lodged at the respective registry when the Registrar, Deputy Registrar, the Registrar of the High Court or any other officer of the court appointed for that purpose has endorsed and put the date when it was lodged upon payment of the required fee and not otherwise. This Court has in numerous cases declared that a document is taken to have been lodged on the date when it was endorsed by the 8 Registrar on payment of the prescribed fee - See Murzah Oil Mills Ltd

- v. Kouk Oils and Grains PTE Ltd, Civil Application No. 105 of 2004; and Insurance Group of Tanzania Limited v. Joeff Group (T) Limited, Civil Application No 18/01 of 2020 (both unreported). In the former case of Murzah Oil Mills Ltd (supra), the Court discussed the issue as to when the document is lodged and while referring to Rule 113
- (1) of the Court of Appeal Rules, 1979 which is in perimetria with Rule 119 (1) of the Rules, it stated that: "It is pertinent that a civil appeal is opened when a memorandum of appeal and the record of appeal are lodged in Court registry and the necessary fees are paid" Also reinforcing the same stance in the case of Insurance Group of Tanzania Limited (supra), the Court stated as follows: "Going by the provisions of the above cited Rule, [Rule 119(1) of the Rules] we agree that the 28th January 2020 when the Registrar endorsed the documents and the fees paid was the date when the application is taken to have been lodged" In this case, applying the above cited authorities, we note that as alluded to earlier on, this application was lodged on 23rd January 2019 as shown at the end of the notice of motion where the Registrar 9 endorsed that the same was lodged in the Registry of the Court of Appeal at Dar Es Salaam on 23rd January, 2019. This is signified by the stamp affixed at the top of the front page of the record of application showing the same was filed on 23rd January 2019 at the Court of Appeal, Registry of Dar es Salaam. Moreover, even the Exchequer Receipt bears out that the fee was paid on that date when the same was lodged. This augurs well with the spirit of provisions of Rules 18 and 119 of the Rules. We think that the stamp affixed at the bottom of the front page indicating that one, R. Komba signed to have received on 22nd January 2019 cannot be taken to be the date of lodgment of the application since it lacks endorsement of the Registrar envisaged under Rule 18 of the Rules and no fee was paid as provided for under Rule 119 of the same Rules. We understand that Mr. Luguwa complained that on 22nd January 2019 payment could not be effected due to the network problem and thus were not able to issue the control number for payment. On our side, we do not find purchase from that proposition, since it has been raised from the bar without any substantiation. We think, as was rightly submitted by Mr. Shayo, if the applicant had noted that they were late to file the application for revision, 10 prudently they would have applied for extension of time to file the revision and advance such reason as the ground for the delay. Failure to do so, renders the application to have been lodged out of time and, therefore, liable for being struck out. That said and done, we find that the application is

incompetent for being filed out of time. We thus, strike it out with no order as to costs.

DATED at DAR-ES-SALAAM this 14th day of April, 2022. R. K. MKUYE JUSTICE OF APPEAL
M.C. LEVIRA JUSTICE OF APPEAL I. J. MAIGE JUSTICE OF APPEAL The Ruling delivered
this 21st day of April, 2022 in the presence of Mr. Silvester Shayo hold brief for Mr. Barnabas
Lugua, counsel for the Applicants and Mr. Silvester Shayo for 1st Respondent also hold brief
for Alphonse Katemi for 2nd and 3rd respondent, is hereby certified as a true ii

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