

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

CIVIL REFERENCE NO. 2 OF 2021

(^B/v district Land and Housing Tribunal for Karatu at Karatu in Taxation No. 101 of 2018)

JULIUS MALKIORI.....APPLICANT

VERSUS

AGRIPINA MATLE.....RESPONDENT

RULING

22/~~12~~/2021 & 30/07/2021

GWAE, J

When this application was called for hearing before me, the learned counsel for the respondent one Kimaay Panga raised his concern that, this application for reference has not been filed in conformity with the court order dated 17th May 2021. Consequently, he prayed this application be dismissed for being filed out of time.

According, to the applicant who appeared in person, unrepresented this application was filed within the prescribed period. Mr. Panga reacted to the applicant's response by stating that, the applicant' application has not been filed

in accordance with the court and above all the applicant has been grossly negligent.

I will therefore determine issue of limitation of time as raised by the respondent's counsel. It is therefore imperative to firstly examine the said court order extending time in favour of the applicant within which to properly file this application and secondly to determine a proper order to make.

The record reveals that, the applicant when appeared before Hon. **Masara, J**, her appeal registered as Land Appeal No. 60 of 2020 was struck out on the 17th March 2021 due to reason that she ought to have filed an application for reference in order to challenge a decision of a taxing officer of the District Land and Housing Tribunal at Karatu. However, for interest of justice, she was granted 10 days from the date of the order within which to file her application for reference.

It is lucidly clear that this application was duly filed on 8th April 2021 as exhibited by the court's seal as well as exchequer receipt. That means, this application was filed after lapse of more than 21 days from the date the order extending time was issued. Hence delay of more than 11 days. The applicant is therefore found to have filed this application beyond the time fixed by the court without seeking first leave of the court. That is wrong in law.

I am alive of the Article 107A of United Republic of Tanzania Constitution, 1977 as amended from time to time which requires our courts when dealing with dispensation of justice to avoid from being tied by legal technicalities however the issue of limitation is not one of the technicalities that our courts can abstain from looking into.

In **Paul Mgana v. Managing Director Tanzania Coffee Board**, Civil Appeal No. 82 of 2001 (unreported), where the Court of Appeal rightly stated;

“It is common knowledge that rules of procedure being handmaids of justice, should be complied with by each and everybody. whether the case involved a constitutional right as the appellant urged or not, so long as the provision of Rules (1) are mandatory going to the root of matter, there is no way in which the appellant could be exempted from complying with the rule”.

It should also be noted that this court is the court of law and not the court of morale or sympathy and that the law of limitation has to be adhered accordingly. Equally, the time extended by this court (Masara, J) was certainly aimed at facilitating expeditious dispensation of justice between the parties. That order, in my view, ought to be strictly followed and in the event of failure for reasons out of the control, the applicant was supposed to apply for further extension of time by advancing sufficient cause.

While the right to be heard is both constitutional and universal right enjoined by virtue of being a human being yet the law of limitation is paramount important in order to prevent litigants from coming to courts at time of their own choice.

Having found that, the applicant's application was filed out of the court order extending time within which to file this application for reference, consequently, the applicant's application is hereby dismissed under section 3 (1) of the Law of Limitation Act, Cap 89 Revised Edition, 2002. Considering the circumstances of the case, I refrain from making and order as to costs of this application is made.

Order accordingly.



M. R. GWAE
JUDGE
30/07/2021

Court. Right of appeal explained



M. R. GWAE
JUDGE
30/07/2021