

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: MWARIJA, J.A., KITUSI, J.A. And MAKUNGU, J.A.)**

**CIVIL APPLICATION NO. 391/01 OF 2019**

**JAMILA MAJALA ..... APPLICANT**

**VERSUS**

**HAMZA ABASI ..... 1<sup>ST</sup> RESPONDENT**

**RICHARD AUGUSTINE ZUBERI**

**T/A ZUBERI AND SONS BUS SERVICE ..... 2<sup>ND</sup> RESPONDENT**

**(Application for revision of the decision of the High Court of Tanzania, Dar  
Es Salaam District Registry at Dar Es Salaam)**

**(Mlyambina, J.)**

**dated 21<sup>st</sup> day of June, 2018**

**in**

**Misc. Civil Application No. 396 of 2015**

**.....**

**RULING OF THE COURT**

*26<sup>th</sup> August & 20<sup>th</sup> December, 2022*

**MWARIJA, J.A.:**

The applicant, Jamila Majala was the plaintiff in the High Court of Tanzania at Dar Es Salaam. She instituted in that court, Civil Case No.

151 of 2008 (the suit) against the 2<sup>nd</sup> respondent, Richard Augustine Zuberi t/a Zuberi and Sons Bus Service. She claimed for a total of TZS 750,000,000.00 as compensation for bodily injuries sustained by her and the loss of her son, Faihadi Ramadhani who passed away as a result of a motor vehicle accident in which the 2<sup>nd</sup> respondent's bus with Reg. No. T629 AET was involved. The applicant and her late son were travelling in that motor vehicle on 5/2/2006 and at the time of the accident, the same was being driven by the 1<sup>st</sup> respondent, Hamza Abbas.

The applicant unsuccessfully sought to join the 1<sup>st</sup> respondent in the suit as a second defendant but upon a preliminary objection, the claim against him was found to be time barred and thus the suit remained against the 2<sup>nd</sup> respondent alone. As it turned out however, the suit did not proceed to hearing. On 15/3/2012, following the prayer made by the counsel for the applicant, the same was marked withdrawn.

Few days later, after the applicant had withdrawn the suit in the High Court, she proceeded to institute it afresh against the respondents in the Resident Magistrate's Court of Dar es Salaam at Kisutu vide Civil Case No. 125 of 2012. The fresh suit could not, again, proceed to

hearing. The respondents challenged its competence through a preliminary objection in which, among other grounds, they contended that the claim was out of time. The objection was upheld and the fresh suit was dismissed.

Aggrieved by the decision of the Resident Magistrate's Court, the applicant unsuccessfully appealed to the High Court. The High Court agreed with the findings of the learned Resident Magistrate on all the three grounds of the preliminary objection including the ground that the fresh suit was time bared. It therefore, dismissed the appeal.

Aggrieved further, the applicant intended to appeal to this Court. However, since in terms of s. 5 (1) (c) of the Appellate Jurisdiction Act (the AJA), she could not do so without the leave of the High Court or of this Court, she proceeded to file an application in the High Court, Misc. Civil Application No. 396 of 2015 seeking the requisite leave. The application was however, dismissed for want of merit. The learned Judge (Mlyambina, J) found that the applicant had failed to demonstrate that there was any matter worth consideration by the Court. He based his decision on the ground that the appeal to the High Court was dismissed because the impugned decision arose from the suit which was

instituted out of time. It is against such decision that the applicant has filed this application seeking to invoke the revisional jurisdiction of the Court.

The application, which was brought under s. 4 (3) of the AJA, is supported by an affidavit sworn by Mr. Mashaka Ngole, advocate. The grounds for the application as contained in the notice of motion are:

- "1. That, the Honourable Judge of the High Court raised, suo mottu, the issue of limitation of time in respect of the Application, Misc. Civil Application No. 396 of 2015, and determined without affording the Applicant the right to be heard.*
- 2. That, the Honourable Judge of the High Court rejected the Application for lack of sufficient reasons after he had arrived into the findings that the Applicant had no need to seek for leave to re-file a fresh Application after the Applicant had withdrawn Civil Case No. 151 of 2018 as earlier determined by the High Court of Tanzania on appeal (the decision which is a subject of an intended Appeal into this Court).*

*3. That, the Application for leave determined by the High Court of Tanzania, which is the subject of this Application, was filed within the period of time prescribed by the law but the Honourable Judge did not analyze and show how the Application was time barred as determined."*

At the hearing of the application, the applicant was represented by Mr. Mashaka Ngole, while the respondents had the services of Mr. Philemon Mutakyamirwa, both learned advocates. The learned counsel for the parties filed their respective written submissions in terms of Rule 106 (1) and (7) of the Tanzania Court of Appeal Rules (the Rules).

In their submissions, the learned counsel for the parties have raised the issue whether or not, the applicant has properly invoked the Court's revisional jurisdiction. According to Mr. Ngole, the High Court decided the application for leave to appeal on the ground of limitation and therefore, the proper way of challenging that decision is by way of revision. On the other hand, Mr. Mutakyamirwa submitted that the High Court decided the application on merit, holding that the applicant had failed to show that there were any points worth consideration by the Court in the intended appeal. In the circumstances, the learned counsel

argued that since the application for leave to appeal was refused by the High Court, the applicant should have filed a fresh application in this Court in the form of a second bite.

Having considered the arguments made by the advocates for the parties, we agree with Mr. Mutakyamirwa that, after her application had been refused by the High Court, the remedy which was available to the applicant was to file a fresh application in this Court by way of a second bite. With respect, the argument by Mr. Ngole that the applicant had to apply for revision because the learned High Court Judge had decided that the application was time barred is therefore, a misconception.

Rule 45 (b) of the Rules provides as follows:

"45 -

(a) .... N/A.

(b) *where an appeal lies with the leave of the Court, application for leave shall be made in the manner prescribed in rules 49 and 50 and within fourteen days of the decision against which it is desired to appeal or where the application for leave to appeal has been made to the High Court and*

*refused, within fourteen days of that refusal*

*....”*

In terms of the provision which has been reproduced above, both the High Court and this Court have concurrent jurisdiction to entertain an application for leave to appeal, only that such an application must be filed in the High Court first. – See Rule 47 of the Rules. In this case, the application was decided by the High Court on merit, and therefore, the applicant had the right of coming to the Court by way of a second bite. Such right is not conditional upon the reasons forming the basis of refusal by the High Court, of the first application.

As correctly submitted by the counsel for the respondents, the learned Judge found no basis upon which leave to appeal could be granted to the applicant as the suit giving rise to the decision sought to be appealed against was time barred. He did not decide that the application before him was time barred. At the conclusion of his ruling at page 162 of the record of appeal, the learned Judge observed as follows:

*“...the application for leave to appeal to the Court of Appeal is hereby rejected for lack of sufficient grounds.”*

In the circumstances, we find that this application for revision is incompetent. The applicant ought to have exhausted the available remedy of filing the matter afresh before the Court. In the event, the application is hereby struck out with costs.

**DATED at DAR ES SALAAM this 14<sup>th</sup> day of December, 2022.**

A. G. MWARIJA  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

O. O. MAKUNGU  
**JUSTICE OF APPEAL**

The Ruling delivered this 20<sup>th</sup> day of December, 2022 in the presence of Mr. Philemon Mutakyamirwa holding brief for Mr. Mashaka Ngole, learned counsel for the applicant and Mr. Philemon Mutakyamirwa, counsel for the respondents, is hereby certified as a true copy of the original.



  
G.H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**