IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: NDIKA, J.A., RUMANYIKA, J.A., And MURUKE, J.A.)

CIVIL APPLICATION NO. 999/06 OF 2023

EPHRAEM CHRISTOPHER MANASE MREMA ..... APPLICANT

VERSUS

HOMANGE KASTORY KUNZUGALA ..... RESPONDENT

(Application for revision from the Ruling and Order of the High Court of Tanzania at Mbeya)

(Ngunyale, J.)

dated the 5th day of June, 2023

in

Civil Case No. 13 of 2016

.....

RULING OF THE COURT

21st & 22nd February, 2024

NDIKA, J.A.:

Ephraem Christopher Manase Mrema, the applicant herein, moves the Court under section 4 (3) of the Appellate Jurisdiction Act, Cap. 141 ("the AJA") and rule 65 (1), (2) and (3) of the Tanzania Court of Appeal Rules, 2009 ("the Rules") for revision of the decision of the High Court of Tanzania at Mbeya (Ngunyale, J.) dated 5th June, 2023.

When the application came up for hearing before us on 21st February, 2024, Homange Kastory Kunzugala, the respondent, who was self-represented, demurred that the matter was incompetent on six grounds. We heard his argument along with the reply from Messrs. Ndurumah Keya Majembe and John Ray Gamaya, learned counsel for the applicant, on the points.

Addressing us on the first point that the present application was time-barred, the respondent argued that while the impugned decision was handed down on 5th June, 2023, the application was lodged on 20th November, 2023, which was 168 days after the impugned decision was rendered. He firmly and incisively contended that the application ought to have been lodged within sixty days from the date of the challenged decision in consonance with rule 65 (4) of the Rules. On that basis, he implored us to strike out the application with costs.

Both Messrs. Majembe and Gamaya took turns to reply to the respondent's submission. In essence, they acknowledged the obvious that the application was instituted on 20th November, 2023, which was the one-

hundred sixty-eighth day after the assailed decision was rendered. However, not to be outdone they referred us to the founding affidavit made by the applicant stating in paragraphs 10, 11 and 12 as follows: first, that after the impugned ruling was handed down, the applicant on 14th June, 2023 applied to the High Court for a copy of the proceedings with the view to seeking redress from this Court. Secondly, that on 25th September, 2023, the Deputy Registrar of the High Court supplied him with the requested documents, but at that time the sixty days limitation period for seeking revision had already expired. Finally, that the Deputy Registrar supplied him with a certificate of delay excluding a total of 104 days spent for preparation and delivery of the requested documents. The learned advocates contended further that if the prescribed sixty days limitation period was reckoned from 25th September, 2023 on the strength of the aforesaid certificate of delay, it would be ineluctable that the instant application was lodged within time, that is, on the fifty-sixth day after the assailed decision was made.

When probed by the Court if a certificate of delay issued by the Deputy Registrar under rule 90 of the Rules could legally form a basis for exemption

of the limitation set forth under rule 65 (4) of the Rules for lodging an application of this nature, both learned advocates consecutively and forcefully replied in the affirmative. Mr. Majembe went an extra mile. He beseeched that the overriding objective be invoked to render the matter amenable for immediate hearing in the interests of justice in view of what he called "the special circumstances of this matter."

We have given due consideration to the contending submissions and examined the record before us. The crisp issue emerging for determination is whether the matter was duly lodged.

In the beginning, it is undoubted that an application for revision, like the instant matter, must be lodged within sixty days from the date of the decision intended to be challenged. That is so expressly stated by rule 65 (4) of the Rules, rightly cited to us by the respondent. For ease of reference, we extract it thus:

> *"(4) Where the revision is initiated by a party, the party seeking the revision shall lodge the application*

within sixty days (60) from the date of the decision sought to be revised."

Reckoned from 5th June, 2023 when the impugned decision was handed down, the prescribed period of sixty days elapsed on or about 5th August, 2023. This application was, therefore, filed 108 days thereafter.

In what we find so astounding, the learned advocates for the applicant bravely claimed that the matter was lodged in time on the strength of the certificate of delay issued to the applicant on 25th September, 2023 as averred in paragraph 12 of the founding affidavit. We saw the certificate alluded to on record, but it is as plain as pikestaff that, for purposes of this matter, it is a worthless piece of paper. Purportedly issued under the authority of the proviso to rule 90 (1) of the Rules, the said certificate would have excluded the period for preparation and delivery of a copy of proceedings for the purpose of lodging an appeal, not an application for revision. This sub-rule stipulates as follows:

*"**90**.-(1) Subject to the provisions of rule 128, an appeal shall be instituted by lodging in the*

appropriate registry, within sixty days of the date when the notice of appeal was lodged with –

(a) a memorandum of appeal in quintuplicate;

(b) the record of appeal in quintuplicate;

(c) security for the costs of the appeal,

save that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant."

Apart from the above provisions indicating expressly that they regulate the institution of civil appeals, they make no reference to the filing of applications for revision. Besides, rule 65 (4) of the Rules above does not subject the reckoning of the prescribed limitation period of sixty days to any

possibility of exclusion by the Registrar of the period necessary for preparation and delivery of any requested documents.

As hinted earlier, the applicant's counsel took pains to implore us to seek the aid of the overriding principle to save the application. In effect, they urged us to adopt a procedure so foreign and unusual to condone delay. We hope we may be excused to wonder why, in the first place, the applicant went ahead and lodged the application out of time without seeking extension of time under rule 10 of the Rules.

We are cognizant that we are enjoined to employ the overriding principle in terms of sections 3A and 3B of the AJA to facilitate just, expeditious, proportionate, and affordable resolution of disputes. With respect, while this principle is a medium for attainment of substantive justice, it will not help a party to circumvent the mandatory rules of the Court, one of which being rule 65 (4) of the Rules. We think that accepting the learned counsel's invitation will render hollow the essence of the aforesaid sub-rule.

In the final analysis, we find merit in the first point as discussed above. Since we find no pressing need to interrogate the other five points, we, at once, sustain the preliminary objection and proceed to strike out the application with costs.

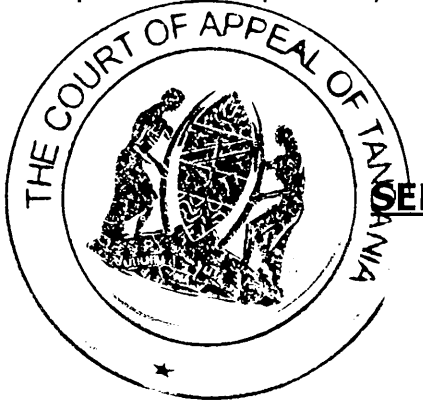
DATED at **MBEYA** this 22nd day of February, 2024.

G. A. M. NDIKA
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

Z. G. MURUKE
JUSTICE OF APPEAL

Ruling delivered this 22nd day of February, 2024 in the presence of Mr. James Kyando, holding brief for Mr. Ndurumah Keya Majembe and Mr. John Ray Gamaya, learned counsels for the Applicant and in the presence of the Respondent in person, is hereby certified as a true copy of the original.



E. G. MRANGU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL