IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWARIJA, J.A., SEHEL, J.A. And KAIRO, J.A.)

CIVIL APPLICATION NO. 538/01 OF 2018

COMPUTER LOGIX LIMITED.....1st APPLICANT
STEPHEN MAPUNDA.....2nd APPLICANT

VERSUS

ZAMZAM SHADADI ISSA AND SEIF ISSA FIKIRINI (Administrators of the estate of the late FIKIRINI ISSA KOCHO) .....RESPONDENT

(Application for Revision of the Ruling and Order of the High Court of Tanzania, at Dar es Salaam)

(Siyani, J.)

dated the 13th day of July, 2018

in

Misc. Civil Application No. 466 of 2015

.....

RULING OF THE COURT

13th June & 1st August, 2022

MWARIJA, J.A:

In this application, the applicants, computer Logix Limited and Stephen Mapunda have moved the Court to revise the decision of the High Court of Tanzania (Dar es Salaam District Registry) at Dar es Salaam made on 13/7/2018 in Miscellaneous Civil Application No. 466 of 2015 (the impugned decision). The applicants had sought before the High Court (Siyani, J., has he then was), an order extending time within which they could institute an application for review of the

decision of the same court (Twaib, J.) in Civil Case No. 151 of 2012 between the late Fikirini Issa Kocho, who was the plaintiff and the applicants, Computer Logix Ltd and Stephen Mapunda together with Computer Pole Ltd who were the defendants. In that case, the late Fikirini Issa Kocho claimed from the applicants and Computer Pole Ltd, a total of USD 117, 622. 00 and TZS 40,772,160.00 being the principal amount received out of the contract entered by them between 1/3/2006 and 17/2/2007. The High Court found that, in their written statement of defence, the applicants and Computer Pole Ltd (the 2nd defendant) had admitted the claim and therefore, entered judgment on admission and proceeded to award the late Fikirini Issa Kocho the claimed amounts plus interest and costs of the suit.

The applicants were aggrieved by the decision of the High Court and thus sought to challenge it by way of review. Since they were late to institute the application to that effect, they applied for extension of time vide Misc. Civil Application No. 466 of 2015, the decision of which has given rise to this application. Their application was however, unsuccessful. The High Court found that the applicants had failed to establish that the delay was due to sufficient reasons.

They were further aggrieved and thus decided to file this application. The application which was brought under s. 4 (3) of the Appellate Jurisdiction Act [Cap. 141. RE. 2019] is supported by an affidavit sworn by the 2nd applicant. On their part, the respondents opposed the matter through an affidavit in reply sworn by Zamzam Shadadi Issa. As per the notice of motion, the grounds upon which the Court has been moved to revise the impugned decision are that:

> *"1. The High Court wrongly computed the days of delay for lodging an application [for] extension of time while the said application was lodged in court immediately after issuance of the ruling, drawn order and the decree to the applicants."*
>
> *2. The High Court Judge hastily ruled out that failure by the advocate to follow proper procedure was not excusable while the overall circumstances surrounding this matter would have entitled grant of extension of time.*
>
> *3. There is an error on the face of the record as the 2nd defendant in the main suit, to wit; COMPUTER POLE LIMITED, [was] not a party to all the subsequent proceedings."*

In further response to the application, on 15/2/2019, the respondents filed a notice of preliminary objection consisting of the following four grounds:

"1. *That this application for revision is time barred.*

2. *That the application is incompetent before the Court for containing incomplete record of the proceedings.*

3. *That this application for revision is incompetent before the Court as the order complained of is appealable upon leave.*

4. *That the affidavit is fatally defective for non disclosure of source of information in the body of the affidavit,"*

At the hearing of the application, the applicants were represented by Mr. Godwin Muganyizi, learned counsel while Mr. Gabriel Mnyele, also learned counsel, represented the respondents. At the outset, the counsel for the respondents intimated to the Court that he no longer intended to argue the 2nd and 4th grounds of the preliminary objection and therefore, dropped those grounds and proceeded to argue the 1st and 3rd grounds of appeal.

Submitting in support of the 1st ground of appeal, Mr. Mnyele argued that, under Rule 65 (4) of the Tanzania Court of Appeal

Rules, 2009 as amended (the Rules), the time limit within which an application for revision must be instituted is 60 days of the date of the decision sought to be revised. He contended that, since the impugned decision was delivered on 13/7/2018, by instituting this application on 15/12/2018, the applicants did so beyond the prescribed time limit for over four months. Citing the decision of the Court in the case of **Amos Fulgence Karungula v. Kagera Cooperative Union (1990) Ltd**, Civil Application No. 435/04 of 2017 (unreported) the learned counsel urged us to strike out the application for being time barred.

In reply, Mr. Muganyizi opposed the submission by Mr. Mnyele that the application was filed out of time. According to the learned counsel, the matter was filed within the prescribed time because, the same was instituted after the applicants had obtained a certified copy of proceedings which was applied for on 16/7/2018, three days after delivery of the impugned decision. The learned counsel submitted that the certified copy was supplied to the applicants on 15/10/2018 and the application was filed on 15/12/2018 within the prescribed period of 60 days. Relying on the provisions of Rules 90 (1) of the

Rules, he urged us to dismiss this ground of the preliminary objection.

It is clear from the provisions of Rule 65 (4) of the Rules that the limitation period for filing an application for revision brought at the instance of a party is 60 days from the date of the decision which is sought to be revised. The provision states as hereunder:

> *"65-(1) .... N/A*
> *(2) .... N/A*
> *(3) .... N/A*
> *(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."*

The issue which arises from the submissions of the learned counsel for the parties is whether, like in the case of an appeal, the period spent in obtaining a certified copy of proceedings in the High Court is excludable from the period of limitation prescribed under Rule 65 (4) of the Rules. The proviso to Rule 90 (1) of the Rules on which Mr. Muganyizi based his argument states that:

> *"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 of 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."*

[Emphasis added].

From the wording of the provision which has been reproduced above, exclusion of the time spent in the preparation and supply of a certified copy of the proceedings apply only to an appeal, not an application. That provision cannot therefore, be invoked where the applicant fails to lodged his application for revision within the prescribed period under Rule 65 (4) of the Rules. In the case of a

delay for any reason including awaiting a certified copy of proceedings, the available remedy for the applicant is to apply for extension of time under Rule 10 of the Rules – See for instance, the Court's decisions in the cases of **Amos Fulgence Karugula** (supra) cited by Mr. Mnyele and **Denis T. Mkasa v. Farida Hamza** (*as an administratrix of the estate of the late Hamza Adam*) **and Another,** Civil Application No. 46/08 of 2018 (unreported). In the latter case in which a similar issue arose, after having considered the import of the provisions of Rule 65 (4) of the Rules, we held as follows;

> *"With respect, the applicant and the second respondent have a misconceived understanding of Rule 65 (4) of the Rules. That provision reckons the time of filing an application for revision from the date of the decision intended to be revised. That is the clear meaning of that provision but there are also quite a few decisions on that point, such as* ***Patrick Magologozi Mongela v. Board of Trustees of the Public Service Pensions Fund****, Civil Application No. 199/18 of 2018 and* ***Dr. Muzzammil Mussa Kalokola v. Minister of Justice and Constitutional Affairs and two Others,*** *Civil Application No. 183 of 2014 (both*

unreported) ....In the latter case cited above, we observed that where one's delay is caused by the delay in availing him with the requisite documents, he should first apply for extension of time".

The above stated position was reiterated in the case of **Amos Fulgence** (supra) in which we observed as follows;

"We are not in agreement with the applicant's argument to reckon the limitation of filing the present application from the date he was supplied with the drawn order and the proceedings. We say so because, the present matter is not an appeal whereby Rule 90 (1) of the Rules regulates the modality of the intending appellant to enjoy exclusion of time spent to be supplied with the requisite document upon certification by the Registrar. Such procedure is not applicable in an application for revision where the time limit to file a revision initiated by the party is prescribed under Rule 65 (4) of the Rules".

On the basis of the foregoing reason, we uphold the 1st ground of the preliminary objection. As a result, we find that the application was filed out of the prescribed period of 60 days in contravention of Rules 65 (4) of the Rules. Since the finding in this ground of the

preliminary objection suffices to dispose of the application, we find no need to consider the other grounds. In the event, this application which is time barred, is hereby struck out with costs.

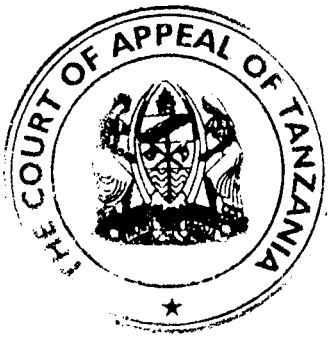
DATED at **DAR ES SALAAM** this 29th day of July, 2022.

A. G. MWARIJA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

L. G. KAIRO
JUSTICE OF APPEAL

The Ruling delivered on this 1st day August, 2022, in the presence of Mr. Sylivanus Chingota, learned counsel for the applicants who also holding brief for Mr. Gabriel Mnyele, learned counsel for the Respondents, is hereby certified as a true copy of the original.



E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL