

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE MUSOMA DISTRICT REGISTRY
AT MUSOMA**

MISCELLANEOUS CIVIL APPLICATION NO. 49 OF 2020
(Arising from Civil Appeal No. 25 of 2020)

AIRO MASUDI..... APPLICANT

VERSUS

JARED NGUKA AREGO RESPONDENT

RULING

18th and 18th March, 2021

KISANYA, J.:

The applicant was aggrieved by the decision of the Tarime District Court in Civil Case No. 3 of 2019, which was delivered on 4th June, 2020. His appeal to this Court (Civil Appeal No. 25 of 2020) was lodged on 14th July, 2020. By an order dated 28th September, 2020, the said appeal was struck out for being filed out of time. That order compelled the applicant to file the present application for review. His application is supported by an affidavit and a memorandum of review which sets out the ground for review.

At the hearing of this application, both parties appeared in person, unrepresented.

In his submissions, the applicant argued that the Court erred in striking out an appeal which was filed in time. The applicant being a lay person did not substantiate his submission with the relevant provision of law. He requested me to adopt the memorandum of review and the affidavit in support of the application, and urged the Court to grant the same.

The respondent did not file a counter affidavit to contest the application. However, he objected the application. He was of the view that the Court did not error in holding the appellant's appeal time barred. Therefore, he asked me to dismiss the application with costs.

I have carefully considered the records pertaining to this matter and the submissions made by both parties. Is this application meritorious? That is the issue to be addressed by the Court.

In terms of section 78 of the Civil Procedure Code [Cap. 33, R.E. 2019], this Court is empowered to review its own decision or order. One of the ground for review is where its previous order is tainted with an error on face of record. In such a case, review is intended to give into effect to what was intended by the Court if certain factor would not have been considered. See for instance, the case of **Justus Tihairwa vs Chief Executive Officer**, TTC, Civil Application No. 134/01 of 2019, CAT at DSM

(unreported) where the Court of Appeal cited with approval the decision of the then East African Court of Appeal in **Lakhamshi Brothers Ltd v. R.**

Raja & Sons [1966] E.A. 313 that:

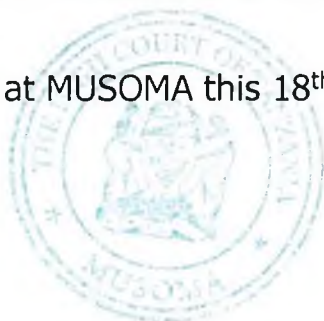
"The court had inherent jurisdiction to recall its judgment in order to give effect to its manifest intention on to what clearly would have been the intention of the court had some matter not been inadvertently omitted, but it would not sit on appeal against its own judgment in the same proceedings,"
"(emphasis added)

It is not disputed that Civil Appeal No. 25 of 2020 was dismissed on the reason that it was timed barred. The Court arrived at that decision after considering the provisions of section 25(1)(b) of the Magistrate Court Act, [Cap. 11, R.E. 2019] (the MCA). However, the said provisions apply in relation to matter originating from the Primary Courts. The matter subject to Civil Appeal No. 25 of 2020 originated from the district court while exercising its original jurisdiction. Therefore, it did not originate from the primary court for the provisions of section 25(1)(b) of the CMA to apply. In terms of paragraph I Part II of the Schedule to the Law of Limitation Act [Cap. 89, R.E. 2019], the time within to appeal against the decision of the district court when exercising its original jurisdiction is 90 days from the date of impugned decision.

Therefore, it is apparent that the applicant's appeal was filed in time. The order of this Court, striking out the appeal for being time barred did not, consider the proper law. In my view, that is an error on face of record which calls for review. In the case of **Zuberi Mussa vs Shinyanga Town Council**, Civil Appeal No. 3 of 2009, CAT at Tabora (unreported), the Court of Appeal granted the application for review after facing a similar situation.

In conclusion, for the reasons stated, the application herein is meritorious. I hereby grant it and vacate this Court's order dated 28th September, 2020. Accordingly, Civil Appeal No. 25 of 2020 is hereby restored and scheduled for hearing on 23rd April, 2021 at 10.00 am. I make no order as to costs because the restored appeal was struck out on the issue raised by the Court, *suo motu*. It is so ordered.

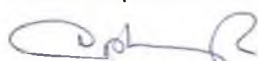
DATED at MUSOMA this 18th day of March, 2021.




E. S. Kisanya
JUDGE

Court: Ruling delivered in open Court this 18th day of March, 2021, in the presence of the applicant and the respondent. B/C Simon- RMA present.




E. S. Kisanya
JUDGE
18/03/2021