

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

COMMERCIAL REFERENCE NO.8 OF 2023

(Arising from Taxation Cause No.41 of 2023)

BETWEEN

REX INVESTMENT LIMITED.....APPLICANT

VERSUS

MKOMBOZI COMMERCIAL BANK.....RESPONDENT

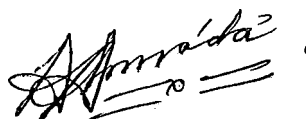
RULING

A.A. MBAGWA J.

This ruling is in respect of preliminary objection on point of law raised by the respondent's counsel. The applicant brought this application under the provisions of order 7(1) & (2) of the Advocates Remuneration Order, 2015 seeking the Court to reverse the ruling and order delivered by the taxing officer in Taxation Cause No.41 of 2023 dated 8/6/2023.

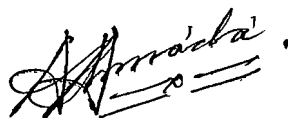
Upon service, the respondent's counsel raised a preliminary objection to effect that the application is time barred. Consequently, the Court scheduled a date for hearing of a preliminary objection.

On the hearing day, the applicant enjoyed the services of Mr. Sylvester Shayo, learned advocate, whereas the respondent was represented by Mr. Malick Hamza, learned advocate.



In his submission in support of the preliminary objection, Mr. Malick Hamza, had it that the preliminary objection was brought under Order 7(2) of the Advocates Remuneration Order which requires a party to file a reference against the decision of taxing officer within twenty-one (21) days from the date of the ruling. He expounded that the decision sought to be challenged was delivered on 8th June, 2023. Thus, counting from 9th June, 2023, the deadline for filing reference was 29/06/2023. He continued that the fiscal receipt for filing fee attached to the application indicates that the payment was made on 30/06/2023. As such, the counsel submitted, the application was time barred for one (1) day. In support of his proposition, the learned counsel cited the decision of this Court in the case of **Attorney General and Another vs M/S Rans Company Limited**, Commercial Application No. 16 of 2022 HC (Commercial Division) at page 6 whereat it was held that the filing date is the date on which the filing fee was paid. The counsel opined that the consequence of this ailment is to dismiss the application. He thus prayed the Court to uphold the objection and dismiss the application with costs.

In reply, Mr. Sylvester Shayo strongly opposed the objection. He stated that as it can be seen from annexure SES1 to the reply to counter affidavit, the document was electronically submitted on 28th June, 2023 and the

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same was admitted on 29th June 2023. He elaborated that the payment for filing fee was made on 30th day of June 2023 due to the fact that on 29th day of June, 2023 it was a public holiday (Eid) and therefore the applicant could not obtain control number for payment of filing fee as all public offices were closed. Mr. Shayo vehemently submitted that according to Rule 21(1) of the of Judicature and Application of Laws (Electronic Filing) Rules, GN. No. 148 of 2018 henceforth Electronic Filing Rules, the case is considered to have been filed on the date it is submitted.

Responding to the decision in the case of **Attorney General and Another vs M/S Rans Company Limited** (supra) cited by the respondent's counsel, Mr. Shayo argued that the case is distinguishable because it did not discuss how the document is submitted electronically and finally admitted.

In the alternative, the respondent's counsel submitted that, in the present case, it is in public knowledge that on 29th June, 2023 it was Eid, a public holiday. As such, in terms of Rule 21(2) of the Electronic Filing Rules GN. 48 of 2018, a document filed on public holiday is considered to have been filed on the next date.

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In conclusion, the applicant's counsel maintained that, in either way the application for reference was filed in time. In the result, he prayed the Court to dismiss the objection with costs.

In rejoinder, the respondent's counsel reiterated that the date on which a document is electronically submitted is not, in law, the proper filing date rather, it is the date of payment which is considered the proper filing date.

On the argument that on 29th June 2023 it was a public holiday and there were no official duties carried out hence the applicant could not get the control number to pay the filing fee, the respondent's counsel submitted that control number is electronically generated in the court system of JSDS2 upon admission of the document. As such, the respondent's counsel submitted that applicant's argument is unfounded.

Having canvassed the rival submissions from both parties, the crucial point for determination is, *when is the document properly filed in court? Is it on the date when the document is electronically submitted or the date when the filing fee is paid?* This court in the cases of **Access Bank Tanzania Limited vs Mahiti Manyori Wambura**, Civil Revision No. 37 of 2021, HC at Dar es Salaam and **Mustapha Boay Akunaay vs Mosses Meimar Laizer (Legal Administrator of Lucia Letroviki Laizer and 2 Others**, Land Reference No. 06 of 2020 has held that the proper date

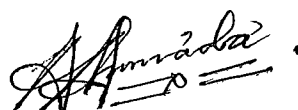
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of filing is the date of payment of fee and not the date on which the document was electronically submitted. The Court reasoned that the advent of Electronic Filing Rules did not change the long-established position which considers the date of filing to be the date of payment of fee.

On my part, I fully subscribe to the position taken by my learned Brethren in the above decisions. The reason for embracing the position is obvious and logical, that is, if physical filing of document does make the document properly filed before the Court unless the filing fee is paid, it naturally follows that electronic filing, which in my view, is a substitute of physical filing cannot constitute proper filing unless the filing fee is paid. See also the case of **John Chuwa vs Anthony Ciza 1992 [TLR] 233**.

Another point I considered is, what would happen if a party submits a document electronically and thereafter, he does not pay the filing fee at all or does it after several months, would the document for which filing fee has not been paid considered properly filed? My quick answer is no.

Furthermore, the applicant's counsel sought to rely on the excuse that since the 29th day of June 2023 was a public holiday, the applicant could not get control number for payment of filing fee. I have carefully considered the applicant's argument but I do not agree with him. The


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reason is that the applicant had enough time (21 days) to file the reference considering that the public holiday was not an emergency. In addition, as rightly submitted by the respondent's counsel, the applicant could still obtain the control number through JSDS2 system.

Applying the above position, it is common cause that the proper filing date is on 30th June 2023 when the filing fee was paid through Control Number: 991400916234 and not on 28th June 2023 when the document was electronically submitted. As such, it naturally follows that the reference application was filed out of time for one (1) day.

It is a settled position that delay even of a single (1) day cannot be condoned without following a proper procedure. In the case of **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016, CAT at Dar Es Salaam, the Court quoted with approval the holding of Kalegeya J, as he then was in case of **John Cornel v. A. Grevo (T) Ltd**, Civil Case No. 70 of 1998 to the following effect;

'However unfortunate it may be for the plaintiff, the Law of Limitation, on actions, knows no sympathy or equity. It is a merciless sword that cuts across and deep into ail those who get caught in its web.'

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All the above considered, I am inclined to hold that the reference is time barred. As such, I sustain the preliminary objection and consequently dismiss the reference. The applicant should bear the costs.

It is so ordered.

Right of appeal is explained.




A.A. Mbagwa

JUDGE

18/08/2023