IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MKUYE, J.A., WAMBALI, J.A., And KOROSSO, J.A.)

CIVIL APPEAL NO. 345 OF 2019

MOHAMED SALIMINI ..... APPELLANT

VERSUS

JUMANNE OMARY MAPESA ..... RESPONDENT

(Appeal from the Ruling and Order of the High Court of Tanzania Dodoma District Registry at Dodoma)

(Mansoor, J.)

Dated the 28th day of September, 2018
in
DC Civil Appeal No. 6 of 2018

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JUDGMENT OF THE COURT

21st September & 22nd October,2020

KOROSSO, J.A.:

This appeal emanates from the ruling of the High Court of Tanzania at Dodoma (Mansoor, J) in DC Civil Appeal No. 6 of 2018 dated 28th September, 2018 that sustained the respondent's preliminary objection that alleged that the appeal against the decision of the District Court of Dodoma in Civil Case No. 27 of 2003 was time barred.

In summary, the context giving rise to the current appeal is that, the respondent successfully sued the appellant in the District Court of Dodoma (the trial court) Civil Case No. 27 of 2003 seeking

for eviction of the appellant from the house situated on Plot No. 61 Block 23 Bahi Road, Majengo area in Dodoma (the suit premises). It should be noted that the appellant claimed that he had purchased the suit premises from the defunct Loans and Advances Realization Trust (LART). Aggrieved by the decision of the trial court, the appellant unsuccessfully appealed to the High Court, Civil Appeal No. 10 of 2005 and thereafter, still unsatisfied, he proceeded to file the second appeal to this Court, Civil Appeal No. 121 of 2008. The Court on the 30th of October, 2009 ruled that the appeal was incompetent for reason of a defective decree of the trial court, struck out the appeal and nullified the Judgment and proceedings of the High Court.

The effect of the decision of the Court meant that there was no valid decree emanating from the trial court in Civil Case No. 27 of 2003. The appellant thus ventured into pursuit of justice through filing of various applications which are not the subject of this appeal. More importantly, in 2017 the appellant formally applied to the trial court in Misc. Civil Application No. 14 of 2017 for correction of the decree of Civil Case No. 27 of 2003 that had been found to be defective by this Court. The application was successful and the

appellant obtained a copy of the trial court's corrected decree on the 27th February, 2018. Thereafter, on the 3rd April, 2018 the appellant filed an appeal in the High Court of Tanzania at Dodoma, DC Civil Appeal No. 6 of 2018 against the judgment and decree of the trial court. The appeal was dismissed for being time barred after the High Court sustained the preliminary objection raised by the respondent.

Dissatisfied by the decision of the High Court and upon obtaining the leave of the High Court to appeal to this Court in Misc. Application No. 56 of 2018, the appellant lodged the present appeal by way of a Memorandum of Appeal fronting five (5) grounds as follows:

1. The learned Judge erred in law in holding that the Appeal before the Court was time barred while in law it was lodged within time.
2. The learned Judge erred in law in failing to interpret and apply the provisions of section 19(2) of the Law of Limitation Act, Cap 89 read together with Order XXXIX Rule 1 of the Civil Procedure Code, Cap 33 to ascertain whether or not the appeal before the Court was lodged within time.

3. The learned Judge erred in law and fact in treating/considering the appeal before the Court as an application for extension of time to lodge an appeal out of time.
4. The learned Judge erred in law and fact in treating/considering the appeal before the Court as an application for correction of errors in the decree of the District Court, the issue which has been finally and conclusively determined by the District Court of Dodoma in Misc. Civil Application No. 14 of 2017.
5. The learned Judge erred in law in basing the computation of time on inapplicable section 21 (1) of the Law of Limitation Act, Cap 89; instead of the applicable section 19(2) of the same law.

At the hearing of the appeal before us, Dr. Lucas Charles Kamanija learned Advocate, represented the appellant whereas on the part of the respondent, he enjoyed the services of Mr. Deus Nyabiri, learned counsel.

Dr. Kamanija commenced his oral submissions by adopting the contents of his written submission filed in support of the appeal and

sought and was granted leave to abandon the 4th ground of appeal. He also intimated his preference to first argue the 1st and 2nd grounds of appeal conjointly followed by arguing the 5th and then the 3rd grounds of appeal separately.

Submitting on the 1st and 2nd grounds of appeal related to whether the appeal before the High Court, DC Civil Appeal No. 6 of 2018 was time barred or not, he contended that the appeal was within time but faulted the learned High Court judge findings for failure to properly interpret and apply the provisions of section 19(2) of the Law of Limitation Act, Cap 89, Revised Edition 2002 (The LLA) read together with Order XXXIX Rule 1 of the Civil Procedure Act, Cap 33 Revised Edition 2002 (The CPC).

According to the appellant's counsel, after the decree of the trial court in Civil Case No. 27 of 2003 was invalidated by this Court in Civil Appeal No. 121 of 2008, the result was that there was no decree of the trial court to appeal against. That subsequently, after successfully applying for the proper decree in the trial court, the appellant was supplied with the same on the 27th February, 2018 and his understanding was that this is the date which the decree of the trial court came into being. He stated further that on the 3rd

April, 2018, in compliance with Order XXX1X Rule 1(1) of the CPC and section 19(2) of the LLA as read together with Paragraph 1 of Part II of the Schedule to the LLA, he lodged the appeal to High Court and it was on time.

The counsel contended further that the appeal was within time because Paragraph 1 of Part II of the Schedule to the LLA provides for the period of ninety (90) days within which to lodge an appeal arising under the CPC where the period of limitation is not provided by any written law. On his part, this is the same situation in the case subject to the current appeal, being an appeal against the decision of the District Court, and there being no specific provision in the CPC that expounds time limitation for such appeal, hence the application of Paragraph 1 Part II of the Schedule to the LLA.

The appellant's counsel argued that this being the position of the law and since section 19(2) of the LLA provides for exclusion of the period of time requisite for obtaining a copy of the decree or order appealed from when computing the period of limitation prescribed for an appeal, it was thus imperative that the High Court when deliberating on whether or not the appeal was time barred should have considered this factor and failing to do so was erroneous.

Dr. Kamanija contended further that when what is stated above is considered together with the provisions of Rule 1(1) of Order XXXIX of the CPC, it makes it a mandatory legal requirement that every appeal from the District Court to the High Court be in the form of a memorandum of appeal to be accompanied by copies of the decree and judgment. That the said mandatory standing can be discerned from the use of the word "*shall*" in the provision and also used in section 19(2) of the LLA. He reasoned that this is further amplified when read within the confines of section 53(2) of the Interpretation of Laws Act, Cap 1 Revised Edition 2002 (The ILA). That the interpretation of the word "shall" as held by this Court in **Ahmed Mabrouk and Najma Hassanali Kanji vs Rafiki Hawa Mohamed Sadik**, Civil Reference No. 20 of 2005 (unreported) that, "*where the word "shall" is used in conferring a function it should be interpreted to mean that the function so conferred must be performed*".

The counsel thus argued that having regard to the stated position and the unchallenged fact that the decree and judgment are composite documents which constitute the adjudication of the Court and that the two must accompany the memorandum of

appeal, then their importance cannot be overemphasized. To strengthen this argument, the decision of the Court in **The Registered Trustees of the Marian Faith Healing Centre @Wanamaombi vs The Registered Trustees of the Catholic Church Sumbawanga,** Civil Appeal No. 64 of 2006 (unreported) was cited. In the said case, the Court explicated that the decree and judgment are composite documents which together constitute the adjudication of the Court. Another case cited was **Mariam Abdallah Fundi vs Kassim Abdallah Farsi** [1991] TLR 196, and the import of Order XXXIX Rule 1 of the CPC was observed and the fact that it is mandatory for every memorandum of appeal to be accompanied by a copy of the decree or order appealed from and that non-compliance should lead to the dismissal of the appeal for reason of not being properly before the court. Other cases referred to by the learned counsel to cement this stance are **Selemani Zahoro and 2 Others vs Faisal Ahmed Abdul (Legal Representative of Deceased Ahmed S. Abdul) (BK),** Civil Application No.1 of 2008; **Emmanuel Kaaya vs Ebelehati Mboyogo,** PC Civil Appeal No. 4 of 2003 (High Court) (both unreported); **Executive Secretary Wakf and Trust**

Commission vs Saide Salum Ambar [2001] TLR 160 as well as the case from the High Court of Zanzibar, **Joseph Maiga vs Abbas Fadhil Abbas and another** [2001] TLR 213.

In consideration of the above position on the issue and applying it to the case subject to the present appeal, the learned counsel for the appellant argued that since the appellant obtained a copy of the decree from the trial court on 27th February, 2018, and having regard to the provisions of section 19(2) of the LLA which mandatorily oblige courts to exclude the period of time requisite for obtaining a copy of the decree appealed from. It follows that the period between 4th March, 2005 (the date the judgement of the trial court in Civil Case No. 27 of 2003 was delivered and the 27th of February, 2018 when the appellant obtained a copy of the decree) is to be excluded when computing the requisite time to appeal. That once the said period is excluded, it follows that the appeal to the High Court was lodged on time, that is, within the prescribed 90 days. The counsel thus sought the Court to find the 1st and 2nd grounds of appeal meritorious.

On the side of the respondent, his counsel objected to the appeal and sought the Court to adopt his filed written submission

so that it forms part of the overall submissions. He responded to the four grounds of appeal generally and stated that the 1st and 2nd grounds of appeal were the ones on the helm of the four grounds of appeal for consideration and determination by the Court.

The counsel started by addressing the learned High Court Judge's analysis of the submissions before her on whether or not the appeal was out of time and argued that on his part, the said findings were justified under the circumstances especially taking into consideration that the appeal was filed fifteen years after the judgment of the trial court in Civil Case No. 27 of 2003 was pronounced. For the respondent's counsel, the appellant's delay in applying for another decree, a corrected one, soon after the Court's finding that the trial court's decree was incompetent on the 30th October 2009 was misguided and unacceptable. He also contended that since the appellant was unable to show cause for the said delay thus there was no way that the High Court judge could have reached any other finding other than that the appeal was out of time.

Whilst the respondent counsel conceded that the CPC and the LLA do not prescribe time within which a party has to apply to be

issued with a decree, he argued that considering that an aggrieved party has to file his appeal to the High Court within ninety (90) days from the date of the decision of the District Court, prudence should have compelled the appellant to apply to have the defective decree rectified within a reasonable time after the decision of the Court of Appeal. Such prompt action he argued, would have enabled the appellant to work within the specified time provided for appeal, instead of waiting for a period of almost nine years as what occurred in the case subject of the current appeal, that is from 2009 to 2017.

Mr. Nyabiri averred further that the long period of inaction on the part of the appellant cannot be said to be reasonable time, citing the decision of this Court to fortify his arguments that is, **Loswaki Village Council and Another vs Shibesh Abebe** [2000] TLR 204 where it was stated that; "*those who seek the protection of the law in a Court of justice must demonstrate diligence*".

The counsel's standpoint being that the appellant did not show diligence in the quest for justice. He argued that section 19(2) of the LLA could only come into play if the appellant had applied to be

supplied with a valid decree within ninety (90) days after the decree was struck out by this Court and since this did not happen then Order XXXIX Rule 1(1) of the CPC cannot be relied upon. He thus contended that the 1st and 2nd grounds of appeal are undeserving of any consideration by the Court and should be dismissed.

The rejoinder by the appellant's counsel with respect to the 1st and 2nd grounds was brief and a reiteration of the submission in chief and stressing the restated position.

We have prudently considered the submissions both oral and written and the cited references by the learned counsel for both parties with respect to the 1st and 2nd grounds of appeal and we duly appreciate the industry exhibited by the counsel in terms of research and well organized and presented submissions. On our side, we find the main borne of contention is whether the appeal from the trial court to the High Court was out of time or not and under the circumstances of this case, the applicability of section 19(2) of the LLA in computing the time to appeal from the trial court in Civil Case No. 27 of 2003 to the High Court.

The submissions from counsel of both parties and the record of appeal lead us to an undisputed fact that the original decree issued

by the trial court was on the 30th October 2009 found by the Court to be defective for having different dates and thus incompetent. The Court then proceeded to strike out the said decree and quashed the judgment and decree of the High Court on appeal and also nullified the proceedings thereto. This development as rightly stated by counsel for the parties meant there was no longer a valid decree related to the decision of the trial court in Civil Case No. 27 of 2003.

The appellant counsel argued that there being no decree of the trial court after the Court struck it out, the appellant could not proceed to appeal to the High Court without a copy of the decree by virtue of section 19 (1) of the LLA and Order XXXIX Rule 1(1) of the CPC and that is what led him to apply for the corrected decree. He believed that the requisite 90 days required to file an appeal as stated under Paragraph 1 of Part II of the Schedule to the LLA started to run after the appellant was served with the corrected decree and he relied on section 19(2) of the LLA. Whereas, the appellant's counsel argued that the High Court Judge failed to impute section 19(2) of the LLA, a mandatory provision when counting the time for filing of the appeal to the High Court and that

such omission was erroneous. This assertion has been challenged by the learned counsel for the respondent, stating that the said provision does not apply in the circumstances of the appeal which was before the High Court.

The Appellant's counsel also argued that, the respondent's contention that there was a long delay in seeking for the correct decree should not be considered because there is no legally specified time to seek for a corrected or amended decree as can be discerned from the provision of section 96 of the CPC. On the part of the respondent's counsel, he argued that the 90 days started running on the 4th May, 2009 immediately after the Ruling of the Court, regardless of whether there was a proper decree or not.

Before moving any further, we find it pertinent for ease of reference to import the relevant provisions which have been discussed by both counsel in relation to the current matter before us.

Section 19 of Limitation Act reads:

> (1) "*In computing the period of limitation for any proceeding, the day from which such period is to be computed shall be excluded.*

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded'.

Section 96 of CPC states that

"Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the court either of its own motion or on the application of any of the parties".

Order XXXIX Rule 1 of CPC states that:

Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the high court thereafter in this Order referred to as "the Court" or to such officer as it appoints in this behalf and the memorandum shall be accompanied by a copy of the decree appealed from and (unless the Court dispenses therewith) of the judgment on which it is founded".

It should be borne in mind that the appellant did appeal to the High Court of Tanzania (Civil Appeal No. 10 of 2005) before the appeal to the Court of Appeal (Civil Appeal No. 121 of 2008) which ended in quashing the High Court judgment and decree and nullification of the proceedings thereto as alluded to above. Undoubtedly, by virtue of Order XXXIX Rule 1(1) of the CPC, for such an appeal to be heard in the High Court from the District Court the record of appeal must have included the decree and judgment of the District Court be it defective or not. This is a mandatory requirement and this stance has been cemented in various decisions of this Court such as **Mariam Abdallah Fundi vs Kassim Abdallah Farsi** (supra).

Thus, when the appeal was struck out and the proceedings of the High Court were nullified what was not affected was the Judgment of the District Court. Noteworthy is the fact that a decree emanates from a judgment thus it draws its date from the judgment. Under Order XX Rule 7 of the CPC, the date of pronouncement of judgment is the date of judgment and decree. This position we also observed in **Registered Trustees of the Marian Faith Healing Centre @Wanamaombi vs The Registered Trustees of the Catholic Church Sumbawanga**

Diocese (supra) we stated that; "*the judgment and decree are composite documents which together constitutes adjudication of the court*".

In the present case, in his pursuit for justice, that is, the preferred appeal, the appellant was **one**, duty bound to seek for the proper decree at the earliest possible time so as to meet the timeline of ninety days as required by Paragraph 1 of Part II of the Schedule to the Limitation Act because he had already been served with a decree regardless of whether or not it was defective. **Two**, the appellant was responsible to take essential steps to ensure that the ninety days timeline does not expire (See **Loswaki Village Council and Another vs Joseph Abebe** (supra)). This being the position, relying on section 96 of the CPC was not proper action because in any case the said provision discusses correction of a decree only but does not stop the running of the time for the appeal to be preferred. Indeed, we are aware of the provision of section 96 of the CPC which does not provide time limit for seeking amendment or correction of a decree. However, it is expected that the person seeking to rely on it will exercise diligence and seek for the same within the boundaries of time specified for a specific

action which such a decree is to be utilized for, in case of an appeal, to adhere to filing of an appeal within 90 days and exercise prudence to ensure this is complied with.

Indeed, in view of the above, the argument that the appellant only received the decree on the 22nd July, 2017 hence the delay to file appeal to High Court does not hold water under the circumstances. For argument sake, after this Court nullified the proceedings and quashed the decree on the 30th October, 2009, the appellant's role was soon after to seek for the rectified decree within reasonable time instead of what he did of waiting until in 2017 to seek for the same, that is nine (9) years later. Noteworthy, is the fact that the record of appeal shows that the appellant was reminded of exercising more diligence in pursuant of his appeal by the High Court judge (Shangali, J.) in a Ruling that determined one of the applications he had filed that sought extension of time to lodge the memorandum and record of appeal from the decision of the High Court, that is, Misc. Civil Application No. 43 of 2009 found in the record of appeal (pages 385-397). In the said Ruling dated 9th March, 2012 the learned High Court Judge, observed at page 393 of the record of appeal that:

> *".... That position means that while the applicant is seeking for enlargement of time to file on appeal to the High Court he has not applied for a valid decree from the District Court".*

Unfortunately, despite the said intervention by the High Court judge, the appellant failed to act promptly. Instead as stated above, he proceeded to seek for the corrected decree and not extension of time to file an appeal as guided by the High Court judge.

There is a case decided by the Privy Council which had occasion to address a similar situation, that is, **Rozenda Ayres Ribeiro vs Olivia DA Ritta Siquera E. Facho and Another** (1936) 3 EACA1, a case originating from Kenya. What was before the Council was an appeal against the decision of the defunct East African Court of Appeal that dismissed an application by the appellant for leave to appeal out of time from the judgment and decree of the Supreme Court of Kenya, dated 19th August, 1932 where it held that:

> *"There can be no doubt that the appellant had an opportunity, if not a duty, in the event of desiring to appeal, to take steps to have the judgment of 19h August 1932,*

drawn up in the form of a decree. The Court of Appeal say 'once the judgment was delivered, he (the appellant) could and should have taken steps to ensure his appeal being within time..."

The Privy Council also cited the case of **Jivanji vs Jivanji** 12 KLR 41 to cement their findings where it was held that:

"it is the duty of a party who wishes to appeal against or apply for a review of a decree or order to move the Court to draw up and issue the formal decree or order..."

We find the above holdings to have great persuasive value as can be discerned from the decision of this Court in the **Registered Trustees of the Marian Faith Healing Centre @Wanamaombi vs The Registered Trustees of the Catholic Church Sumbawanga Diocese** (supra). The Court when determining an appeal challenging the High Court decision that the appeal was time barred deliberated on the efforts alleged to have been taken by the appellant to appeal on time, and observed that the period from the date of pronouncement of judgment is the starting date of counting the expiry of the 90 days required to appeal as outlined by Paragraph I Part II of the Schedule to the LLA.

The above fact should be taken together with the fact that it is undisputed that under section 19(2) the of the LLA, the time used to obtain a copy of the decree has to be excluded in computing time used to appeal. Simultaneously, consideration should also be to the fact that despite the provisions of section 19(2) of the LLA, preparation and signing of the decree by itself should not affect the date which a decree bears, since it should be the same date the judgment was delivered as already alluded to hereinabove.

Suffice to state, having in mind the duty to ensure there is a decree and judgment attached to the record of appeal as stated in section 19(2) of the LLA falls on the appellant, there is also a duty to apply for a decree within the time prescribed for appeal. In the present case, after the trial court decree was struck out by the Court, the duty to procure a corrected and proper decree was upon the appellant, and this duty was expected to be exercised within reasonable time while mindful of the time prescribed for lodging and appeal before the High Court is, ninety (90) days.

Indeed, when applying for the corrected decree of the trial court it was incumbent for the appellant to be mindful of whether or not the prescribed 90 days for such an appeal was still running.

We find the contention that the respondent had a duty to first challenge the granting of the corrected decree because not doing so would have meant the respondent slept on his rights and he thus could not challenge the delay to seek for the impugned decree is irrelevant under the circumstances, and it does not bring in any new issue to take to the table.

The fact is that since even the corrected decree still specified that it was drawn on the 4th April, 2005 the time to file an appeal started running from that date. This can be drawn from the Memorandum of Appeal filed to the High Court which shows that the judgment and decree were issued on the 4th April, 2005. When computing the time to file an appeal to the High Court what should be considered is from the 4thth April, 2005 when the judgment of the trial court was dated. Thus, when this is done, it is clear that section 19(2) of the LLA does not apply since there is no challenge on the date of the appeal to the High Court (proceedings which were nullified). Without doubt it was filed on time then and section 19(2) of LLA applied then, but it cannot apply after the decision of the Court to struck out the decree when it is on record that the judgment and decree was already obtained 15 years earlier. That is,

the appeal was filed on the 3rd April, 2018 whereas the judgment was delivered on the 4th April 2005.

As rightly stated by the counsel for the respondent, the argument by the learned counsel for the appellant that section 19(2) of the LLA should have taken effect after the erroneous decree was obtained is defeated by the fact that application of section 19(2) of the LLA does not remove the duty of the aggrieved party wishing to appeal within 90 days as specified under Paragraph I Part 11 of the Schedule to the LLA. This is because the issue for consideration was not to apply for a decree without purpose. Under the circumstances, section 19(2) of the LLA would not in any way have protected the appellant to save the appeal.

While we acknowledge the fact that after the decision of the Court to strike out the trial court's decree, the 90 days prescribed by law were still undisturbed when in pursuance of a proper decree, as alluded to earlier in this judgment, the duty to seek for a decree on time was on the appellant who was to benefit from this, and this duty was not absolved by reason that the decree which he was provided with was later found to be defective by this Court. Even when he was applying for a corrected decree, he was still bound by

the limitation period and even after being reminded by the High Court judge as alluded to above on the fact that his time to appeal had run out, the appellant failed to take any action to respond to the concern.

Thus, for reasons we have advanced, we find that the appellant failed to file the appeal within the time prescribed and that the learned High Court judge was correct to say that the appeal was out of time even if we may somewhat differ in our reasoning to arrive at this decision, and consequently we find the 1st and 2nd grounds of appeal to lack merit.

In the 3rd ground of the appeal, the appellant complains that the appeal in the High Court was considered as an application for extension of time to lodge an appeal out of time instead of an appeal against the trial court's decision. The appellant's counsel argued that in determining the appeal, the judgment of the High Court stated that the main legal issue for determination was whether the appeal before the court was time barred or not and thus in effect erroneously considered the appeal as an application for extension to lodge an appeal out of time. He also contended that, because the High Court wrongly conceptualized the issue

before it, the High Court's findings considered unrelated issues in the appeal. This included consideration of assertions that the appellant had failed to explain each day of delay a matter which should not have been deliberated on since the appeal before the High Court was within time. He thus prayed that the ground be considered and determined favourably for the appellant.

In response, the respondent's counsel beseeched us not to consider this ground contending that it lacked merit and that there is nowhere in the judgment of the High Court that it can be inferred that the appeal was treated as an application for extension of time. He argued that when deliberating on the matter, the High Court, after discerning the issue of whether the appeal was on time or not was the crucial matter to address, proceeded to discuss this but only in passing, and that it was not the main issue discussed and determined in the High Court judgment. The appellant's counsel rejoinder was a reiteration of his earlier submissions.

Our scrutiny of the record of appeal when deliberating on this ground, found that the impugned High Court decision under scrutiny is one which disposed of a preliminary objection raised by the respondent on a point of law that the appeal was time barred.

In the impugned decision, the parties did not submit on the appeal on merit but on the preliminary objection raised. Therefore, determination of the preliminary points of objection by the High Court judge cannot be adjudged to have been misguided. The High Court judge deliberations were on whether or not the appeal was on time. We have also found that any reference to the need to show cause of delay where in essence, statements in passing when deliberating on the issue for determination before the High Court. We thus find that in view of our determination on the 1st and 2nd grounds of appeal as shown above, there is no need to further deliberate on this ground since it is inconsequential. We thus find this ground without substance and lacks merit.

After the 4th ground of appeal was abandoned, the remaining ground is the 5th ground of appeal. The ground faults the High Court judge for failing to properly consider section 19(2) instead of section 21(1) of the LLA when computing the time of appeal. The learned counsel for the appellant argued that from the impugned Ruling of the High Court, computation of time for appeal was improper since what was considered was section 21 (1) of the LLA. He argued that despite the fact that this was not openly stated by

the High Court Judge, that is, on whether or not section 19(2) or 21(1) of the LLA were used to compute the time of appeal, it was incumbent for the High Court to be guided by section 19(2) of the LLA.

In response, the learned counsel for the respondent did not have much to say on this ground contending that it was misconceived and inconsequential and prayed we find that it lacked merit. There was no rejoinder from the appellant's counsel.

We have carefully gone through the impugned Ruling of the High Court and find nothing to lead us to find that she considered and applied the provisions of section 21(1) of the LLA when computing the time to arrive at her decision that the appeal was time barred. We are thus of the view that this ground has no legs to stand on and is misconceived, especially when our findings in the 1st and 2nd grounds of appeal are considered. We have already stated above that reliance on section 19(2) of the LLA cannot assist the appellant's stance since the decree extracted from the judgment is dated 4th April, 2005 and as stated above the time started to run therefrom, when the judgment was delivered by the trial court.

In the end, section 19(2) of the LLA is inapplicable in the current matter as the appellant did not apply for the correct copy of the decree within reasonable time. In the premises, for the foregoing reasons, the appeal is devoid of merit and is hereby dismissed in its entirety with costs.

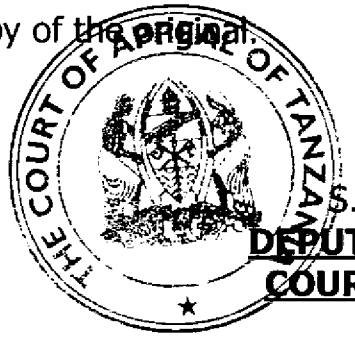
DATED at **DAR ES SALAAM** this 21st day of October, 2020.

R. K. MKUYE
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

The judgment delivered this 22nd day of October, 2020 in the presence of Mr. Lucas Kamanija, learned counsel for the appellant and Ms. Nyanjiga Nyabukika, learned counsel for the respondent linked via video conference from Dodoma is hereby certified as a true copy of the original.



S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL