

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KOROSSO, J.A, FIKIRINI,J.A, And MAKUNGU, J.A,)

CIVIL APPEAL NO. 316 OF 2020

GRACE C. RUBAMBHEY.....APPELLANT

VERUS

CMC AUTOMOBILES LIMITED.....RESPONDENT

**(Appeal from the Ruling and Order of the High Court of Tanzania
at Dar es Salaam)**

(Munisi. J)

dated the 20th day of July, 2017

in

Miscellaneous Civil Application No. 629 of 2016

.....

JUDGMENT OF THE COURT

31st May & 6th July, 2023

FIKIRINI, J. A.:

The appellant, Grace C. Rubambey discontent with the Resident Magistrate's Court at Kisutu decision in Civil Case No. 160 of 2013 dated 4th May, 2016, she anticipated an appeal. Cognizant of the procedure, on 5th May, 2016 she applied to be furnished with copies of the judgment, decree and proceedings for appeal purposes. On 18th August, 2016 the appellant was supplied with copies of the judgment

and proceedings. The decree regarding the judgment was not availed until 2nd September, 2016. Thinking she was out of time to lodge appeal, she sought and on 20th July, 2017 declined an extension of time vide Miscellaneous Civil Application No. 629 of 2016. Discontent she preferred the present appeal challenging computation of time limitation in terms of section 19 (2) of the Law of Limitation Cap. 89 R.E. 2019 (the Law of Limitation), in lodging an appeal. And this is where the contentious issue lies, which calls us to trace its history.

The storyline leading up to the present appeal originates from the appellant's and respondent's relationship. The respondent is a car dealer and the appellant is one of its clients. The appellant sent the respondent her Land Rover Discovery car from that relationship for repair. The repair was not done as agreed, which caused the appellant not to use her car since 2010 when she took it to the respondent for repair. This caused her to suffer mental anguish. Disappointed and displeased, she sued the respondent in Civil Case No. 160 of 2013 before the Resident Magistrate's Court. Despite the decision delivered on 4th May, 2016 being in her favour, the appellant was unsatisfied.

Thus, intending to challenge the decision, she, requested copies of the necessary documents on 5th May, 2016. By the time she was availed with all the necessary requested documents, the time of ninety (90) days to lodge appeal to the High Court had already elapsed. Considering herself out of time, she moved the High Court seeking for extension of time, the application which was declined hence the present appeal, in which the appellant's complaints to this Court are as follows:

1. *That the Honourable Judge of the High Court erred in law in refusing to grant extension of time to the appellant to file an appeal to the High Court out of time without taking into account the mandatory requirement of the law that the time requisite for obtaining a copy of the decree must be excluded.*
2. *That the Honourable Judge of the High Court erred in law and in fact in refusing to extend time to the appellant to file an appeal to the High Court out of time basing on the reason that there was inaction on the part of the appellant in following up documents, without ascertaining the date when the requisite documents were ready for collection, thereby occasioning substantial and grave injustice to the appellant.*

It is significant to note that appeals from the Resident Magistrate's Court to the High Court pursuant to section 3 (1) of the Law of Limitation Act read together with Item 1 Part II of the Schedule to the Law of Limitation Act, are to be lodged within ninety (90) days. In the present appeal, the appellant thinking she was out of time, thus applied for extension of time, through Miscellaneous Civil Application No. 629 of 2016. Her application was dismissed for failure to show sufficient cause as required in law, for she could not account for why she did not act from the date of the letter up to 18th August, 2016 when she was availed with the copy of the judgment.

Mr. John Kamugisha and Mr. Shehzada Walli learned advocates filed written submissions on behalf of their parties supporting their respective positions before the hearing. On the date scheduled for the hearing, they both entered appearance, ready to argue the appeal.

Preceded with adopting the written submissions filed on 16th November, 2020 in support of the appeal, Mr. Kamugisha divided his submission into two limbs: the first limb examined the High Court's refusal without taking into account and excluding the time spent to

obtain the documents, especially the decree in terms of section 19 (2) of the Law of Limitation Act. According to Mr. Kamugisha copies of the judgment, decree and proceedings were requested on 5th May, 2016, but not all could be furnished timely. In support of his submission, Mr. Kamugisha referred us to the cases of **The Registered Trustees of the Marian Faith Healing Centre @ Wanamaombi v. The Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2006 and **Alex Senkoro & 3 Others v. Eliambuya Lyimo(As administrator of the Estate of Frederick Lyimo, Deceased)**, Civil Appeal No. 16 of 2017 (both unreported) on the computation of time. Mr. Kamugisha implored us to endorse the first limb on the computation of time, that it starts after a party is supplied with the necessary documents, in this case particularly the copy of the judgment and decree. On the basis of this ground, he urged us to allow the appeal.

Addressing us on the second limb, indifferent to the conclusion that there was inaction on the part of the appellant, the Judge counting the time between 5th May to 18th August, 2016 as unaccounted for, Mr.

Kamugisha, contended that the decree could not be supplied until 2nd September, 2016 as exhibited by a copy of an exchequer receipt to that effect found on page 89 of the record of appeal. Besides, letters were written to that effect as shown on page 82 of the record of appeal. Unfortunately, by the time the decree was obtained ninety (90) days within which to lodge appeal had already elapsed since 3rd August, 2016. The application for extension of time was thus inevitable.

Based on his submission, Mr. Kamugisha implored us to allow the appeal with costs.

On his part, Mr. Walli, apart from adopting his written submission, resisted the submission that the decree was extracted and supplied on 2nd September, 2016. Instead, he contended that the decree was ready as of 18th August, 2016 as indicated on pages 48 and 81 of the record of appeal. Mr. Walli cited the case **ACE Distributors Limited v. Gabriel Kimwaga**, Miscellaneous Labour Application No. 712 of 2019, High Court of Tanzania (Labour) at Dar es Salaam (unreported), alluding that the appellant's inaction was the cause of delay. Distinguishing the cases cited by Mr. Kamugisha, Mr. Walli submitted

that only one letter was written and since there was no follow-up, the appellant could not know that the documents were ready by 18th August, 2016. He thus prayed for the appeal to be dismissed with costs.

Briefly rejoining, Mr. Kamugisha asserted that on 18th August, 2016 it was the judgment and proceedings that were ready, not the decree. And going by Order XXXIX rule 1 (1) of the Civil Procedure Code, Cap. 33 R. E. 2019 (the CPC), a decree is essential to lodging an appeal. He went on submitting on two things: *one*, that the date from 5th May to 18th August, 2016 was not to be accounted for as a requirement, and *two*, from 2nd September, 2016 up to when the application for extension of time was lodged was not an issue before the High Court, the submission in that regard should therefore be ignored.

After considering the rival submissions, our first stop was at section 19(2) of the Law of Limitation on the computation of time. The provision provides that in computing the period of limitation prescribed for appeal, in terms of section 19 (2) of the Law of Limitation Act, the period used in obtaining the copies of proceedings, judgment and

decree is automatically excluded. Section 19 (2) of the Law of Limitation Act provides as follows:

*"19 (2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of the 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.**"*

[Emphasis added]

This Court, in the case of **Alex Senkoro & 3 Others** (supra) elaborating on the application of section 19 (2), had this to say:-

*"We entertain no doubt that the above subsections expressly **allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made upon an order of the court in a formal application for extension of time. Indeed, that stance***

*was taken recently in **Mohamed Salimini v. Jumanne Omary Mapesa**, Civil Appeal No. 345 of 2018 (unreported), where the Court affirmed that section 19 (2) of the LLA obliges the courts to exclude the period of time requisite for obtaining a copy of the decree appealed from." [Emphasis added]*

In determining whether the High Court Judge properly dismissed the application for extension of time to appeal for the applicant's inaction, we will deal with both grounds together.

Our thorough perusal of the record of appeal and submissions reveals undisputedly that the Resident Magistrate's Court's decision in Civil Case No. 160 of 2013 was delivered on 4th May, 2016. Disgruntled, the appellant wrote to the Resident Magistrate Incharge, Kisumu, requesting to be supplied with certified copies of the necessary documents. The copies of the judgment and proceedings were certified on 18th August, 2016 as indicated on pages 81 and 82 of the record of appeal and were supplied to the appellant.

The decree, which is the essential document in processing the appeal as per the record was not part of the documents supplied to the appellant on 18th August, 2016. Instead, the decree was extracted and supplied on 2nd September, 2016 as exhibited on page 51 of the record of appeal. Conversely, Mr. Walli contested this fact but could not present credible evidence that the decree was furnished to the appellant on 18th August, 2016 and not 2nd September, 2016 as alluded by Mr. Kamugisha.

A decree is a necessary document in the lodgment of an appeal, in terms of Order XXXIX rule 1 (1) of the CPC. The provision is couched as follows:-

*"1.-(1) Every appeal shall be preferred in the form of memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf. **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." [Emphasis added]

From the provision, it is obvious that a copy of a decree and judgment are prerequisites in the lodgment of an appeal. Without this, no appeal can be lodged. In the present appeal there is no doubt that the decree was extracted and supplied to the appellant on 2nd September, 2016 as revealed on page 51. The exchequer receipt issued on 2nd September, 2016 bear proof of this. We, therefore, do not find any conceivable reason why we should reject Mr. Kamugisha's contention on when the decree was extracted and supplied to the appellant. In our view, Mr. Walli's submission does not explain why all three documents were not supplied on the same date if they were really ready. Also, he could not convincingly explain why he disputes that the decree and the exchequer receipt were issued on 2nd September, 2016.

In terms of Order XXXIX rule 1 (1) of the CPC, a decree is vital, without which no appeal can be lodged. In the present appeal, likewise, no appeal could be lodged without a copy of a decree supplied and with that in place, the time started running from 2nd September, 2016 and

not 5th May, 2016 or 18th August, 2016. Therefore, after getting the decree and computing the time from 2nd September, 2016 to 19th September 2016 when the appellant lodged the application for extension of time, which the High Court declined, the appellant was well within the time to lodge such an application if at all required. However, since the period used in obtaining the necessary documents was to be automatically excluded, there was no need for the appellant to apply for extension of time.

The alleged inaction from 5th May, 2016 when she requested to be furnished with documents up to 18th August, 2016, when she was furnished with some of the documents, with due respect we find there was no inaction on the appellant's part. The Judge's conclusion is thus uncalled for and unsupported. The provision and the case laws have given interpretation on that point, that computation of time starts after receiving all the documents. In the present appeal, the appellant received all the requested documents on 2nd September, 2016 when she was supplied with a decree and not 18th August, 2016, when she was only provided copies of the judgment and proceedings.

In fine, we find this appeal meritorious and allow it with costs. We order the record to be remitted to the High Court for the appeal process.

DATED at **DAR ES SALAAM** this 28th day of June, 2023.

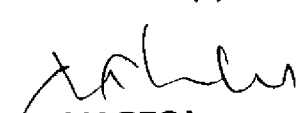
W. B. KOROSSO
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

The Judgment delivered this 6th day of July, 2023 in the presence of Mr. John Kamugisha, learned counsel for the appellant who also holding brief for Mr. Shehzada Walli, learned counsel for the respondent, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL