

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

**PC. CIVIL APPEAL NO. 36 OF 2008**

*(Originating from the Musoma District Court Misc. Civil App. No. 03 of 2007. Civ. App. No. 9/08 Civ. Case No. 37/06 Urban Court)*

**THOMAS MONI MANOKO ..... APPELLANT**

**Versus**

**FRED PETER MARWA ..... RESPONDENT**

**RULING**

**G. K. RWAKIBARILA, J**

Appellant **THOMAS MONI MANOKO** was a plaintiff in Musoma Urban Primary Court Civil Case No. 37 of 2006. He was claiming in that suit from respondent **MARWA FREDY PETER** (who was the defendant in that case) Shs. 2,500,000/= for hire of plaintiff's boat engine. Judgment was entered for appellant and respondent lodged an appeal out of time in Musoma District Court Civil Appeal NO. 36 of 2006.

Before hearing the Civil appeal No. 36 of 2006 in Musoma District Court commenced, there was an application to file the appeal there out of time which was allowed on 14.02.2008. But before hearing of that appeal (which was filed out of time) in Musoma District Court started, appellant lodged this appeal before this court primarily contesting the grant of leave by the District Court to appeal out of time.

Mr. Nkenji, learned counsel for respondent raised a preliminary objection just before hearing of this appeal commenced. He based on three grounds. He contended in the first ground that the trial Musoma Urban Primary Court had no pecuniary jurisdiction. On the second ground this learned counsel for respondent contended that there was no right to appeal against an interlocutory order, when leave was granted to lodge an appeal to the District Court. And on the third ground, Mr. Nkenji submitted that the appeal to this court was time barred.

In the case of the first ground which Mr. Nkenji raised, the plaint which appellant filed in the primary court shows that he was claiming the principal sum of Shs. 2,500,000/= which allegedly accrued from hire of his engine boat by respondent. Under Section 18 (1) (a) (iii) of The **Magistrates' Courts Act, Cap. 11 (Vol. 1, R.E. 2002)** it is provided that:

*"A Primary Court shall have and exercise jurisdiction.....for the recovery of any Civil debt arising out of contract, if the value of the subject matter does not exceed three million shillings....."*

It is relevant to note here that in her judgment, the primary court awarded appellant the total sum of T.Shs 5,500,000/=. But that alone did not oust the pecuniary jurisdiction of that primary court because what was important to determine from the beginning was whether initially the court had such jurisdiction as construed from the relief's sought in the plaint and not the consequential amount which was awarded in the judgment. Therefore so long as the relief which

was sought by appellant in the plaint was only Shs. 2,500,000/=, Mr. Nkenji's first ground of objection is rejected.

The second ground of objection which Mr. Nkenji raised for respondent is that there was no right to appeal against an interlocutory order in which leave to appeal out of time was granted. The relevant provision which deals with such matter is an amendment to Section 43 of **The Magistrates' Courts Act** (supra) as reflected in Section 2 of **The written Laws (Miscellaneous Amendments (No.3) Act, No. 25 of 2002** which added immediately after sub-section 43 (1) that:

*"(2) No appeal or application for revision shall lie against or be made in respect of any preliminary or interlocutory decision or order of the district court or a court of a resident magistrate **unless such decision or order has the effect of finally determining the criminal charge or the suit** "(emphasis added).*

In this situation, the decision of the District Court in Civil Appeal No.36 of 2006 when leave to appeal out of time was granted can not at any standard amount to final determination of this matter. Therefore appellant was, in view of the said amendment to Section 43 of **The Magistrates' Courts Act**, barred to appeal from that decision to wit, parties in this appeal are remanded back to Musoma District Court and directed to contest the appeal which was lodged by respondent there.

Mr. Nkenji, third ground in which he stated that this appeal is time barred is, at this juncture, overtaken by what was resolved in the second ground. The reason is that this appeal was not properly lodged to this court where parties should, from this juncture, appear in Musoma District Court to contest in Civil Appeal No. 36 of 2006 there.

And the way in which the first and second grounds in this preliminary objection were resolved suffice to order costs incurred to follow the event.

**G. K. Rwakibarila**  
**JUDGE**  
**20.02.2009**

**Date:** 24.02.2009

**Coram:** G. K. Rwakibarila, J

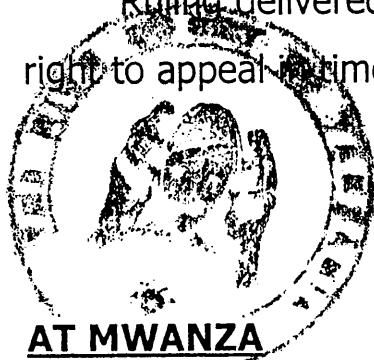
**Appellant:** Present in person

**Respondent:** Mr. Nkenji

**B/C:** Leonard

**Court:**

Ruling delivered at Mwanza this 24<sup>th</sup> day of February, 2009 and right to appeal in time has been explained thoroughly.



**G. K. Rwakibarila**  
**JUDGE**