

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 41 OF 2011**

**TANESCO. . . . . APPELLANT**

**VERSUS**

**MADINA HATIBU MALLY. . . . . RESPONDENT**

*Date of last order: 01/11/2011*

*Date of Ruling: 11/04/2011*

**R U L I N G**

**KARUA, J.**

The respondent, Madina Hatibu Mally, sued the appellant, Tanzania Electric Supply Company Ltd, (TANESCO), at the Court of the Resident Magistrate of Dar es salaam at Kisutu claiming a sum of Shs. 57,619,000/= being compensation for loss of her house and personal

effects, such as deep freezer, wardrobe, cupboard, beds, mattresses, household utensils, sofa sets, clothing and so many other items, which were all gutted down by fire due to electrical fault from the system maintained by the appellant. On the other hand, the appellant denied that the source of the fire was a short circuit which caused explosion of a Luku meter installed by the appellant at the respondent house.

The trial court (Wambura, RM), decided the matter in favour of the respondent. The appellant felt aggrieved and presented in this court the current appeal. However, before the appeal was heard, Mr. Living Kimaro, on behalf of the respondent, interjected on the ground that the appeal is hopelessly out of time and was filed without the permission of this court. Mr. Kimaro went on to say that the judgment which the appellant wishes to appeal against was delivered on the 6<sup>th</sup> April, 2010. Judgment and the

decree was ready for collection by 1<sup>st</sup> July, 2010. This is evidenced by the exchequer receipt issued to the respondent when she went to collect her copy of judgment and decree. Time stated to run against the appellant when the copy of judgment and decree were ready for collection. That meant ninety (90) days expired on 1<sup>st</sup> November, 2010. Unfortunately the appellant presented the appeal on the 18<sup>th</sup> April, 2011, almost nine months had elapsed and according to Mr. Kimaro the appellant had put forward no reasons to condone the delay. Mr. Kimaro therefore asked for the dismissal of the appeal.

The objection on the other side was resisted by Mrs. Stella Rweikiza, learned counsel for the appellant. Mrs. Rweikiza, insists that time had not run out against the appellant. According to Mrs. Rweikiza, the appellant applied for a copy of judgment and decree on the same date the judgment was pronounced, that is, on the 6<sup>th</sup> April,

2010. However, the documents were supplied to the appellant on 18<sup>th</sup> April, 2011, and a day after the appeal was filed. According to Mrs. Rweikiza, it is the duty of the court in terms of Rule 20 of Order XX to furnish the documents to the appellant. There is no legal provision that require the appellant to make a follow up of the judgment and proceedings. It is the court's duty to notify the appellant that judgment is ready for collection. Thereafter it becomes the duty of the appellant to pay and collect the documents. Mrs. Rweikiza cited the case of Transcontinental Forwarders Vs Tanganyika Motors Ltd (1997) TLR No. 328. Moreover, Mrs Rweikiza, without prejudice, submitted that even if it is found that the appellant is caught by limitation, the consequences is not to dismiss the appeal but rather to strike it out. She cited the case of VIP Engineering and marketing Ltd Vs SGS civil case no. 32 of 2006 (unreported).

I have followed and considered these arguments. With respect, I am satisfied that the preliminary objection is abundant in merit. The appellant is caught by limitation. Mr Kimaro presented his case very well. The judgment, from which it is appealed against, was delivered on 6<sup>th</sup> April, 2010, and a copy of judgment and decree, in terms of the respondent ERV, was ready for collection since 1<sup>st</sup> July, 2010. The appeal, on the other hand, was presented on 19<sup>th</sup> April, 2011, almost nine months had elapsed. I have examined the record. There is no evidence that the appellant was informed by the court that a copy of judgment and decree was ready for collection. On the contrary, and, as rightly pointed out by Mr. Kimaro, the appellant collected the copy of judgment and decree swiftly because it was squeezed by the execution proceedings. In driving home her point, Mrs. Rweikiza relied on the


provisions of rule 20 of Order XX of the Civil Procedure Code, which is couched in the following words:-

***2.0 Certified copies of the  
judgment and decree  
shall be furnished to the  
parties on application to  
the court and at their  
expense.***

Indeed, it is the duty of the court to supply to the parties, copies of judgment and decree on two prerequisite. Firstly, the party must make an application for the documents and secondly, on a price. It is not free of charge. That being the position, the appellant must be keen to pursue for the copy of the judgment and decree on payment of fees. Prudence and foresightedness will not call upon the appellant to sit down and wait. The appellant must apportion some labour to follow up the documents.

Time has changed. Practice and reality calls for a follow up. However, transcontinental case is distinguishable in that in that case a copy of judgment was not ready. In this case, on the contrary the documents were available awaiting collection.

Having held that the appeal is caught by limitation, what should be the end result? Mr. Kimaro asked for the dismissal of the appeal. Mrs Rweikiza, on the other hand, asked for the appeal to be striked out. She said when the appeal becomes incompetent the only remedy is to strike it out and not to dismiss it. A matter which has not been heard on merit cannot be dismissed, she said. Indeed, she is right. Consequently, the appeal is struck out with costs.



S.N.G. Karua

**JUDGE**

**11/04/2012**

**DATED AT DAR ES SALAAM**

Appearances:

For the appellant: Ms Joyce Mwakijale, Advocate

For the respondent: Ms. Joyce Mwakijale holding brief  
for Mr. Living Kimaro