

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
(APPELLATE JURISDICTION)**

**CIVIL APPEAL NO. 31 OF 2015
(From the Dar es Salaam Kisutu RM'S COURT CIVIL CASE NO.16 OF 2011-
Hon.D.KISOKA-RM)**

NATIONAL MICROFINANCE BANK PUBLIC CO.LTD.... APPELLANT
Versus
EDOS MASAWA T/A BINECA INVESTMENT RESPONDENT

Date of last Order: 16th July, 2015
Date of Ruling: 14th August, 2015

RULING

Feleshi, J.:

The respondent raised a preliminary objection against the pending appeal to the effect that the appeal is time barred as it was filed out of time prescribed by law and without leave of this honorable Court.

Mr.Galikano, Advocate submitted that in view of the fact that the suit from which the present appeal arises was governed by the Civil Procedure Code, [Cap.33 R.E.2002] which does not provide the period of limitation within which to appeal and the judgment having been delivered on 30/4/2014 then the filing of the present appeal by the appellant on 18/3/2015, about five months later, makes the appeal time barred in terms of the Law of Limitation Act, [Cap.89 R.E.2002] whose Part II item 1 provides that:

"An appeal under the Civil Procedure Code where the period of limitation is not otherwise provided for by any written law... ninety days"

In their reply the Applicant through the service of M/S Maleta & Ndumbaro Advocates submitted that the fact that the impugned trial court's

judgment was certified on 8/1/2015 and they instituted the appeal on 18/3/2015 makes the Appeal being well within time in terms of section 19(2) of the Law of Limitation Act (supra) which discounts the period between 30/10/2014 and 8/1/2015 spent in waiting for the certified copy of judgment and that the limitation statutory period of 90 days for them would have actually been 8/4/2015 and not before that.

In his rejoinder, Mr. Galikano submitted that the Appellant cannot rely on section 19(2) of the Law of Limitation Act (supra) because he has not disclosed when he applied for the certified copy judgment so that he can legally and properly get protection under the said provision of the law. In addition, he submitted that the said section 19(2) is usually invoked when applying for extension of time as a reason for the delay. He therefore invited this Court to act under section 3(1) and 3(2) (b) of the Act and dismiss the Appeal with costs.

I will therefore determine whether this respondent's preliminary objection has merit.

Though in the present appeal I found the Appellant had applied for execution of the decree I could not ably immediately establish the date (if any) he applied for typed and certified copy of the proceedings and decree which he subsequently attached to his memorandum of appeal. Section 3(2) (b) referred to by the respondent's Counsel reads:

"3. (2) (b) For the purposes of this section a proceeding is instituted—

(a) N/A;

(b) in the case of an appeal, when the appeal is preferred either by filing a memorandum of appeal or in such other manner as may be prescribed by any written law."

In view of the above submissions and provision of the law, it is obvious to me that the Appellant filed his memorandum of appeal on 18/3/2015 the date which was well within the prescribed period in terms of Section 19(2) of the CPC (supra). He could be rightly held to have acted out of time if by 8/4/2015, the end of his 90 days prescribed for **appeal under the Civil Procedure Code where the period of limitation is not otherwise provided for by any written law**, he could have not filed his memorandum of appeal.

I therefore entirely agree with the Appellant that the preliminary objection is not meritorious and the same is hereby dismissed with costs. The appeal shall be disposed on merit. I rule accordingly.

DATED at Dar es Salaam this 14th August, 2015



A handwritten signature in black ink, appearing to be "E.M. Feleshi".

E.M. Feleshi
JUDGE

Ruling delivered on this 14th day of August, 2015 in the presence of Mr. Edward Magayane, Advocate for the Appellant and Mr. Galikano, Advocate for the Respondent.

A handwritten signature in black ink, appearing to be "E.M. Feleshi".

E.M. Feleshi
JUDGE
14. 8.2015