IN THE HIGH COURT OF TANZANIA

AT TABORA

CIVIL APPEAL No. 10 OF 2015

(Arising from Civil Case No. 6 of 2013 in the District Court of Tabora District, at Tabora)

STAR SYSTEM INTERNATIONAL CO. LTD.....APPELLANT

VERSUS

AGATHA CYRIL NANGAWE..... RESPONDENT

RULING

14& 19/04/2016.

Utamwa, J

This is a ruling on a preliminary objection (PO)filed by the respondent in this appeal, AGATHA CYRIL NANGAWE against an appeal lodged by the appellant, STAR SYSTEM INTERNATIONAL CO. LTD. Though the written notice of the PO (in a reply to the memorandum of appeal) indicates that the PO is based on two points, in effect it is based on a single point that the appeal is time barred.

The brief background of this matter is that, the respondent filed a suit (Civil Case No. 6 of 2013) against the appellant before the District Court of Tabora District, at Tabora (trial court) seeking various reliefs.

The trial court awarded the reliefs in favour of the respondent vide its judgment dated 09/10/2014 (the impugned judgement). Aggrieved by the impugned judgment the appellant lodged this appeal which has now encountered the PO under consideration.

The PO was argued by way of written submissions. The respondent in this saga appeared sole without any legal representation while the appellant enjoyed the service of Mr. Musa Kasim learned counsel.

In supporting the PO the respondent briefly argued that the impugned judgment was delivered on 9/10/2014 and certified on 16/10/2014, but the appeal was filed on 1/4/2015 which was almost six months from date of the certification. This was against section (s.) 3 and Item 1 of Part II in the Schedule to the Law of Limitation Act, Cap. 89 R. E. 2002 which provides that the time limit for appeals of this nature is 90 days only. She further argued that the appeal could have thus been filed by 13/1/2015. This position is in line with s. 19 (3) of Cap. 89. She thus urged the court to dismiss the appeal for been time barred.

In his replying submissions the learned counsel for the appellant argued that the appeal is not time barred for the following grounds; that upon the delivery of the impugned judgment on 9/10/2014 the appellant applied for a certified copy of the decree on 17/12/2014 since it has to accompany the petition of appeal as per Order XXXIX rule 1 (1) of the Civil Procedure Code, Cap. 33 R. E. 2002.

The learned counsel did not however, dispute the stance of the law that the appeal is to be filed within 90 days from the date of the judgment. He however, argued that s. 19 (2) of Cap. 89 permits the appellant to deduct the period of time requisite for obtaining the copy of the decree in computing the time of limitation for appealing. He further argued that since the decree was supplied to the appellant on 13/3/2015 vide Exchequer receipt No. 2213532 the appeal (which was filed on 2/4/2015) was in time upon deducting the period of waiting for the copy of decree. The respondent did not file any rejoinder submissions, hence this ruling.

I have considered the arguments by the parties, the record and the law. Parties in fact agree that according to the law cited above appeals of this nature have to be filed within 90 days from the date of judgment. They are also in accord that the appeal at hand was in fact filed after the expiry of the said 90 days from the delivery of the impugned judgment. The guidance of ss. 19 (2) and (3) of Cap. 89cited by the parties herein above is also not disputed by them.

In determining this matter I will begin with a highlight of the law of limitation as far as this appeal is concerned. As rightly agreed by the parties according to Item I, part II of the first schedule to Cap. 89 the time limitation for filing appeals of this nature is ninety days. This period of limitation commences to run from the date on which the challenged decision was delivered, (i. e. on 9/10/2014 in the case at

hand), see section (s.) 4 read together with s. 6 (j) of Cap. 89 and the envisaging of this court in **Tanzania Breweries Ltd v. Robert Chacha, HC Civil Revision No. 34 Of 1998, at Dar Es Salaam** (Katiti, J. as he then was).

However, there are exceptions in computing the period of limitation in appeals of this nature. One of the exceptions is that, this court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of the appeal where an application is made either before or after the expiry of the period of limitation [(see s. 14 (1) and (2) of Cap. 89]. Another live example of the exceptions in computing the time limitation in appeals of this nature is found under s. 19 (2) and (3) of Cap. 89 cited by the parties herein above. I will quote these provisions of the law for the sake of a readymade reference, they are couched thus;

> "(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.** "(bold emphasis is mine).
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> (3): **Where a decree is appealed from** or sought to be reviewed, **the time requisite for obtaining a copy of the judgment on which it is founded shall be excluded"**(bold emphasis is provided).

These provisions, especially s. 19 (2) of Cap. 89 form the main basis for the appellant's arguments in respect of time computation. The issue that arises here is thus, *whether or not the appellant is entitled to what I may call a "self and automatic" exclusion of the period of time requisite*

for obtaining the copy of thedecree in computing the time limitation. In other words, the issue is whether or not the appellant was entitled in law to arbitrarily exclude (for itself) the said time and then file the appeal out of time without any leave of court for extension of time.

My settled views which I also underscoredin the cases of **TANESCO v. Christopher Bita Makunja, High Court Civil Appeal No. 42 of 2011, at Dar es salaam** (unreported ruling dated 11/11/2011), **Sudi s/o Nassoro v. Yakubu s/o Salum, High Court PC. Civil Appeal No. 25 of 2015, at Tabora** (unreported order dated 18/3/2016),**Chairman & Board Member of Katuma Amcos v. Jonas s/o Anthony Ally, High Court DC. Civil Appeal No.7 of 2015, at Tabora** (unreported ruling dated 22/3/2016) and many others are that; by reading the provisions of ss. 19 (2) and (3) of Cap. 89 between lines it is clear that a party who delays to file an appeal the time limitation of which is governed by Cap. 89 (like the one under discussion) is not entitled to exclude the period of time requisite for obtaining copies of judgement or decree (at issue) unless such time was indeed necessary in the eyes of the law (and not according to the views of the intended appellant himself) for him to obtain the copies. The intended appellant must in fact prove that the time was necessary and he so proves to the court and not to himself. The proper forum for providing such proof is in an application supported by an affidavit, which said affidavit contains

sufficient reasons for convincing the court that in fact such time was necessary for him to obtain the copies of judgement and or decree.

My view just demonstrated above is supported by the decision of this court in **M/S Concrete Structure v. Simon Matafu, HC Civil Case No. 12 of 1995, at Mbeya** (Lukelelwa, J as he then was), the envisaging in **Elly Ngole and 2 others v. Jactan Sigala, HC Misc. Civil Appeal No. 14 of 2004, at Mbeya** (Othman, J as he then was) and in **NBC v. Pima Phares, Civil Appeal No. 33 of 1997, at Mwanza**(by Mrema, J. as he then was).

In the **M/S Concrete Structure** casethe court discussed the procedure for excluding the period of time requisite for obtaining copies of judgement and decree where one intends to file an application for review out of time under Cap. 89, which said procedure I find also applicable *mutatis mutandis* to appeals that may be filed out of time. I am entitled to this view since rules of appeals are also applicable to reviews by virtue of the spirit under Order XLII rule 3 of Cap. 33. In thatcase (**M/S Concrete Structure**) the applicant (for a review) arbitrarily excluded the period of time requisite for obtaining a copy of the ruling and filed the application for review out of time without any leave of the court the way the appellant filed this appeal at hand. This court remarked, and I quote for a quick reference;

> "Any application beyond that date has to be with leave of the court. **It is the court which will have to extend the period if it is satisfied that the applicant obtained**

the copy of the ruling late, it is not the applicant who have to exclude the period necessary to obtain the copy of the ruling" (bold emphasis is mine).

It must also be born in mind that what has been made by the appellant's counsel before me are mere submissions (as opposed to affidavits) to the effect that the time was necessary for the appellant to obtain the copy of decree, but such submissions do not suffice for the purposes of a legal proof. Our law is clear that mere submissions in court are not evidence, hence they are incapable of proving any fact for the court to rely in making its decision, see the Court of Appeal of Tanzania decision in the case or **The Assistant Imports Controller (B.O.T) Mwanza v. Magnum Agencies Co. Ltd. Civ. Appeal No; 20 of 1990 At Mwanza.** Yet, the submissions by the appellant in the matter at hand leave a lot to be desired. It is not for example stated by the appellant as to whether it made any effort to follow up the decree upon the impugned judgement been certified on 16/10/2014. It did not also show why it could not obtain the decree soon after the impugned judgment was certified.

It was therefore, the duty of the appellant to file the appeal in time according to the applicable statutes (Cap. 33 and Cap. 89). Alternatively, upon finding itself out of timethe appellant had the duty to apply before this court for it to extend the time by excluding the period of time requisite for obtaining the copyof decree upon the appellant adducing sufficient cause in proving that the time to be excluded in computation of time was indeed necessary for it to obtain the copy. The envisaged

application had to be supported by affidavit as usual since affidavits, unlike submissions, take place of oral evidence in law. This is the import of ss. 19 (2), 19 (3) and 14 (1) of Cap. 89 being read together.

In other words, I underscore that the statutory requirement that extension of time to file an appeal out of time under s. 14 (1) of Cap. 89 must be upon adducing sufficient reasons is a very significant prerequisite. I add that in fact categories of sufficient reasons are never closed, but the legislature intended to specifically declare as one of the sufficient reasons for extension of time under s. 14 (1) of Cap. 89, anydelay(proved to have been caused by reasons outside the control of the appellant) to obtain copies of judgement or decrees, hence the provisions of ss. 19 (2), 19 (3) and 14 (1) of Cap. 89. What the appellant thus needs is to prove before the court that the delay was in fact outside his control so that the court can extend the time for him.

The appellant must also remember that according to the lawa right to appeal can only be founded on the relevant statutes and any party who seeks to avail himself of that right must strictly comply with the conditions prescribed by the statutes, see the prudence of the Court of Appeal in **Ludovick K. Mbona v. National Bank of Commerce[1997] TLR 26** (following the Court of Appeal for Eastern Africa in the case of **Harnam Singh Bhogal t/a Harnam A Singh & Co v. Jadva Karsan [1953] 20 EACA 17).**

For the above reasons it was not open for the appellant to arbitrarily exclude the time for itself, and file the appeal out of time without any leave of the court and argue subsequently that it had good reasons for excluding the time and for filing the appeal belatedly. Such alleged reasons could have been properly adduced in application for extension of time as hinted earlier and not in defending this appeal which has already been filed out of time.The approach taken by the appellant is thus a trend that I usually brand "*knocking the door from inside for seeking a permission to get in*" which said trend cannot be condoned by courts of law since it violates the law on limitation and may result to injustice and chaos in courts. I underscored this position in several cases such as **Elizabeth Makundi and 52 others v. Mtibwa Sugar Estates, Misc. Civil Appeal No. 07 of 2009, at Dar es Salaam** (unreported) when I spoke for a panel of 3 judges of this court, **Oceanic Bay Hotel Ltd v. Real Insurance Tanzania Ltd, High Court Civil Case No 113 of 2010, at Dar es salaam** (unreported) and **Mohamed Mwilima v. Halima Chipaka, High Court Civil Appeal No. 106 of 2011, at Dar es salaam,** (unreported) and I do the same here.

My further settled views are that, had the law been so lenient in permitting parties to arbitrarily exclude the period of time requisite for obtaining the copies of judgement or decree themselves and file appeals out of time without leave of court as the appellant wants to envisage, flood gates of unnecessarily delayed appeals would be opened and chaos

in courts of law would be the order of the day. This would be sobecause; dishonest litigants would hide themselves under that loophole and deliberately bring to court delayed appeals under the pretext of excluding that time for themselves without any sufficient cause.

I am settled in mind that the legislature could not have intended to accommodate such an absurd construction of the law just demonstrated herein above because, that trend would surely render the law of limitation a nugatory command, which said situation cannot be condoned by courts of law for the significance of the law of limitation in civil litigations. The provisions of s. 14 (1) of Cap. 89 that give powers to this court to extend time would also be useless since every belated appellant would have powers to extend the time for himself by excluding the period necessary for getting the copy. The provisions of ss. 14 (1), 19 (1)and (2) must therefore, be read together and cumulatively as hinted previously.

Furthermore, I firmly believe that the English "Purposive Approach" rule of construing legal provisions favours my above demonstrated interpretation of the law. The rule is to the effect that, in interpreting statutes in all cases, courts should adopt such a construction as will promote the general legislative purpose underlying the provisions of the statute. It further states that whenever an interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it by reading words if necessary, so as to

do what Parliament would have done had they had the situation in mind. The "Purposive Approach" rule was adopted into our legal system through the decision by the Court of Appeal of Tanzania in **Joseph Warioba v. Stephen Wassira and another [1997] TLR 272** and has been followed in other decisions of the same court such as in **Goodluck Kyando v. Republic, Criminal Appeal No; 118 of 2003, at Mbeya** (unreported).

Courts of this land should not thus let the significance of the law of limitation to be eroded by approving arguments that threaten its existence like the one advanced by the learned counsel for the appellant. The worth of this branch of the law in civil litigations has been religiously underscored by courts.Parties coming to court must thus abide with it; this court in the **Tanzania Breweries Ltd** case(supra) following the English case of **R. B. Policies At Lloyds v. Butler (1950) 1 KB. 76, at 81or (1949) 2 ALL ER 226 at 230** remarked to the effect that the reasons why we should have the Statutes of limitation are *inter alia* that long dormant claims have more of cruelty than justice in them and the person with good cause of action, should pursue his right with reasonable diligence.

It was further remarked in that English Case of **R. B. Policies At Lloyds** (supra at pages 229-230) that principles underlying the law of limitation include the following; that those who go to sleep on their claims should not be assisted by the courts in recovering their property,

there shall be an end of matters filed in court, and there shall be protection against stale demands. I hastily add here that the reasons why we should have limitation of time in respect of suits are the same as far as appeals are concerned.

Again, the Court of Appeal of Tanzania emphasized the importance of the law of limitation in the case of **Hezron Nyachiya v. Tanzania Union of Industrial Commercial Workers and another, Civil Appeal No. 79 of 2001**by observing thatthe Law of Limitation plays many roles including to set time limit within which to institute proceedings in a Court of Law and to prescribe the consequences where proceedings are instituted out of time without leave of the court.

For the grounds stated above I hold the issue posed herein above negatively to the effect that the appellant was not entitled in law to arbitrarily exclude (for itself) the said time and then file the appeal out of time without any leave of court for extension of time to do so.

Thelegal effect of a time barred matter in this land is clear, trite and settled. It must be dismissed, see s. 3 (1) of Cap. 89 and the **Hezron Nyachiya** case (supra), the **M/S Concrete Structure** case(supra),the **Tanzania Breweries Ltd** case(supra)and **Hashim Madongo and 2 others v. Minister for Industry and Trade and 2 others, Civil Appeal No. 27 of 2003, at Dar es salaam** (by the Court of Appeal). Other decisions supporting this stance are **Koja Shia Ithnasheri Jamaat and**

another v. Modest Rutanyagwa, Civil Appeal No. 19 of 2007 at Dar Es Salaam (by the High Court)and **Stephen Masato Wasira v. Joseph Sinde Warioba and the Attorney General [1999] TLR. 334** in which said case the Court of Appeal held to the effect that under s. 3 (1) of Cap. 89 the court has only the powers to dismiss proceedings filed out of time and not to strike the same out.

For the above reasons I agree with the respondent that the remedy against this appeal at hand is only a dismissal order. Having found as above I hereby dismiss the appeal with costs. The appellant shall pay costs since the general rule on costs commands that costs follow event unless there are good reasons to be recorded by the court for departing from this rule, see s. 30 of Cap. 33 and the case of **Njoro Furnitures Mart Ltd v. Tanesco Ltd [1995] TLR. 205**. I see no reason in this appeal to justify my departure from the general rule on cost. It is so ordered.

J.H.K. Utamwa

Judge

19/04/2016.