

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

CIVIL APPEAL NO. 63 OF 2018

(Appeal from judgment and decree of the Resident Magistrate's Court of Dar es Salaam
at Kisutu, Hon. Mwambapa SRM, dated 7th November, 2017 in
Civil Case No. 252 of 2013)

KENYA COMMERCIAL BANK (TANZANIA) LTD.....APPELLANT

VERSUS

KUSIRE ANAEL MWASHA T/A

MAXIMUM AND COMPANY.....RESPONDENT

RULING

MURUKE, J.

When this appeal came for hearing, court raised *suo moto* issue of time limitation. This Civil Appeal originates from District Court of Kisutu, in its original jurisdiction. Time prescribes by Law of Limitation act, part II Item No. 1 to the first schedule of law of limitation is 90 days. Judgment sought to be challenged was delivered on 7th November 2017. Current appeal was filed on 9th March 2018, vide exchequer receipt No. 18889376.

It is not in dispute that, in terms of section 19 (2) of the Law of Limitation act Cap. 89, the law provides for exclusion of the

requisite time used to obtain copies of Judgment and Decree. It reads:-

*"(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**"*

The question to be answered is whether exclusion of period of obtaining the Judgment and Decree can be dealt in the appeal.

Section 14(1) of the Law of Limitation Act (Supra) provides:-

"(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application".

Though the law avails discretionary powers to court to enlarge time to appeal either before or after expiry of the period of limitation; enlargement of time can only be sought in a requisite application. In the event law gives room for one to seek enlargement after expiry of limitation period, that accommodates the fate of late appeals where one can lodge an application to seek enlargement and avail reasonable or sufficient cause for the delay. Such extension of time cannot be automatically be

assumed by parties unless a requisite application is properly sought through the appropriate forum.

In the circumstances, appeal is struck out. Preliminary objection being raised by the court, each parties to bear, own costs. Parties to be notified.



Z. G. Muruke

JUDGE

04/04/2018

Ruling delivered in the absence of all the parties.



Z. G. Muruke

JUDGE

04/04/2018