

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

PC CIVIL APPEAL NO 19 OF 2017

(Arising from Civil Appeal No 1 of 2017 in the District Court of Kiteto; Original  
Civil Case No. 19 of 2016 in the Kibaya Primary Court)

ALI JUMA.....1<sup>ST</sup> APPELLANT

ASIA SHAABAN.....2<sup>ND</sup> APPELLANT

VERSUS

YUSUPH MOHAMED.....RESPONDENT

RULING

26<sup>TH</sup> SEPTEMBER, 2018

MWENEMPAZI, J.

The appellants were sued by the respondent in this appeal in the Primary Court of Kibaya, Madai Na. 19 of 2016. The respondent (plaintiff then) sought to recover his money paid to the appellants(wadaiwa) for the purchase of 150 sacks of maize (Tshs. 8,250,000/=), costs (9,100,000/=) and profit making a total of Tshs.17,

350,000/=. The decision was made in favour of the respondent whereby the court ordered the appellants to pay Tshs. 8,250,000/=. The same was made on the 20<sup>th</sup> January, 2017. The appellants appealed in the District Court of Kiteto at Kibaya in Civil Appeal No. 1 of 2017. The District court by the decision of 5<sup>th</sup> May, 2017 found the appeal had no merit and upheld the decision of the trial court.

The appellants still being aggrieved by the decisions of the lower courts appealed to this court. They filed an appeal on the 13<sup>th</sup> June, 2017. The respondent filed a notice of preliminary objection on point of law on the 4<sup>th</sup> September, 2017 that the appeal is time barred and thus not maintainable before this Honourable court. Hearing of a preliminary objection was ordered by this court dated 12<sup>th</sup> April, 2018 to be by way of Written Submission. On the date the appellants did not enter appearance. It is, however, worthy noting that from the date they filed an appeal, the appellant, specifically, the 1<sup>st</sup> Appellant entered appearance once, on the 14<sup>th</sup> September, 2017.

The respondent has been enjoying services of the Lecktony L. Ngeyesan, learned counsel, who complied with the order of the court by filing Written submission in support to the Preliminary Objection on the Point of Law. In his submission, the learned counsel argues that as the decision of the District Court in its appellate jurisdiction was made on the 5<sup>th</sup> May, 2017 and the appeal was filed on the 13<sup>th</sup> June, 2017 the appellants were late for eight (8) days. Thirty days which

are provided by the law for appeal lapsed on the 5<sup>th</sup> June, 2017. This contravened the provisions of section 25(1)(b) of the Magistrate's Courts Act, Cap. 11 R.E.2002. He prayed for this court to dismiss the appeal with costs. The provisions of section 25(1)(b) read as follows, I quote: -

*“25.(1) Save as hereinafter provided—*

*(a) ....; or*

*(b) in any other proceedings any party,*

*if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.”*

The counsel for the respondent has also submitted that he would like to draw the attention of the court that the appellants have never appeared before this Honourable Court from the time they filed their appeal. In his view, it is either they have lost interest with their appeal or they are not serious with their appeal but rather they want to misuse the precious time of this court.

I have had time to go through the records of this appeal and the records of the lower court below. On whether the appeal is time barred or not, I have no doubt,

that going through the record, this appeal indeed was file eight days after time had expired. Also, there is no any order of the court to enlarge time. The latter is the only thing which would validate the life of this appeal. As commented herein above, the appellant has shown no or little interest to this appeal. The first appellant appeared once on the 14<sup>th</sup> day of September, 2017.

The position is clear, once a suit is time barred it is rendered incompetent and therefore not maintainable by the court. In this case, the appeal is time barred; it is accordingly incompetent and is therefore struck out.

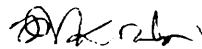
It is so ordered

SGD: T. M. Mwenempazi

JUDGE

26<sup>TH</sup> September, 2018

I hereby certify this to be a true copy of the original



**J.F. NKWABI**

**DEPUTY REGISTRAR**

**ARUSHA**

05/10/2018