

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL APPEAL NO. 105 OF 2018**

LEBERE LEBOY.....APPELLANT

VERSUS

RAMADHANI ALLY MALUNGO.....RESPONDENT

(Originated from Civil Case No. 10 of 2016 at Bagamoyo District Court)

RULING

MURUKE, J.

Upon perusal of the records, court raised *suo moto* issue of time limitation. This Civil Appeal originates from District Court of Bagamoyo, 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 24th January, 2018. Current appeal was filed on 30th April, 2018, vide exchequer receipt No. 18896122. From 24th January, 2018 to 30th April, 2018 is 95 days. Thus appeal is out of time for 5 days.

It is not in dispute that, in terms of section 19 (2) of the Law of Limitation Act Cap. 89, R.E. 2002, 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 for being filed out of time. Objection being raised by the court, *sou moto*, and respondent has been served, I will not order any costs.



Z. G. Muruke

JUDGE

23/05/2018

Ruling delivered in the absence of the parties.



Z. G. Muruke

JUDGE

23/05/2018