

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

CIVIL APPEAL NO. 270 OF 2017

(An appeal from the decision of the Resident Magistrate Court of Kibaha for Coast
Region at Kibaha in Civil Case No. 10 of 2016)

AUGUSTINO ELIAS MDACHI.....1ST APPELLANT

PHILIPO JOHN MAGANGA.....2ND APPELLANT

BEATRICE MTENGA.....3RD APPELLANT

VERSUS

RAMADHANI OMARI NGALEBA.....RESPONDENT

RULING

MURUKE, J.

When this appeal came for hearing, court raised *suo moto* issue of time limitation. This Civil Appeal originates from Resident Magistrate Court of Kibaha at Kibaha, 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 **27th July, 2017**. Current appeal was filed on **12th December 2017**, vide exchequer receipt No. 118891230. From 27th July, 2017 to 12th

December, 2017, it is more than four months. Obvious appeal is out of time

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**"*

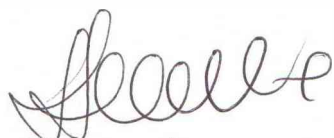
The question to be answered is whether exclusion of period of obtaining the Judgment and Decree can be dealt in the appeal. Section 14(1) of the Law of Limitation Act (Supra) provides:-

"(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

05/02/2018