

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL APPEAL NO. 48 OF 2017

(An appeal from the decision the Resident Magistrate's Court of Dar es Salaam at Kinondoni,
dated the 3rd day of November, 2016 in Miscellaneous Civil Application No. 314 of 2016)

MOHAMED ENTERPRISES (T) LTD..... APPELLANT

VERSUS

THE MANAGING DIRECTOR,

DIRA YA MTANZANIA MAGAZINE.....1ST RESPONDENT

MUSA MKAMA.....2ND RESPONDENT

THE MANAGING DIRECTOR, DIRA

NEWSPAPER COMPANY LIMITED.....3RD RESPONDENT

POA PRINTING COMPANY LTD.....4TH RESPONDENT

RULING

Date of last order 20/02/2020

Date of Judgment 21/02/2020

NGWALA, J

The 1st, 2nd and 3rd respondents in this Appeal have preferred a Preliminary objection on only one point of law that:-

“The Appeal is incompetent before the court for being hopelessly time barred and is without the leave of the court”.

It is submitted in support of their objection that the mandatory requirements of the law as provided for under the provisions of section 3(1) of the Law of Limitation Act [Cap. 89. R.E 2002] have been violated. That is, this appeal was filed on 16/02/2017, after expiry of 105 days after the delivery of the judgment, Decree and order appealed against, without the leave of the court for filling it beyond the prescribed time of ninety (90) days. This Appeal is time barred.

It is argued that, as the Appeal was lodged fifteen (15) days beyond the days within which it is required by the law to be lodged in the court, the Appeal be dismissed.

The counsel supported the argument by citing the decision, orders and judgments of courts that support the position of the law that, any person preferring to Appeal against the decision, judgment, order or decree from the Court of Resident Magistrate or District Court beyond the prescribed period of Ninety (90) days, as provided for under the Law of Limitation Act [Cap. 89. R.E. 2002], under the second column, item I of Part II the first schedule of the Law of Limitation Act is time barred.

In reply to the submission by the counsel for the Respondent, the advocate for the appellant, Miss Mary, M. Lamwai submitted that

the preliminary objection is misconceived, because Order XXXIX Rule 1(1) of the Civil Procedure Code [Cap. 33 R.E. 2002] provides to the effect that:-

- (1) Every appeal shall be preferred in the form of a Memorandum signed by the appellant or his advocate and presented to the High Court (herein after in this Order referred to as the court or to such officer as it appoints in this behalf and the Memorandum **shall be accompanied by copy of decree appealed from and (unless the court dispenses therewith) of the copy of the judgment on which it is founded**”.

In view of the cited provision, it is argued by Miss Lamwai that the court, excludes the time requisite for obtaining the said copies as required by the law. As the copies of the Ruling delivered and dated 3rd November 2016 were made available to the appellant on 20th January 2017, the current Appeal that was lodged on 16th February 2017, is well within the ninety (90) days, as it was filed within fifteen (15) days after excluding the time requisite for obtaining copies of judgment and decree as required by the law, in terms of section 19(2) of the Law of Limitation Act [Cap. 89 R.E. 2002].

She insisted that, the time begins to run against the intended Appeal, only upon being supplied with copies of Decree as per the section 19(2) of the Law of Limitation Act cited above that provides for exclusion of time in computing the Limitation by not considering the period of time requisite for obtaining a copy of the Decree or Order appealed from. She buttressed her argument by citing the case of **"The Registered Trustees of the Marian Faith Healing Centre @ Wanamaombi Vs. The Registered Trustees of the Catholic Church Sumbawanga Diocese Civil Appeal No. 64 of 2007 at page 15 (unreported)"** that observed:-

"in view of what we have endeavoured to show above, and in the light of section 19(2) supra, it follows that the period between 2/5/2003 and 15/12/2003 when the appellants eventually obtained a copy of the decree ought to have been excluded in computing time. Once that period was excluded, it would again follow that when appeal, was lodged on 19/12/2003 it was in fact and law not time barred".

With regard to the cited case of **Augustino Elias Mdachi & 2 others Vs. Ramadhani Omari Ngalebu Civil Appeal No. 270/2017 unreported** that was cited by the respondents, Miss

Lamwai contended that it is distinguishable from the circumstances of this Appeal as in that case the appellants were already out of time when they lodged their Appeal. As the appellant had pleaded in the Memorandum of Appeal that, when the decision was made, the appellant was not availed with the documents necessary for Appeal purposes, hence the provisions of section 19(2) of the Law of Limitation Act, are not applicable, but rather section 14 (1) of the said Law of Limitation Act.

With regard to the decision of **Halfan Ramadhani Mbongo & others V. Kasato Maulid Land Appeal No. 57 of 2016 (unreported)**, it was further submitted that the delay was not caused by the appellant's failure to obtain the necessary copies for appeal. Instead the Registry was responsible to provide the appellant with the necessary copies. For those reasons Ms. Lamwai prayed the preliminary objection be overruled with costs to allow the appellant to proceed with the appeal on its merit.

I have read all the decisions cited above, and in the record. It is not certain that the facts in those cases are similar with the present case. It is also not stated by the appellant if they are similar, as the appellant has not proved as to when the appellant sought or applied to be availed with the said copies of

documents. The mere assertion that there is an exchequer receipt for payments of the said copies which evidently shows that the appellant obtained the copies very late, which eventually led to the late filing of the appeal without proof is not enough or satisfactory evidence to be relied upon that this Appeal is not time barred.

The cited case of **"The Registered Trustees of the Marian Faith Healing Centre (supra)**, which the appellant is relying to attempt or try to justify the applicability of **Section 19 (2) of the Law of Limitation act, Cap. 89 R.E. 2002**, that the period to obtain the copy of decree or order appealed from shall be excluded, is not automatic. I agree with the respondents and hold that the present Appeal is distinguishable. I hold so because the appellant did not show any efforts of applying for copies of the judgment, and has not offered any proof that the delay in obtaining the copies was not caused by negligence of either the appellant or trial court. In my considered view, the appellants attempt to use Section 19 (2) of the Law of Limitation Act to file the Appeal is a clear abuse of the court process as the arguments by the appellant's counsel show that the appellant is now putting ***"A cart before a horse"***. That is, the counsel is suggesting an inconsequential procedure that is contrary to the laid down rules

of practices of the court without formally going to the court processes as held in chain of cases cited by Mr. J. Kannonyele and Mr. Musa Raphael Mbagha the respective the counsels for the 1st, 2nd and 3rd appellant's. The cases includes the following:-

- 1. The Headmaster Forest Hill Secondary School v. Robert R. Mluge – Land Appeal No. 52 of 2010.**
- 2. Abdul Sul Ahmed & 3 others v. Parin Jaffer & another, Civil Case No. 5 of 1994 Dar es Salaam unreported.**
- 3. Gilbert Mutayabarwa v. Anuna Paniel Mugyabuso Land Appeal No. 117/2015 High Court of Tanzania Land Division at Dar es Salaam.**
- 4. Halfan Ramadhani Mbung'o & Other v. Kasato Maulid Said Appeal No. 57 of 2016, High Court of Tanzania (Land Division).**
- 5. The Commissioner General of Tanzania Revenue Authority v. Mohamed Zahoro & Others, Civil Appeal No. 16 of 16/2015. Iringa District Registry (unreported).**
- 6. Abdulla Shariff vs. Kampala General Agency Ltd (1934) E.A. CA. Vol I part II.**

**7. Cresthale (U) Ltd vs. Bondeni Seeds Ltd [2000]
T.L.R. I.**

**8. Maneno Mengi Ltd & 3 Others vs. Farida Said
Nyamachumbe & other (2004) TLR391.**

In the case of the Headmaster of **Forest Hill Secondary School vs. Robert R. Mluge (land Appeal No. 52 of 2010, High Court of Tanzania land Division Dar es Salaam, Khaday J** (unreported) at page 7 of the typed judgment held:-

“The application of section 19 (2) of the Law of Limitation Act [Cap 89 R.E. 2002] is not that automatic. The same has to be applied through formal Application to be brought to court under section 14(1) of the same Cap. 89. Had **things go that automatic there would have been no need to have Limitation Act to regulate times for actions by parties**”.

More so, the Court of Appeal of Tanzania in the case of **Abduralrasul Ahmed & 3 others v. Parin Jaffer and another** (supra) it was held:-

“Even if the delay seems to have been not deliberate act on the part of the appellant, the court cannot act, suo motto to grant extension without being asked, or moved to do so. a party has to seek extension of time to have

a belated matter heard out of time, regardless the reason behind the late filing of the appeal in court”.

The decisions of the Court of Appeal of Tanzania in the cases of **Cresthale (Uk) Ltd Vs. Bondeni Seeds Ltd (2002) TLR. I**, and the cited case of **Abdulrasul Ahmed & 3 others & Parin jafer (supra)** which are referred in a number of cases, including the above cited cases, it was held that:

“Seeking of extension of time to appeal out of time is paramount”.

And further that:-

“The court’s Discretion under Section 14 (1) should be exercised only upon an application being made to court in that behalf and both sides have been given the opportunity to be heard. Such approach puts the court in a position where it can properly determine whether or not, reasonable or sufficient cause has been disclosed for extending the time and serves to ensure that the court’s discretion is exercised judiciously”.

The East African Court of Appeal in the cited case of **Abdul Shariff v. Kampala General Agency Ltd (1934) EACA Vol. (Part II)** at page 23, strongly held that:-

"....in computing the period for filing appeals in civil case, the time requisite for obtaining a copy of the decree and of the statement given by the judge be excluded, does not in itself create a right to file an appeal out of time without an application for leave to appeal out of time".

In the upshot, this Appeal which has been brought in court beyond the prescribed period of Limitation is incompetent before the court taking into account of an exclusion of certain period as envisaged under section 19 (2) and (3) of the Law of Limitation act [Cap 89 R.E. 2002], that it shall not be exercised automatically without leave of the court on application.

Accordingly, in terms of **Section 3 (1) of the Law of Limitation Act [Cap. 89. R.E. 2002]**, this suit must be dismissed with costs.


A. F. Ngwala

JUDGE

21/02/2020

21/02/2020

Coram: Hon. A. Ngwala, J.

For the Appellant - Absent

For the 1st Respondent } Mr. Mussa Mbuga H/B of Mr.

For the 2nd Respondent } Kanyonyele (Advocate)

For the 3rd Respondent }

For the 4th Respondent - Mr. Mussa Mbuga (Advocate)

Court: Judgment delivered in court in the presence of Mr. Mussa Mbuga (Advocate) for the 4th Respondent who is also holding brief of Mr. Kanyonyele.

Court: Right of Appeal to Court of Appeal of Tanzania explained.


A. F. Ngwala

JUDGE

21/02/2020