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**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

PC. CIVIL APPEAL NO. 13 OF 2019

(From the decision of the District Court of Meatu at Mwanhuzi in Civil Appeal No. 13 of 2018 originating from the decision from the decision Mwandoya Primary Court in Civil Case No. 38 of 2018)

MISUNGWI SHILUMBA.....APPELLANT

VERSUS

KANUDA NJILE..... RESPONDENT

RULING

Date of the last Order: 2nd July, 2020

Date of the Ruling: 28th August, 2020

MKWIZU, J

Aggrieved by the decision of Meatu District Court, Appellant appealed to this court. When the matter came for hearing on 2/7/2020, counsel for the respondent raised a preliminary objection that the appeal is time barred. This is a ruling in respect of the said preliminary objection.

On behalf of the respondent, Mr. Mbatina advocate argued that ,the impugned decision was delivered on 21/12/2018, and the petition of Appeal was filed in this court, on 18/1/2019, but the receipt indicated that payment was effected on 30/1/2019.He explained further that, being a second appeal, which originated from the primary court, appeal ought

to be filed within 30 days. Reckoning from the date of the delivery of the judgement by the District Court to 30/1/2019 when the payment was effected, it is conclusive that, the appeal was filed 11 days beyond the prescribed time.

As to when the appeal is said to have been filed between the date it is presented in court and the date of payment, Mr. Mbatina was of the suggestion that the appeal is said to have been filed on the date when the payment is effected. He cited to the court the decision in **Adamson Mkondya and Another Vs. Angelika Kikutona Wanga (As an admistratix of the late Stephen Angelo Rumanyika) Misc. Land Application No. 521 of 2018 High Court** (unreported). He prayed for the dismissal of the appeal with costs.

In response to the preliminary objection, Mr. Kaunda, counsel for the appellant said, the appeal was filed within the statutory time of 30 days as required by section 20 (3) of the MCA. He argued that, in the Court fees Rules, 2018, there is no any provision describing categorically that the filling of any matter matures when the court fees is paid and a part

issued with an exchequer receipt. Mr. Kaunda contended further that after all, the preliminary objection raised cannot stand the principle enshrined in the case of **Mukisa Biscuits** because to say why the exchequer receipt was issued on 30/1/2019 and not when the petition of appeal was presented, needs ascertainment of facts which the court cannot do at this stage. He urged the court to overrule the preliminary objection and proceed with the hearing of the appeal on merit.

I have considered the submissions by parties as well as the records of the appeal. It is true that the petition of appeal was presented at Meatu Registry for filing on 18/1/2019. This is evidenced by the stamp positioned at the top-right of the front page of the petition of appeal before the court. This also is supported by the date and signature of the registry officer on the last page of the petition of appeal which was presented for filing on 18/1/2019. It is uncontroverted fact also that, on this date, that is 18/1/2019, the appeal was within time. The controversy appears to be on the date the payment in respect of the said appeal was effected. The exchequer receipt was issued on 30/1/2019. On this date, the appeal was already 10 days beyond the time limit.

I think the issue here is simple. It is a trite law that document is deemed to be filed in court when payment is done and the proof is payment of fees exhibited by the Exchequer Receipt. Similar to this case, in **John Chuwa vs. Anthony Ciza** [1992] TLR ,233, the notice of appeal was filed in time on 25/6/1990 which was within time. However, the receipt for the fees was issued on 29/6/1990 which date the appeal was out of time by two days. Msumi J (as he then was) dismissed the appeal for being time barred. On appeal to the Court of Appeal, Ramadhani, CJ (as he then was) stated:

" ...the date of filing the application is the date of the payment of the fees and not that of the receipt of the relevant documents in the registry. Mr. Akaro, learned advocate for the applicant, conceded that before me and I cannot fault the learned judge there."

Again, my brother Rumanyika J, in the case of **Mailande Augustine Mpemba Vs. Pius Regasira and Two others**, Land appeal No 23 of 2020, said as follows:


"...it is settled law that for purposes of calculating limitation period where date of filing was contested, unless it was filed inform a pauperis it is date of exchequer receipt that counted unless through a formal application for extension of time, which is not the case here, it was sufficiently established; (a) that for the purposes of payment the applicant was late in the day availed the control number (b) that the exchequer receipt was backdated (c) that the delay was caused by the Registry Officer's in action. Categories not closed"

There is no doubt that the exchequer receipt in this matter was issued outside the limitation period set by the law. As rightly submitted by Mr. Mbatina, the appellant had good explanations establishing that the appeal was lodged within time but the receipt was issued by the court beyond time, then, such reasons would be good ground for an application for enlargement of time. Lodging the appeal with such a document without leave, is without doubt, taking the obvious risk of having the appeal dismissed for being time barred.

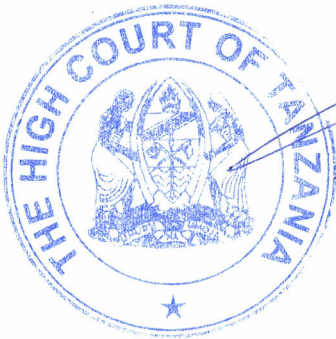
The decision of the district court was given on 21/12/2018, the Appellant's petition of appeal having been lodged 30/1/2019, as evidenced by the exchequer receipt, is time barred by limitation. I sustain the preliminary objection and dismiss the appeal with costs.

It is so ordered.

DATED at Shinyanga this 28th day of August, 2020.


E.Y.MKWIZU
JUDGE
28/08/2020

COURT: Right of appeal explained.




E.Y.MKWIZU
JUDGE
28/08/2020