

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL APPEAL NO. 187 OF 2019**

(From the decision of Kinondoni District Court in Civil Appeal No. 82 of 2018)

(Kiliwa- Esq-RM)

MATRIDA CHILEWA.....APPELLANT

VERSUS

MARIA MUSA SAID.....RESPONDENT

JUDGEMENT

15th & 16th December 2020

AK. Rwizile, J

Background facts which led to this appeal are that, in the year 2015 parties herein entered into a lease agreement. The respondent leased a bar premises from the appellant. The agreed amount as rent was Tsh. 1,000,000/= per month. It was a one-year lease. The respondent alleged to have paid an advance rent of 5,000,000/=. Unfortunately, she was unable to start her business since the appellant leased the same place to another person. The appellant failed to refund the same as their agreement was frustrated. Consequently, the respondent decided to file a civil suit at Kinondoni Primary Court.

The case was heard and it was decided in favour of the appellant. The respondent was aggrieved. She appealed to Kinondoni District Court where the court quashed and set aside the judgement and decree of the trial court and ordered the appellant to pay the respondent an amount of

5,500,000/= . This time the appellant was aggrieved by the said decision, she is now before this court appealing on the following grounds;

- 1. That the honourable trial magistrate erred in law and fact by not hearing and determining the preliminary objection raised by appellant that the Kinondoni District Court has no jurisdiction to entertain the matter.*
- 2. That the honourable trial magistrate erred in law and fact by not considering the evidence brought by the appellant*
- 3. That the honourable trial magistrate erred in law and fact by awarding the respondent Tsh 5,500,000 without proof.*

When replying to the memorandum of appeal, the respondent filed a notice of preliminary objection on the point of law that this appeal is time barred. At the hearing, the appellant was represented by Mr. Mutashobya learned advocate while the respondent appeared in person. Submitting in support of the objection the respondent did not have much to say, than saying the appellant was supposed to appeal in 30 days from the date of the decision of the District Court. She added that this appeal is out of time and she prayed for the same to be dismissed with costs.

Contesting the objection, Mr. Mutashobya learned advocate argued that, the preliminary objection is baseless since the appeal was filed within time. He asserted that the judgement of the District Court was delivered on 27th of August 2019 and it was signed on 3rd of September 2019. It was submitted that when the judgement is not signed, it cannot be supplied.

He added that, the appellant received a copy of judgement on 3rd September 2019 and said the appeal was filed on 1st October 2019.

He argued further that, time started to run on 3rd September 2019 and so the appeal was filed in less than 30 days. He cited section 25(1)(b) of MCA [Cap 11 R.E 2019] and Order. XX Rule 3 of the Civil Procedure Code, [Cap 33 R.E 2019]. It was argued that since the judgement was signed on 3rd September 2019, there was no judgement before that time. The learned counsel submitted; time started to run on 3rd September 2019. He then prayed for the objection to be dismissed. In re-joining, the respondent submitted that, the date to be considered was the date when the judgement was delivered.

Having considered the arguments of the parties and gone through the record of appeal, it is in record and undisputed that the judgement of the District Court was delivered on 27th August 2019, but it was certified on 3rd September 2019. The question to be determined is when did time start to run against the appellant. It is a known fact that time starts to run upon pronouncement or delivery of the judgement. To appeal against the decision of the District Court to the High Court must be within 30 days. This is provided for under the provision of section 25(1)(b) of the Magistrate Court Act, [Cap 11 RE 2019] which states;

25.-(1) Save as hereinafter provided-

(a).....

*(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 there from 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. [emphasis is added]

As for this case, time started to run on 28th August 2019, a day after the judgement was delivered. When counting from the day after 28th August 2019 to the date when this appeal was filed on 1st October 2019, it is crystal clear that this appeal was filed after 30 days. As I have said before, the record shows that the copy of judgement was certified on 3rd September 2019.

I think and it is my considered view that the learned advocate for the appellant misdirected himself believing that, since the judgement was certified on 3rd September 2019, then time to appeal started to run on the that date. The appellant was supposed to apply for extension of time to appeal out of time as per Section 14(1) of the law of Limitation Act, [Cap 89 R.E 2019] which for easy reference reads;

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.

Since it is clear that the judgement was obtaining upon certification. It is held that time begun to run on the day it was delivered not when it was certified as the appellant wants this court to find.

The reason advanced by the learned advocate may justify delay but this is not a forum to show reasons for delay. For the foregoing reasons, the preliminary objection is sustained. This appeal is dismissed with costs.

AK Rwizile
JUDGE
15.12.2020

Delivered in the presence of Mr. Mutashobya for the appellant and the respondent is appearing in person.

AK Rwizile
JUDGE
15.12.2020

 Recoverable Signature

X 

Signed by: A.K.RWIZILE

