

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

**CIVIL APPEAL NO. 239 OF 2019**

(Appeal from the Ruling and Order of the District Court of Ilala at Samora in  
Miscellaneous Civil Application No. 70 of 2019, delivered on 25th October, 2019)

**NEEMA NANYAI** ----- **APPELLANT**

*VERSUS*

**RICHARD SAMATA SWIKA** ----- **RESPONDENT**

**RULING**

*Date of last order: 30.09.2020*

*Date of ruling: 11.12.2020*

**EBRAHIM, J.:**

The Appellant herein being aggrieved by the decision of the Primary Court of 24<sup>th</sup> May, 2018 in Matrimonial Cause No. 25 of 2018 at Ukonga Primary Court, lodged an appeal at the District Court of Ilala at Samora Avenue on 20<sup>th</sup> August, 2018 i.e., Civil Appeal No. 97 of 2018. The same was struck out on 14<sup>th</sup> February 2019 for being time barred and in non-compliance with the requirement of the law as the title read Memorandum of Appeal instead of Petition of Appeal.

The Appellant, unsuccessfully filed Miscellaneous Civil Application No. 70/2019 at the District Court of Ilala at Samora. In dismissing the

application for extension of time, the Resident Magistrate stated that the struck-out appeal was time barred after it was filed on 20<sup>th</sup> August, 2019 far beyond 45 days alleged to have been misled by the trial court magistrate whilst the Appellant received the copy of the judgement on 10<sup>th</sup> July, 2018.

Aggrieved again, the Appellant has preferred the instant appeal raising four grounds of appeal as follows: -

1. That, the trial Magistrate erred in law and fact when he ruled that there were no good grounds and sufficient reasons for extension of time to file an appeal out of time.
2. That, the trial Magistrate erred in law and fact by considering irrelevant matters in dismissing the application.
3. That, the trial Magistrate erred in law and fact by entertaining the Respondent's submission without prior setting aside the ex parte order dated 13<sup>th</sup> August 2019.
4. That, the trial Magistrate erred in law and fact by delivering a ruling of a matter which he did not preside over it.

This appeal was argued by way of written submission. The Appellant was represented by advocate Armando Swenya; and the

defendant was represented by advocate Maryam Hussein. Both parties filed their submissions as ordered by the court. However, I shall not recapitulate their submissions on records.

Going through the parties' submissions, Counsel for the Appellant mainly insists that the delay by the Appellant was occasioned by the order of the trial court by telling the parties that the right of appeal is within 45 days contrary to the provisions of **section 20(3) of the Magistrate's Court Act, Cap 11 RE 2002**. He cited a number of cases to support his contention including the case of **R.S.A. Limited Vs. Hanspaul Automechs Ltd and Goviderajan Senthil Kumar**, Civil Appeal No. 179 of 2016 (CAT); and **M/S Flycatcher Safaris Ltd Vs Hon. Minister for Lands and Human Settlements Development and Another**, Civil Appeal No. 142 of 2017, (CAT – Arusha).

On the other hand, Counsel for the Respondent insisted that the Resident Magistrate dismissed the application with costs due to the reasons that the Applicant has not given sufficient reasons to the satisfaction of the court to grant extension of time.

Nevertheless, before I could proceed to determine the grounds of appeal in the instant case, I visited the ruling of the District Court in Civil Appeal No. 97 of 2018 in respect of the preliminary objection.

At page 5 of the typed ruling, the Resident Magistrate raised an issue as to whether the appeal before him was filed out of time and in none compliance with the requirement of the law. The Resident Magistrate stated as follows:

*"It's clear that the appeal is baseless since it is time barred as the fact that the judgement was read in Ukonga Primary Court on 24<sup>th</sup> May 2018 and the appeal to the District Court was lodged on 16<sup>th</sup> July 2018, and according to the law that governing (sic) the appeals from primary court to district court, is that all the appeal from primary court to district court has to be within 30 days from the day judgement was out as per section 20(3) of the Magistrate Court Act cap 11 RE 2002."*

It follows therefore that the District Court at the very early stage ruled that the appeal before the court was time barred. Once the matter is time barred the court is ousted with jurisdiction to determine the

matter be it on its competence or merits. More -so the law is clear that once the matter has been declared to be time barred, the effect is dismissal irrespective of the language used. Further to that, borrowing the principle illustrated by the Court of Appeal in the case of **East African Development Bank Vs Blueline Enterprises Limited**, Civil Appeal No. 101 of 2009 (unreported); that where an order of dismissal is made, it is not open for an aggrieved party to come back to the same court and institute an application for extension of time. The same applies to the instant case that once the District Court made a finding that Civil Application No. 97 of 2018 was time barred, the remedy available to the Appellant was to either seek review, revision or appeal but not to file extension of time as she did in Miscellaneous Civil Application No. 70/2019. I am further persuaded by the decision of this court in the case of **Boniface Inyansi Vs Amini Hussein Rukoba and Another**, Miscellaneous Civil Application No. 55 of 2019 (unreported) where my brother Judge Siyani held as follows:

*“Taking a leaf from the above authority, it is apparent that since the applicant's appeal was dismissed for being time barred, the remedy cannot be returning to the same court by way of an application for extension of time. In my*

*considered opinion, the principle set out in the case of Olam Uganda Limited suing through its Attorney United Youth Shipping Limited V Tanzania Harbor Authority, **cuts across all the proceedings regardless of the law applicable because when a matter is dismissed for being time barred, such dismissal order becomes final in that court as far as time limitation is concerned**". (emphasis is mine).*

From the above position of the law, it was even wrong at first place for the Resident Magistrate to proceed to entertain an application for extension of time after the same court has already ruled out that the appeal was time barred. Whether the language used was struck out or otherwise, the effect is dismissal.

Consequently, I find that the Miscellaneous Civil Application No. 70 of 2019 was wrongly filed and it was a nullity. I accordingly nullify its whole proceedings, resultant orders and the ruling of 25.10.2019. As for the decision in respect of the ruling on preliminary objection, I revise the same to struck out order to have the effect of dismissal

order. The Appellant if she so wishes should appeal against the decision in Civil Appeal No.97 of 2018 subject to time limitation.

For all purpose and intent, this appeal is dismissed. Being a matrimonial issue, I give no order as to costs.

Accordingly ordered.



A handwritten signature in blue ink, appearing to read "R. A. Ebrahim".

R. A. Ebrahim

**JUDGE**

**Dar es Salaam**  
**11.12.2020**