

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

PC. CIVIL APPEAL CASE No. 123 OF 2019

HALIMA ALLY MAKAGULA.....APPELLANT

Versus

ZUHURA JUMA KARIA.....RESPONDENT

RULING

5/3/ - 10/3/ - 17/3/ - 26/3/2020

J. A. DE-MELLO J;

A **Preliminary Objection** on **Point of Law** has been raised by the Respondent in his reply to the Petition of Appeal that;

The Appeal is Bad in Law for being Time Barred, hence be dismissed with costs.

The Appellant appeared in person while Respondent was represented by **Counsel Gladys Tesha**. Both Parties are in agreement to dispose the said Preliminary Objection by way of written submissions, which the Court duly blessed.

Submitting on the objection, **Counsel Gladys** argues that, the Appeal which is before this Court had its origin from is against decision in **Civil Case No. 101 of 2017 of Temeke District Court** which was pronounced on the **16th February, 2018. Thirty (30) days** prescribed by the law under

section 25 of the **MCA Cap. 11 R.E. 2002** lapsed for Appeal but, the Appellant through **Miscellaneous Civil Application No. 272 of 2018**, was on **17th August 2018** granted leave to institute her Appeal within fourteen (14) days from this date. Yet still, the fourteen **(14)** days expired on **2nd September, 2018**, notwithstanding records which shows that the Petition for this Appeal was signed by the Appellant on **28th September, 2018** and, presented for filling in Court on **2nd October, 2018**. Obviously she is horribly late she observed.

The Appellant on her part is of the view that, all this is attributed by reacted confusion on dates of the order of the Court granting **Leave** to file **Appeal Out of Time**. On page 1 it is dated **18th September, 2018** and, on **page 2**, the date is **17th August, 2018** and, since there was no proceeding conducted on that date **17th August, 2018**, then it was just a slip of the pen. Moreover, the order of institution of intended appeal that was granted for **fourteen (14) days**, she was struggling to secure that copy of the Order and it is until the **2nd October, 2018** she managed to get it. She referred to **section 19 (1) and, (2)** of the **Law of limitation Act** excluding the day in which the period is computed, that of **18/09/2018** and since the Appeal was instituted on **2nd October, 2018**, she was right on time within the **fourteen (14) days**. To support her argument, she relied on **section 60 (1) (b)** of the **Interpretation of the Law Act Cap. 1** and, the case of **Kec International vs. Azania Bank Limited, Commercial Case No. 152 of 2015**, to support her arguments, as she prayed dismissal of the objection.

Having carefully considered the submissions of both parties, the reading from **Miscellaneous Application No. 272 of 2018** had the order granting Leave to file an Appeal Out of Time, which read and, I borrow;

"The Applicant is granted leave to file her intended Appeal against the decision on Civil Appeal No. 101/2018 dated 16/2/2018. The same to be filled within 14 days counting from a date of this order".

The order was signed on **17th of August, 2018** to mean it that, nothing less nothing more. Computation has it that, the said fourteen **days (14)** was to lapse on **2nd September, 2018**, as opposed to, **2nd October 2018**, hopelessly long after that date. That, the order of Court was given on **18th September, 2018**, is misconception as the date which it was signed on the

For the reasons above, the **Preliminary Objection** has merit and, is sustained, as the Appeal is dismissed with costs.

I so order.




J. A. DE-MELLO

JUDGE

26/03/2020