

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 210 OF 2018**

MIKOCHENI BUILDERS

MERCHANTS LIMITED.....APPELLANT

VERSUS

DAIKIN TANZANIA

LIMITED.....RESPONDENT

RULING

Date of last order: 12/11/2019

Date of Ruling: 30/03/2020

S.M. KULITA J;

This is a ruling on the Preliminary Objection on point of law raised by the respondent's counsel, Mr. Geoffrey Paul on the point that the appeal is time barred.

During the hearing of submissions which was done by way of written submissions, the respondent's Counsel submitted that the judgment in the trial court was delivered on the 13th June,

2018 and the appellant filed the appeal on the 14th September, 2018.

Mr. Geoffrey Paul submitted that the Law of Limitation Act [Cap 89 RE 2002] provides for the prescribed period of limitation to file matters in court including appeals. Where no period of limitation is prescribed the time limit is 90 days and it is where the matter at hand falls. He further submitted that as for this matter the time started to run from the date that the judgment was delivered on the 13th June, 2018 to the date of filing the appeal that is 14th September 2018. He said that with such computation of time it is clear that this appeal is out of the prescribed time.

The counsel submitted that section 3(1) of the Law of Limitation Act provides for the dismissal of proceedings filed out of time. He concluded by praying for the appeal to be dismissed with costs.

In reply to the respondent's submissions on the preliminary objection the appellant's counsel Mr. Salmin Mwinri submitted that he rightly agrees with the respondent's Counsel that this appeal falls under the item 1 of Part II to the Schedule to the Law of Limitation Act [Cap 89 RE 2002] which provides for the period of limitation to file appeal being 90 days.

He further submitted that section 19(2) of the Act provides for the manner in which the prescribed time is computed that the requisite time for obtaining copies of judgment are excluded. He said that in the present appeal the copies of judgment were obtained on the 1st August, 2018 and not 13th June 2018 as submitted by the respondent's counsel.

Mr. Mwinri concluded by submitting that the appeal is within time relying on the provisions of section 19 of the Act to support his argument thus he is of the view that the respondent's Preliminary Objection is baseless and unfounded, the same is subject to dismissal.

Having carefully considered the submissions of both parties I have noticed that there is no dispute that this appeal falls under under the item 1 of Part II to the Schedule to the Law of Limitation Act [Cap 89 RE 2002] which provides for the period of limitation to file the appeal being 90 days. The dispute lies on the computation of time. The respondent's counsel started to compute the time from the 13th day of June, 2018 the date that the decision was delivered while the appellant's counsel computes it from the date of receiving the copies of decision, and proceedings that is 1/8/2018. The wording of section 19(1) of the Act provides that the first day should be excluded when computing time the principle which was also stated in the case

of **KEC INTERNATIONAL LTD V. AZANIA BANK LIMITED, Commercial Case No. 152 of 2015** in which it was held;

*".....where the period of time is expressed to be reckoned from or where the word **from** is used in prescribing the period of time then that day is excluded in the period ..."*

As for the matter at hand if the period of limitation is counted **from** the next day to the date of delivery of judgment, that is 14th June, 2018 instead of 13th June, 2018 **to** the 14th September, 2018 when the appeal was lodged at High court an aggregate of 93 days period had passed. As per the provision of Item 1 of Part II of the Schedule to the Law of Limitation Act [Cap 89 RE 2002] the appeal is out of time for 3 days. That being the case the appellant ought to have sought leave before filing this appeal.

Though the number of days for delay is only 3 the same should be accounted for. It has been stated in several cases of the Court of Appeal including **RAMADHAN K. KIHWANI V. TAZARA, Civil Application No. 401/18 of 2018, CAT at DSM (unreported)** and **BUSHIRI HASSAN V. LATIFA LUKIO MASHAYO, Civil Application No. 03 of 2007 (unreported)** that delay of even a single day has to be accounted for and the forum for that matter is the application for leave to appeal.

As for the issue of a day from which computation of number of days should start before lodging the appeal I have this to say; I don't agree with the submissions of the Appellant's Advocate that the appeal should be determined on merit for the reason that the subordinate court had been late in supplying the copies of order and proceedings, that they were supplied to the Appellant on the 1st August, 2018 and therefore computation of number of days should start to be counted from that date. My comment on that is that those arguments were supposed to be presented in the application for leave to appeal out of time before this appeal being filed. That the appellant was supposed to file the application for seeking extension of time to appeal out of the prescribed time of 90 days. The appellant's act of submitting the reasons for delay at this forum is not proper. They can be regarded as afterthoughts. In fact he could have nowhere to present them if the respondent had not raised the Preliminary objection. Not only that but also the said allegation by the appellant that he was not supplied in time the necessary documents for filing appeal has no proof. Unless those facts are deponed in the affidavit, such a mere statement cannot be accepted.

In view of the foregoing submissions I find the preliminary objection raised by the respondent's counsel has merit. The appeal is therefore struck out for being filed out of time without leave of the court. The appellant to bear the costs.



S.M. KULITA

JUDGE

30/03/2020