

**IN THE HIGH COURT OF TANZANIA  
MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**CIVIL APPEAL No. 30 OF 2020**

***(Arising from the Civil Case No. 11 of 2019 in the District Court of  
Nyamagana District at Mwanza, Before Hon. Sumaye – SRM)***

**THE REGISTERED TRUSTEE OF**

**THAQAAFA EDUCATION FOUNDATION**

**.....APPELLANT**

**VERSUS**

**THE REGISTERED TRUSTEE**

**OF JUMAA MOSQUES MWANZA**

**.....RESPONDENT**

**RULING**

**13<sup>th</sup> & 31<sup>st</sup> May 2021**

**TIGANGA J:**

The appellant, a corporate body under the Trustees Incorporation Act of the laws of Tanzania, sued the respondent, a Registered Trustees, also incorporated under the same law for a number of reliefs. The suit was filed before the District Court of Nyamagana, which after full hearing; the decision was handed down, in the following terms;

- (i) As the letter with reference No. RTSM/GE/2017 dated 27<sup>th</sup> April, 2017 and Ref. No. RTSM/Afya/2017/64 of 31<sup>st</sup> May, 2017 the contract has no legal effect, the term of the contract shall remain as it was signed on 21/03/2015 by both parties in the present.
- (ii) The costs of construction of toilet not in the terms of contract the defendant has a right to recover his costs vial legal process.
- (iii) Money deducted on costs of toilets shall remain as the rent for healthy premises. The construction of toilets was agreed by both sides and the plaintiff has, and Tsh. 2,070,000/= (sic) for the toilets.
- (iv) The plaintiff was ordered to pay the costs of the suit.

At first, the appeal was assigned to my sister Hon. Mgeyekwa, J who in allowed the appeal with costs via her judgment dated 16/09/2020, however, on 09/10/2020 the respondent filed HC. Civil Revision No. 02/2020 on the ground that the respondent was not represented in Civil Appeal No. 30/2020 as the alleged principal officer who appeared and defended the appeal had no authorization from the respondent.



Also that there was a conflict of interest due to the fact that Idrisa Hayeshi who appeared on behalf of the respondent was a Board member of the appellant, and he impersonated himself as a secretary of the respondent and conspired with the appellant in Civil Appeal No. 30/2020, that is why he conceded to all grounds of appeal.

After hearing that application for review, the Hon. Judge did on 14/12/2020, set aside her judgment and decree passed in Civil Appeal No. 30/2020 and ordered the appeal to be heard and determined *inter partes* after summoning the proper parties.

After that order, the Honourable Judge, having dealt with the case to that extent, decided for the interest of justice to recuse herself from the conduct of the appeal, remitted the case file to the Honourable Judge In charge for re-assignment of the appeal to another Judge, consequence of which, the same was re-assigned to me.

When the matter came to me for hearing of the appeal on 25/03/2021 parties were represented by the learned Advocates, namely Mr. Kilenzi, Advocate who represented the appellant and Mr. Godfrey Martin – Advocate who represented the respondent. The Court was also

informed that Mr. Martin had raised the preliminary objection that the appeal was filed out of time.

Before hearing, Mr. Kilenzi addressed the court raising an important concern on the representation of the respondent. He submitted substantively giving this court some clues of the existing conflict on the part of the respondent. In short he hinted that the respondent has two set of management, one team constitutes members of the Board of Trustees which was resolved, but who did not agree and contested the resolving of the Board, the other team constitutes the interim committee appointed after resolving the Board, claiming to be the current office bearers.

He asked for the court to ascertain who is the proper representative of the respondent before proceeding with the hearing of the appeal. He said on the side of the appellant, they recognize the interim committee not the member of the Board which was resolved.

Mr. Martin, Advocate, who on that date appeared representing the respondent, said his clients are the members of the Board which was purportedly resolved. He however submitted that he was ready to submit the proof of the legality of his client representation as there is an order



issued by the High Court of Tanzania Main Registry maintaining of the status quo.

From these proceedings, it was obvious that the members of the new interim committee were on that date not in court, following that state of affairs, this court made the following orders.

- (i) To issue summons to the members of the interim committee to appear so that they can be informed of the following orders.
- (ii) The respondent was supposed file their submissions proving their representative ship on 12/04/2021.
- (iii) The submission by the respondent shall touch the issue as to whether the appeal is in time or out of time.
- (iv) The appellant shall submit the issue of the order issued by the High Court Main Registry in Dar es Salaam maintaining status quo and to respond on the issue of time limit on or before 19/04/2021.
- (v) Rejoinder by the respondent which will reply on the order of the High Court Main Registry maintaining status quo and on the issue of time limit be filed on 26/04/2021.

On 20/03/2021, following the summons issued on 23/03/2021 to the member of the interim committee, six people whose names are listed in the proceedings of 29/03/2021, but for the purpose of clarity they are reproduced hereunder, that is;

- (i) Sheikh Aman Mahuba Mussa – Chairman of the interim committee,
- (ii) Mr. Idrisa Ageshi – Secretary of the interim committee.
- (iii) Mr. Rajabu Katembo Juma – member.
- (iv) Mr. Ahamad Komo Ngoma – Member.
- (v) Mr. Abdul Majid Abdallah Kagimbo – Member, and
- (vi) Mr. Yasin Fuad – Member.

They appeared in response to the summons, and they were informed what transpired on 23/03/2021 in their absence and were required to file their submission proving their representativenesship.

Parties filed their respective submissions and proof as ordered by the court.



In the submissions filed by the member of the interim committee, it has been established that before 14/0/2020, the Board of Trustee af the respondent had seven members namely:-

- (i) Abdallah Amin Abdallah.
- (ii) Omary Mbaramwezi.
- (iii) Hamza Mansour
- (iv) Abdillah Salehe
- (v) Khalid Abdallah
- (vi) Maruzulu Magongo
- (vii) Abdulhakim Abeid.

These Board members were removed from their position by the meeting of all members of the respondent which was superintended by BAKWATA and in the presence of RITA officers, where 13 members of the interim committee were appointed to manage and run the affairs of the respondents Trust for the interim period up to the time when the pending court cases would be determined and finalized.

That after the defunct Board had been resolved, three out of seven members namely, that is, Abdallah Amin Abdallah, Khalid Abdallah and

Omari Said Mbaramwezi discontented and filed Misc. Civil Cause No. 32 of 2020 before the High Court of Tanzania, Main Registry challenging the decision to remove them from their trustship and the forming of the interim committee, but they lost.

It is the submission of the members of the interim committees, that they were given powers by RITA to carry on day to day activities, deal with the organization account and doing and receiving official correspondences. Their tenure has been renewed by RITA at every expiry.

They mentioned the pending cases filed by the three members of the deferent Board to be Misc. Civil Cause No. 4/2020, and Misc. Civil Application No. 15/2020.

They submitted that, when the Misc. Civil application No. 15/2020 came for mention, the counsel for three members the defunct Board made an oral application for the court to maintain the status quo as the respondent was about to conduct election to elect new leaders, consequently the court, through its order date 20/04/2020 issued an order maintaining the status quo. They submitted that the status which was



maintained is the status which existed at the time when the order was made.

They said when Civil Appeal No. 30/2020, was filed when three members were still the lawful members of the Board of the Trust, but at the conclusion of the case, they were no longer the members as they had already been removed from their position and the interim committee had already been formed.

They submitted that the respondent is a legal entity its personality is not of an individual member of the Board, it is of itself.

Also that since the corporate body is an artificial person it can not represent itself in conducting business and attending some issues like court cases, it is represented by its officer and in this case the current office bearers regardless their styled names and that in this case the office bearers are the members of the interim committee.

That the allegations that the case was opened while the three defunct Board members were in office has no legal bearing as it is defended by the principle enunciated in section 8 of the Trustees Incorporation Act (Supra).

They submitted that when the summons of Civil Appeal No. 30/2020 was served to the respondents the office bearers who were found in office, and that service is supported by the authority of the Court of Appeal in Civil Appeal No. 01/1984 between **TAZARA VS. Elikana Makene CAT.**

Therefore, the members of the interim committee are the proper persons to represent the respondent and that the removed members of the Board of Trustee or the dissolved Board have no legal basis to represent the respondent in any official business, court cases inclusive. They asked the court to hold that the members of the interim committee are the current office bearers, therefore have the mandate to represent the respondent in HC. Civil Appeal No. 30/2020.

Mr. Godfrey Martin, learned Counsel for the respondent the side of the members of the dissolved Board. He submitted that, the Appeal was filed out of time, he said so supporting the notice of preliminary objection on point of law filed on 04/02/2021.

In support of his argument he submitted that the decision subject of this Appeal was delivered on 09/01/2020, the decision was certified on



13/01/2020, while the instant appeal was filed on 23/05/2020 which is equal to 134 days.

He submitted that the law requires the appeal arising from the decision of the District Court to be filed within 90 days from the date of the judgment as per the 1<sup>st</sup> schedule of the Law of Limitation Act [Cap. 89 RE. 2019], item 1.

For that reason, according to him, the appeal was filed out of time for 54 days. He therefore under section 3 of the Law of Limitation Act invited this court to dismiss the appeal with costs.

He further submitted that, the appellant would have been justified had he asked and obtained the extension of time to file an appeal. He cited the authority in the case of **Hashim Madongo and 2 Others Vs. The Minister for Industry and Trade and 2 Others**, Civil Appeal No. 27/2003, CA of Tanzania at DSM.

He submitted that the appellant wrote a letter on 09/01/2020 requesting for a copy of judgment, which was collected soon thereafter, however it seems the decree was issued on 13/05/2020 although it was certified on 13/01/2020, the issue is when was the decree requested? He

submitted that, the record is silent and the letter requesting the decree is not in the court record.

According to him, in order for the appellant to benefit from section 19 of the Law of Limitation Act, the record should clearly indicate that the letter requesting for the copies of the order or decree appealed from was filed within the prescribed period of filing the appeal.

Submitting on the 2<sup>nd</sup> issue of locus standi or the right of the respondent's Board of Trustees to defend the appeal. He admitted the fact that the Board of Registered Trustee of Jumaa Mosque was dissolved by RITA, therefore members who were aggrieved by the decision, decided to challenge the decision of RITA by filing Misc. Civil Cause No. 04 of 2020 together with Misc. Civil Application No. 15/2020, HC. Main Registry and that, in the later, the Honourable Court issued the following orders.

*"The prayer by the appellant for interim order is hereby granted to maintain the status quo pending the hearing of the application".*

He submitted that, looking at the prayer in chamber summons that the defunct Board of Trustee is still in office pending hearing and determination of the main suit before the High Court. He submitted that,



the interim committee has no legal personality, but it ceased to exist soon after an interim order was issued by the High Court.

He in the end, asked the respondent Board of Trustee to be allowed to defend the appeal because they are legally vested with the mandate to appear as such for the time being.

His submission was followed by the submission made by Mr. Kilenzi, learned Counsel who started by submitting that, Mr. Godfrey Martin files his submission out of time because the same was supposed to be filed on 13/04/2021.

He insisted and the importance of ascertaining which one of the rival group is a valid representative of the respondent giving the reasons that, first against whom the execution process should be filed and second, the importance of knowing the proper representative of the respondent not only in this case but also in other cases.

Mr. Kilenzi is in agreement that the High Court Main Registry issued an order maintaining the status quo, but it was maintaining the status quo that existed at the time of its issuance, as the same had no retrospective

effect to return the Board members who had already been removed from the office.

Mr. Kilenzi submitted at length justifying his argument by giving a dictionary definition of what the term status quo is, but in essence he was insisting that the order did not reinstate the members of the resolved Board in office.

Regarding the issue of time limit, he submitted that, the appeal at hand was filed within time. He submitted that although the judgment was delivered on 09/01/2020, and was certified on 13/01/2020, but the decree was prepared on 13/04/2020 and that is proved by the insertion of the date of extraction of the decree.

He submitted that order XXIX Rule 1(1) of the Civil Procedure Code [Cap. 33 R.E 2019], requires every appeal to be accompanied by a copy of the decree appealed from, therefore he submitted that it was mandatory for an appeal to be accompanied with the copy is the decree.

He further submitted that, the time requisite for obtaining the copy of judgment and decree is excluded in computing the period from which the time starts to run. He submitted therefore that the time of 90 days started



to run from 19/04/2020 when the appellant was supplied the decree for filing appeal. He relied on the case of **Salum Rashid vs. Hadija Abdalah**, PC. Appeal No. 61 D 66 HC. 154 and the case of **Joseph Mninga vs. Abass Fadhili Abass and Hassan Hatibu Pandu**, [2001] TLR 213, the court when considering section 100(2) of the Civil Procedure Decree Cap. 8 of the Laws of Zanzibar which is in *pari materia* with section 19(2) of the Law of Limitation Act, (Supra) where it was held *inter alia* that:-

*"The time used for obtaining a copy of decree or order appealed from is excluded in computing time. This appeal therefore was filed within time"*

He submitted that the record is clear that the letter filed requesting the copy of decree was filed within time, that is on 09/01/2020.

Lastly he submitted that the facts of the case of **Hashim Madongo & 2 others Vs. the Minister for Industry and Trade and 2 others** (supra) is distinguishable, in the circumstances of the case at hand. He at the end he submitted that,

"On the basis of our submission and legal authorities both statutory and decided cases, it is clear that this appeal was filed

out of time and humbly insisted this honourable court to hold as such with costs"

In his rejoinder Mr. Godfrey Martin – Advocate submitted that before venturing into the merits of the reply submission he submitted that, his submission in chief was filed on 12/04/2021 as indicated by the exchequer receipt, but due to the electronic processing of the receipt the control number was out when the court clerk had already left the office, since he had already left, the court clerk indorsed the document in the next day. He relied on the authority in the case of **John Chuwa vs. Anthony Chiza** [1992] T.L.R. 233 which held that, the date of filing is the date of payment of fees not that of the receipt of the relevant documents.

He in his submission capitalized on the 3:0 prayers, in the submission by the counsel for the appellant, at which Mr. Kilenzi submitted that,

*"On the basis of the submission and legal authorities both statutory and decided case it is clear that this appeal was filed out of time, and I humbly invited this court to hold as such with costs"*

He said on that concession by the counsel, and other factors as submitted hereunder, he asked this appeal to be dismissed with costs.



He submitted that, he is aware that the time of obtaining a copy of judgment, order or decree appealed against is excluded under section 19(2) of the law of Limitation Act, but for a party to benefit with that automatic exclusion in computing the time of limitation, there are some factors which are to be considered, the said factors are the date when the letter requesting the copies of judgment and decree was lodged in court, the date when the judgment and/or decree was extracted and the effort by the appellant of making follow up by writing reminder letters requesting to be supplied with the same.

He submitted that unlike in the High Court and Court of Appeal where there are specific rules, in the subordinate courts the practice has been making follow up after lodging a letter requesting copies of the documents, as a person is not expected to sit for unknown period without making follow up.

He submitted that the decree was ready on 09/01/2020, but the date of issue depended on when an individual went to collect it, he gave example that the decree which he was given was issued to him on 03/03/2020, but that attached to the memorandum of appeal was issued on 13/05/2020. That means, the document was there and its date of issue

was depending on the date when an individual went to collect it. According to him, the allegations that decree was extracted on 13/04/2020 is misleading information, he said that date is a fiction invented by the appellant which is not reflected in the court record.

He further more submitted that, the appellant was not diligent to make follow up of the documents, he submits that it defeats reasons that the counsel was supplied with the copy of judgment four days after its delivery, but had awaited for almost four month for the decree to be extracted from the judgment.

He submitted that, in the subordinate courts, it is the duty of the parties to make follow up, but the appellant did not inform the court of the effort taken by him. He cited the case of **Beatrice Mbilinyi vs. Ahmed M. Shabiby**, Civil Application No. 475/01 of 2020, in which the CAT at Dar es Salaam at page 20 last paragraph and page 21 first paragraph, the superior court insisted on the importance of follow up of the documents necessary for appeal after the statutory period of 90 days had lapsed in the Court of Appeal of Tanzania. The Counsel asked the Court to take, inspiration of the decision cited above, in this case at hand, he submitted that with all these contradictions, the appellant was not entitled to



automatic exclusion but was supposed to apply for extension of time and prove with evidence as to why his decree delayed to be extracted.

Discussing on what should be the remedy for an appeal filed out of time, he submitted that there are two schools of thought in the decisions of the Court of Appeal of Tanzania, and those of the High Court regarding on what remedy, as between dismissal and struck out of the appeal. He asked the current position which insists that, the same be dismissed under section 3(1) of the Law of limitation Act (Supra).

Submitting on the status of the order issued by the High Court Main Registry in Misc. Civil Application No. 15/2020, he cited the authority in the case of **NHC vs. Peter Kassidi & 4 others, Civil Application No. 243 of 2016 CA of Dar es Salaam**, in which it was held that;

*"....a temporary injunction is an equitable relief for maintaining the status quo between the parties pending determination of action in court, the court went further that, it is in the nature of prohibitory order granted at the discretion of the court against a party."*

He referred this court to the prayers in the chamber summons, which asked among other orders, that the respondent who is the current appellant, her agent, employee or any person claiming or acting under her from carrying effect to and/or implementing her decision to dissolve the Board of Trustee of the 3<sup>rd</sup> Respondent (who is the respondent in this appeal).

He submitted that the order by the High Court Main Registry meant that, those prayers in the chamber summons were granted to maintain the status quo pending the hearing of the application.

He in the end asked the court to hold that, the decision or rather the order of the High Court Main Registry rendered the interim committee in operational, while at the same time, reinstating the Board of Trustee purportedly resolved, in office thus a proper representative of the respondent.

That marked the submission by all parties in respect of all issues they were directed to address the court.

As earlier on submitted, the matter for which the parties were ordered to address the court was basically in two folds, **one**, was the locus



standi of the two rival groups of the respondent to represent the respondent, **two**, whether the appeal at hand was time barred or not.

At this juncture, before going to the merit of both components, I find it important to point out two issues, **first**, is the scope of the argument submitted in respect the locus standi. When I asked the parties to prove their representativenesship of the respondent, I expected them to be brief and confine themselves on matters of facts pertaining each party's position in as far as the affairs of respondent are concerned. But apparently from what they actually submitted, it was as if the matter before me was to determine the legality of the act of RITA in resolving the Board, or to interpret and give effect the decision passed by the High Court Main Registry in Misc. Civil Application No 15 of 2020. That in my opinion is not the area which this court should venture into. It must confine its finding on the matter pertaining on the appeal at hand only.

The second issue is that as between the two folds I have just pointed out, one relates to the point of law or related to matters of law that is whether the appeal was filed within time or out of time. While the other which relates on which is the proper group to represent the respondent, relates to the issues of facts.

As a matter of practice, where there are two issues, the issue of law and the issue of facts, then the court must first deal with the issue of law as opposed to the issue of fact.

It is on that ground that I will start with the preliminary objection raised by Mr. Godfrey Martin, learned counsel as to whether the appeal was filed within time or out of time.

One would ask why should I start with an issue raised by a party whose status of representativenesship has not been established? As already pointed out, a point of law can be raised, by any party, and it not so raised, then by the court itself. What is important is that after it has been so raised; parties should get sufficient opportunity to address the court in respect of that issue. In this matter, parties have had opportunity to sufficiently deliberate on the issue, and have actually exhausted, therefore, I am justified to start with the same.

The preliminary objection is premised on the fact that the judgment and decree appealed against were delivered on 09/01/2020; the law requires the person aggrieved by the decision passed by the District Court,



to appeal within 90 days. However, the appellant filed the appeal on 23/05/2020 which is approximately 134 days.

The appellant argued that, although the copy of the judgment was supplied on 13/01/2020 four days later, the copy of the decree was not supplied on time as the same was extracted on 13/04/2020, collected by the appellant on 19/04/2020, while the appeal was filed on 23/05/2020. Therefore, computing from when the decree was extracted, and collected, you find that, the appeal was filed within time. He relied on section 19(1)(2) or the Law of Limitation Act (supra) which requires exclusion of the days used for obtaining necessary documents to be accompanied with the appeal.

He also relied on Order XXXIX Rules 1 which requires that the copy of decree appealed against is necessary to accompany the appeal without which, the appeal is rendered incompetent.

Regarding the timing of when the decree was extracted, the counsel for the respondent disputed and said the counsel for the appellant is giving misleading information to the Court. He submitted that according to the

record, the decree was ready for collection much earlier as he collected his on 03/03/2020, and that the appellant did not make follow up.

Further to that, he said even the 13/04/2020 as a date of extraction of the decree is not supported by evidence as the decree he attached to the memorandum of appeal bears a completely different date as the date of extraction.

As these issues of the dating and extraction of the decree can be ascertained from the record, this court upon passing through the record it found the following facts established.

The original decree which is in the original record bears the date of 09/01/2020. It has the date of issue to the parties, which is the date of collection not filled in (as it has been left blank).

The decree which the appellant attached with the memorandum of appeal has the same date of issue, but seemingly supplied on 13/05/2020, as opposed to the date of 13/04/2020 mentioned by the counsel for the appellant to be the date of its supply. This means as correctly submitted by the counsel for the respondent, the date of 13/04/2020 is an imaginary one which has no support from the record.



While this one issued to the respondent was issued to him according to the date it bears, on 03/03/2020.

This means two things, **one**, that the decree was ready for collection long before 03/03/2020, and 13/04/202 and 13/05/2020, and whenever one went to collect his copy, the same was dated the date of collection depending on when that person went to collect the same.

It is true that section 19(2) of the Law of Limitation Act (Supra) allows exclusion of days used to make follow up and obtain the said requisite copies of documents necessary to be attached with memorandum of appeal. That, provision saves where the court delays to prepare and supply the documents to the parties, it does not apply where a party fails to make follow up and collect the copies necessary to file an appeal.

It is common knowledge that, a decree is extracted from the judgment, it defeat reasons, that a judgment may be ready and supplied to the parties only four days of its delivery and wait for a decree to be extracted four months later.

From that common knowledge, which the learned advocate had, it was expected, the Advocate to have clearly stated in his submission that

after being supplied with copy of judgment four days after its delivery, that is on 13/01/2020, he made follow up to be supplied with the copy of the decree but in vain.

To the contrary, that was not shown neither follow up letters were produced nor even an oral statement that the counsel physically followed up in vain. That being the case, he appellant cannot hide behind the protection of section 19(2) of the Laws Limitation Act.

Although in the Law of Limitation or Civil Procedure Code, there is no rule specifically providing for the requirement of making follow up, however, even in the advanced customer care arrangement, like we have in our Judiciary of supplying copies of judgment and decree by delivery commonly known as "POSTA MLANGONI", that cannot be expected to save the appellant in the circumstances where he had already personally visited the court registry and collected the judgment, to sit and expect someone else to collect decree for him. Common sense requires a person who has shown an intention to appeal to go to the registry and collect the documents for appeal purposes.



For that reason, I find the appellant to have failed to show that he took necessary steps to make follow up so that he can appeal within time, he has not demonstrated, that his such effort was prevented either by inaction or omission by the court, court officials or any other inadvertent action by the court or its officials. In this case, the scale tilts much against his side, therefore he is self to blame.

That said, I find the appeal to have been filed out of time, without the appellant first seeking and obtaining the order extending the time for him to file an appeal out of time.

Now, having so found, what should be the remedy? in my considered view, section 3(1) of the Law Limitation Act is clear, that the appeal or a suit filed out of time should be dismissed.

Therefore, I have nothing I can do other than to give effect to the law that is to dismiss the appeal under section 3(1) of the Law of Limitation Act, for being time barred.

Now, having dismissed the appeal, then the issue of who is to represent the respondent dies a natural death as there is nothing before the court to be represented.

In the fine, the preliminary objection is sustained; the Appeal is dismissed with costs.

It is so ordered.

**DATED at MWANZA** this 31<sup>st</sup> day of May, 2021



  
**J.C. Tiganga**

**Judge**

**31/05/2021**