

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

CIVIL APPEAL NO. 12 OF 2020

(Originating from Tabora RM's Court in Civil Case No. 23 of 2019)

KITUMBO SECURITY COMPANY LIMITED -----APPELLANT

VERSUS

VIMAJO & SONS LIMITED -----RESPONDENT

RULING

08/06 & 09/07/2021

BAHATI, J.:

This ruling is in respect of the Preliminary Objection raised by the respondent named above Vimajo & Sons Limited in an appeal lodged by the appellant Kitumbo Security Company Limited. The respondent prayed this court to dismiss the appeal filed by the appellant for the reason that the appeal is hopeless and time-barred.

The respondent was under legal representation of Mr. Saikon Justine learned counsel whereas the appellant enjoyed the services of Mr. Kilingo Hassan learned counsel. With the permission of this Court, both parties agreed to argue the objection by way of written submission.

Mr. Saikoni submitted that the appeal is out of time for having not complied with the order of this Court in Kitumbo Security Guard Ltd vs Vimajo & Sons Limited D.C Civil Appeal No. 1 of 2020 in which

the appellant was granted leave to refile her appeal within 14 days from the date of the order which was on 10/06/2020. Mr. Saikoni argued that the appellant was required to refile her appeal on or before 23rd June 2020.

He added that the appellant has delayed for nine days as a Memorandum of Appeal filed to this Court shows that it was filed on 29th June 2020 without seeking an extension of time. To support his argument Mr. Saikoni cited the case of ***Msasani Peninsula Hotels Limited & 6 Others vs Barclays Bank Tanzania Limited and Others, Civil Application No. 192 of 2006*** where the court held inter alia that *"No document is properly filed until fees have been paid"*.

Mr. Saikoni buttressed that, the memorandum of appeal was filed on the date on which Court's fee was paid and that was 29th June 2020 the date which makes the appeal time-barred. He further contended that failure by the appellant to comply with Court's Order is impliedly insubordination of the highest degree in which this Court should not allow the appellant to sin against its order as it always must be respected.

Responding, Mr. Kilingo Hassan who advocated for the applicant submitted that, the appellant filed an appeal in time on 24th June 2020 via the Judicial Online Registration System (JSDS). He added that the appeal was filed on the last date but within fourteen days granted by the Court.

Mr. Kilingo admitted that the filing fees were effected on 29th June 2020 and he stated that the delay was caused by the late

delivery of the payment control number from the online registration system problem which made him approach the Deputy Registrar to report the delay.

Reinforcing his argument Mr. Kilingo added that, the Online Registration System is subjected to many cons compared to pros, that the system has a lot of difficulties such as poor network, delay due to Court's managerial issues, incompetence on the side of stakeholders, and so forth. He upholds that, if a common registration system were to be offered the appellant could have paid fees on the same day. He urged this court to consider those challenges resulted from the use of an online case registration system.

Having heard from both parties the issue before this court is whether the PO has merit.

Before counting on the number of days that the appellant was required to file an appeal as per leave granted by this Court, I wish to remind the learned counsels that, Judicature and Application of Laws (Electronic Filing) Rules, 2018, GN No. 148 of 2018 provides that,

"A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date, it is submitted unless a specific time is set by Court or it is rejected"

From its advent, this law recognized electronic filing of cases as a means of filing documents in Court. Mr. Kilingo claimed that he filed this appeal on 24th June 2020 via the Judicial Online Registration System (JSDS), I consulted the system to verify the assertion and I

found that it true that the appellant filed this appeal on 24th June 2020.

Now, the question comes, was 24th June 2020 within 14 days granted by this court? The order that granted leave to refile this appeal was delivered on 10th June 2020 and this appeal was filed on 24th June 2020 if you count from the day leave was granted you will find that the last date to file the appeal was 23rd June 2021, for that reason, I am in agreement with Mr. Saikoni that this appeal was filed out of time.

That being said, the preliminary objection raised by the respondent is sustained, the appeal is hereby struck out with costs.

Order accordingly.



A. A. BAHATI
JUDGE
09/07/2021

Ruling delivered under my hand and seal of the court in the chamber, this 9th day July 2021 in the presence of the respondent.



A. A. BAHATI
JUDGE
9/07/2021

The right of appeal is explained.



A. A. BAHATI
JUDGE
9/7/2021

