

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

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 296 OF 2020**

(Appeal from the Decision of the Juvenile Court of Dar es salaam at Kisutu  
in Civil Application No. 303 of 2020 before Hon. J. Lyimo, **RM** dated 13<sup>th</sup>  
November, 2020)

**SUZAN ROSE SENGA..... APPELLANT**

**VERSUS**

**MUSSA SELEMAN MBWANA.....RESPONDENT**

**RULING**

22<sup>nd</sup> June, 2021 & 16<sup>th</sup> July, 2021.

**E. E. KAKOLAKI J**

This is a ruling in respect of the preliminary objection raised by the respondent challenging competence of this appeal by the appellant for being filed out of prescribed time. The challenged appeal was filed in Court by the appellant on the 7<sup>th</sup> of December, 2020 seeking to assail the decision of the Juvenile Court of Dar es salaam at Kisutu in Civil Application No. 303 of 2020, handed down 13<sup>th</sup> November, 2020, that granted custody of the child one Mariana Mussa Selemani to the respondent (biological father) following ultimate demise of her mother. Six grounds of appeal were filed by the

appellant faulting the decision which for the purposes of this ruling I see no need of reproducing them. The objection raised is touching competence of the appeal. With leave of the court parties agreed to dispose it of by way of written submission and I commend them for adhering to the filing schedule orders issued by the Court.

The appellant in this matter proceeded unrepresented while the respondent hired the services of Ms. Jesca Massae learned advocate. Submitting in support of the preliminary point of objection Ms. Massae informed the court that the law under Rule 123(1) of the Law of Child (Juvenile Court Procedure) Rules, 2016, hereinto referred as *Juvenile Court Rules*, requires the person aggrieved with the decision or order of the Juvenile Court to appeal to this Court within fourteen (14) days from the date of the decision or order. He said as the decision sought to be impugned was entered on 13/11/2020 and the memorandum of appeal filed on 7/12/2020 the date when the court fees was paid, the present appeal is manifestly time barred as under section 6(j) of the Law of Limitation Act, [Cap. 89 R.E 2019] herein to referred as LLA, the appellant's right of appeal accrued on the date when the decision appealed against was delivered. On the effect of filing the appeal out of time Ms. Massae argued, the only remedy under section 3(1) of LLA is dismiss the appeal and so prayed the court to do as no leave was sought and obtained by the appellant to file the appeal out time. On the prayer for dismissal of the appeal he referred the court to its own decision in the cases of **Elias Kamokyo Vs. Jasson Kasaizi and 2 Others**, Land Appeal No. 10 of 2018 (HC-unreported) and **Joseph Ndyamukama Vs. Gaudensia Kaizilege**, Land Appeal No. 30 of 2014 (HC-unreported).

Retorting the respondent's submission the appellant submitted the appeal was within time. She said after delivery of the ruling sought to be assailed entered on 13/11/2020, on 16/11/2020 by letter she requested to be supplied with the copies of ruling/judgment and proceedings for appeal purposes in which the copy of ruling was supplied to her on 20/11/2020 before she further applied for drawn order on the 23/11/ 2020 that was collected on 25/11/2020. According to her time for filing the appeal accrued on the date when she received the copy of drawn order on 25/11/2020. She contended, since the memorandum of appeal was presented for filing in court on 04/12/2020 though the receipt exhibit payment of court fee was issues on the 07/12/2020, counting from 25/12/2020 to 07/12/2020 which is twelve (12) days passed, the appeal was within time. She said the authorities relied upon by the respondent were not applicable in the circumstances of this case, therefore prayed the court to dismiss the objection and proceed to determine the appeal on merits. In her reply submission Ms. Massae resisted the appellant's submission that all documents meaning ruling, drawn order and proceedings were requisite documents in filing this appeal so as to entitle her exclusion of the days when she was still waiting for the copy of drawn order. She argued the law under section 123(1) of *Juvenile Court Rules*, puts clear that, the mandatory document can be either the judgment or order. Otherwise she reiterated her earlier submissions and prayers thereto.

I have dispassionately considered the rival arguments by the parties and the law as well as perusing the ruling and memorandum of appeal at issue in this matter. What is discerned therefrom is that parties are at one that the

time limitation within which the appeal is to be filed to this court from the decision of the Juvenile court is fourteen (14) days). They are also not at dispute that under section 19(2) of LLA the time spent by appellant for obtaining the copy of the decision intended to be appealed against is excluded from the days delayed in filing the appeal. That position of the law on reckoning the days is fortified with the decision of the Court of Appeal in the case of **Trustees of Mariah Faith Healing Center @ Wanamaombi Vs. Registered Trustees of the Catholic Church of Sumbawanga Diocese**, Civil Appeal No. 47 of 2007 (CAT-unreported) when held that:

*"In computing the time period of appeal, the time spent to obtain a copy of judgment should be excluded."*

Parties are at loggerheads when it comes to the issues as to what documents are mandatorily accompanying the memorandum of appeal when filing the appeal and when was the time to file the appeal in this matter accrue. On the mandatory documents to accompany the memorandum of appeal Ms. Massae submits it is only the ruling sought to be impugned while the appellant says it is both the ruling and drawn order. On the accrual of time limitation within which to appeal under the circumstances Ms. Massae submits it is on 20/11/2020, the date in which the appellant obtained the copy of ruling while the appellant contends it is on 25/11/2020 when she collected the copy of drawn order. I endorse Ms. Massae's argument that the time limitation for filing the appeal in this matter accrued on the 20/11/2020 when the ruling was obtained by the appellant and not on 25/11/2020 when the drawn order was collected. My endorsement of that position is based on the required documents for accompanying the

memorandum of appeal as provided under Rule 123(2) of the *Juvenile Court Rules*. The said Rule reads:

*"S.123(2) An appeal shall be made in the form of a memorandum in Writing in Kiswahili or English and state briefly the grounds of objection to the decision, sentence or order appealed against and be accompanied by a copy of the proceedings, judgment **or** order appealed against, unless the High Court otherwise directs."*

The law is very clear under section 13 of the interpretation of Laws Act, [Cap. 1 R.E 2019] that, where the conjunction "or" is used in the provision of the law shall be construed disjunctively and not to imply similarity or other meaning. The section provides thus:

*"S.13. in relation to a written law passed or made after commencement of this Act, but subject to section 2(4), "or", "other" and "otherwise" shall be construed disjunctively and not as implying similarity unless the word "similar" or some other word of like meaning is added."*

Applying the interpretation of the conjunction "or" as used in section 123(2) of the *Juvenile Court Rules*, I conclusively hold that the provision has purposely used the conjunction "or" to imply that the required document(s) to be accompanied to the memorandum of appeal are either proceedings, judgment **or** order appealed against. Guided by that conclusion, I am of the firm view that in the circumstances of this case the appellant ought to have used either the ruling or order whichever is being appealed against to accompany to the memorandum of appeal as required by the law. In other

words having obtained the copy of ruling on the 20/11/2020<sup>1</sup> which she is appealing against, it was not mandatory for the appellant to wait for the drawn order issued to her on 25/11/2020 for her to file the appeal as claimed.

Having so found the second issue as to when was the time for filing the appeal accrued has no difficulties to respond to. As the necessary document for attaching to the memorandum which is the ruling of the court was duly obtained on 20/11/2020 the time limitation within which to appeal started to run on the very date. Now next issue for determination is whether the appeal was filed out of prescribed time limitation as asserted by the respondent. Counting from 20/11/2020 when the impugned ruling was obtained by the appellant the fourteen (14) days for her to appeal lapsed on the 05/12/2020. The appellant contended in her submission that the memorandum of appeal was filed in court on 04/12/2020 though the court fees receipt was issued to her on 07/12/2020 in which Ms. Massae insists is the day when the appeal was filed. I find no difficulties in acceding to Ms. Massae's propositions. It is trite law that the document is deemed to have been filed in court on the date when the court fees was paid. This position of the law was stated in the cases of **John Chuwa Vs. Anthony Ciza** (1992) TLR 233 where the Court of Appeal held that:

*"...According to the learned judge, **the date of filing the application is the date of the payment of the fees and not that the receipt of the relevant documents in the registry.** Mr. Akaro, learned advocate for the appellant,*

*conceded that before me and I cannot fault the learned judge there.” (Ephasis supplied).*

Similar views was aired in the case of **Misungwi Shilumba Vs. Kanda Njile**, PC Civil Appeal No. 13 of 2019 (HC-unreported) where this court said:

*“...a document is deemed to be filed in court when payment of court fees is done and the proof is payment of fees exhibited by the exchequer receipt.”*

Applying the principle in the above cited authorities to the facts of this case, I am freed from doubt that in this case the appellant filed her appeal on the 07/12/2020 the date which she was out of time for two days as the days expired on the 05/12/2020. In light of the foregoing the preliminary objection raised by the respondent has merit and I hereby uphold it.

Now what is the remedy for the appeal filed out of time? Ms. Massae submitted under section 3(1) of the LLA is to have it dismissed while the appellant resisted the submission. Under the said provision every proceedings duly instituted out of time which its time limitation is provided in the first schedule opposite to the second column to the LLA shall be dismissed. The provision reads:

*3.-(1) Subject to the provisions of this Act, **every proceeding** described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, **shall be***

***dismissed whether or not limitation has been set up as a defence. (Emphasis supplied)***

The Law of Limitation Act under section 2(1) defines the term proceeding as referred in the above provision to include appeals. The definition reads:

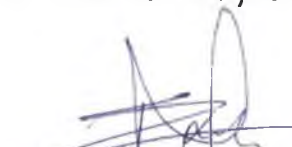
*"proceeding" means a suit, an appeal or an application, and includes proceedings under customary law;*

In view of the above provision of the law and basing on the fact that the appellant in this appeal filed the appeal out of prescribed time limitation without prior extension of time within which to appeal sought and granted by this Court as per the dictates of section 14(1) of LLA, I am inclined to hold that the appeal was time barred and the same is hereby dismissed.

Considering the nature of the case, I order no cost to any party.

It is so ordered.

DATED at DAR ES SALAAM this 16<sup>th</sup> day of July, 2021.

  
E. E. KAKOLAKI

**JUDGE**

16/07/2021





Delivered at Dar es Salaam in chambers this 16<sup>th</sup> day of July, 2021 in the presence of the Appellant in person, Ms. Jesca Massae advocate for the Respondent and Ms. Monica Msuya, court clerk.

Right of appeal explained.



E. E. Kakolaki

**JUDGE**

**16/07/2021**

