

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL APPEAL NO. 263 OF 2020

(Appeal from the decision of the Resident Magistrate Court of Dar es salaam at Kisutu in
Misc. Civil Application No. 186 of 2019 before Hon. V.W. Mwaikambo, **RM** dated
02/09/2020)

ETG COMMODITIES LTD.....APPELLANT

VERSUS

MOHAMED ENTERPRISES (TANZANIA) LIMITED.....RESPONDENT

RULING

04th Nov, 2021 & 05th Nov, 2021.

E. E. KAKOLAKI J

This ruling emanates from the attention drawn by the respondent when making a reply to the appellant's submission in chief filed in support of the appeal. Before the court the appellant above named filed her appeal challenging the decision of the Resident Magistrate Court of Dar es salaam at Kisutu in Misc. Civil Application No. 186 of 2019 dated 02/09/2020, dismissing her application for extension of time within which to file bill of costs. Earlier on when the appeal was called for hearing the appellant and

respondent who appeared represented by Mr. Symphorian R. Kitale and Ms. Neema Mahunga, both learned counsels respectively sought leave of the court to argue the appeal by way of written submissions and complied with the filing schedule orders. According to the exchequer receipt No. 24948442 attached to the appellant's memorandum of appeal issued on 02/12/2020, it is alleged the appeal, was filed out of prescribed time of 90 days counting from 02/09/2020 as per Item I Part II of the Schedule of the Law of Limitation Act, [Cap. 89 R.E 2019]. Following that assertion the appellant in her rejoinder submission attached an extract from the Court Electronic Filing System proving that the said appeal was filed in time on 01/12/2020. As to the issue whether the appeal was filed out of time hence competent before the court on the 04/11/2021 and before composing the judgment parties were summoned to address the court on the said issue.

Submitting on the issue Mr. Aidan Kitare who appeared for the appellant on that date stated, the appeal was filed in time as the deadline for submission of the Memorandum of Appeal was on 01/12/2020. He argued, the documents for appeal purposes were filed on 01/12/2020 as per the requirement of Rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, GN. No. 148 of 2018, which provides the

document shall be considered to have been filed if it is submitted through Electronic Filing System before mid-night East African time unless specific time is set by the court or it is rejected. He said, according to that rule the appellant's memorandum of appeal was filed timely as it was not rejected but returned for rectification which was done and the document admitted as control number for payment of admission fees were issued and fees paid. Further to that he argued Rule 25 of the said GN. No. 148 of 2018 provides the said filed documents may be printed where need arises for filing hard copies in court. That being the case he argued, the printed hard documents which were filed in court bear the date of presentation of the memorandum of appeal in court which is 02/12/2020. As under electronic filing what is considered to be the date of filing is the date of submission of the documents through Electronic Filing system this court was invited to find the appeal was filed in time as the appellant submitted the documents were filed on 01/12/2020 as indicated in the extract printed from the system and not the date of presentation of hard copy in court for filing which is 02/12/2020.

In riposte Mr. Mwakabungu who appeared for the respondent intimated from the outset the appeal was filed out of time as the appellant failed to

prove to the court that, the said memorandum of appeal was **received** and **admitted** by the court electronic filing system which is the disputed issue as the date of filing is not at issue. He therefore submitted, the appeal before the court is time barred for want of timely admission in the electronic filing system. Basing on that submission he called the court to dismiss it with costs. In his brief rejoinder submission Mr. Kitale argued, the appeal was timely filed and that is why it is before this court. He attacked Mr. Mwakabungu's submission on appellant's failure to prove admission of the document in the system, submitting that, the same is misleading as in his submission he noted with stress the memorandum of appeal was filed and admitted and that is why control number was issued and payment of admission fees made. Otherwise he reiterated his earlier submission in chief and prayers thereto.

I have dispassionately considered the rival submissions by both parties' counsels as well as perusing the pleadings relied on by the parties and the extract from court electronic filing system concerning the filed documents of appeal. What is discerned therefrom is that both parties are at one that the appellant filed the said memorandum of appeal on 01/12/2020 the date which according to Rule 21(1) of the Rules GN. No. 148 of 2018, should

have been within time. The said Rule 21(1) of Rules, GN. 148 of 2018 reads:

21.-(1) 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 the court or it is rejected.

What remains in dispute as per their submissions is whether the said memorandum of appeal was admitted in the said electronic filing system as claimed by the appellant. Mr. Kitale says it was admitted since at first it was returned, rectified and control number issued before the admission fees was paid while Mr. Mwakabungu submits to the contrary that, there is no proof that it was admitted. I am at one with Mr. Mwakabungu's submission that there is no proof that the said memorandum of appeal was admitted electronically on 01/12/2020 through electronic filing system apart from the fact that it was submitted on the same date electronically as the action seen in the extract from the electronic filing system after its submission reads:

"The case is returned for want of jurisdiction."

What is deciphered from the above comment is crystal clear that the memorandum of appeal was not admitted. There is no explanation from the appellant as to whether upon being returned the said memorandum was resubmitted on same date of 01/12/2020, admitted and control number generated for the purpose of payment of admission fees of the appeal as control number could have been obtained on the 02/12/2020 when payment admission fees of the appeal were made. The exchequer receipt No. 24948442 for payment of admission fees of the appeal shows was issued on 02/12/2020. There is no any explanation advanced by Mr. Kitale as to why payments were made on that date if at all the document was filed and admitted on 01/12/2020 as claimed. As there is no proof that the said memorandum of appeal was admitted on the alleged submission date of 01/12/2020 as required under Rule 21(1) of the Rules, GN. No. 148 of 2018, the only remaining base for determination of the filing date of the document is the date of payment of the filing fees. It is trite law that document is deemed to have been filed on the date when the filing fees are paid. This position of the law was stated in the case 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." (Emphasis 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 of payment of fees exhibited by the exchequer receipt."

Guided with principle in the above cited cases, in this case since the filing fees of the memorandum of appeal was paid on 02/12/2020, I am remained with no doubt and therefore of the finding that, this appeal was filed out of time, thus the same is incompetent before this court. This finding resolves the issue raised above in negative.

Having so held the next issue for determination is what course should be taken against the appeal under the circumstances. Section 3(1) of the Law of Limitation Act, [Cap. 89 R.E 2019] provides that any proceedings instituted after the period prescribed in the second column opposite to the first column shall be dismissed. The said section 3(1) of the Law of Limitation Act 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.

That said and done, it is my finding that this appeal was filed out of time, thus the same is dismissed with costs under 3(1) of the Law of Limitation Act.

It is so ordered.

DATED at DAR ES SALAAM this 05th day of November, 2021.




E.E. KAKOLAKI

JUDGE

05/11/2021

Delivered at Dar es Salaam in chambers this 05th day of November, 2021 in the presence of Mr. Respicius Mkandala, Advocate for the appellant, Ms. Neema Mahunga, advocate the respondent in person and Ms. Asha Livanga, court clerk.

Right of appeal explained.




E. E. KAKOLAKI

JUDGE

05/11/2021