

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO

CIVIL APPEAL NO. 10 OF 2022

(Arising from the decision of Resident Magistrate Court of Morogoro in Civil case No. 23 of 2020)

MW RICE MILLERS LTD APPLICANT

VERSUS

MWASA SECURITY LIMITED.....RESPONDENT

RULING

Hearing date on: 17/6/2022

Ruling date on: 22/6/2022

NGWEMBE, J:

The appellant is in this court struggling to challenge the decision of the Resident Magistrate Court of Morogoro delivered on 30th November, 2021 which judgement was in favour of the respondent. Being so aggrieved, successfully appealed to this court clothed with three grounds. However, before the date of hearing, the respondent through its advocate Thomas Mathias, successfully instituted notice of preliminary objection based on time limitation, to wit; *"the appeal is hopelessly time barred"*



The principle of law is well settled on how to raise and argue an objection based on law. Obvious once an objection is raised in respect to an action before it, such objection must first be decided. This position of law was rightly promulgated in the case of **Munawer M. Pardar Vs. Jubilee Insurance Co. (T) LTD [2016] TLS LR 235**, where the Court of Appeal held:-

"The law is well established that a court seized with a preliminary objection is first required to determine that objection before going into the merits or the substance of the case or application before it"

The purpose of determining an objection prior to the hearing of the main suit is to serve time of the court and minimize costs. The reason is clear that, once the objection is sustained, it means the whole suit or appeal comes to an end and parties are allowed to take their right cause to the ends of justice. This position was rightly, pointed out by the Court of Appeal in the Case of **Bank of Tanzania Vs. DP Valambhia, Civil Application No. 15 of 2002** held:-

"The aim of a preliminary Objection is to save time of the court and of the parties by not going into the merits of the suit/application because there is a point of law that will dispose of the matter summarily. The result is to render all subsequent proceedings a nullity".

Of course, there are basic elements of raising preliminary objection, one of them the objection must be on point of law, when



argued successfully, should be capable of disposing of the whole suit or appeal or application. This position was promulgated in the famous cases of **Mukisa Biscult Manufacturing Co. LTD Vs. West end Distributors LTD. [1969] EA 694; COTWO (T) OTTU UNION Vs. Hon. Idd Simba Minister of Industries and Trade & Others [2002] TLR 88; CITI BANK CIVIL APPLICATION NO. 112 of 2003 Court of Appeal Dar es Salaam Registry (unreported)** and many more cases.

In respect to this appeal, the respondent rightly raised an objection based on time limitation, which is a valid point of law like raising an objection based on jurisdiction. Therefore, the respondent was right in raising this point at the earliest stage of pleadings.

In hearing this point, the advocate for the respondent strongly, argued his objection by pointing clearly that the appeal was instituted in this court on 24/2/2022, but the payment as per the exchange receipt was made on 7/3/2022. Referred this court to the judgement of **Ahmed Mohamed Suud & Another Vs. Mohamed Suud & 3 others, Civil application No. 12/17 of 2019.**

Proceeded to argue that, the last day of filing this appeal was on 28/2/2022, thus any subsequent date was out of time. Also referred this court to the Online Rules which mandatorily provide filing every action in court by electronic filing. Therefore, the appellant filed this appeal on line on 4/3/2022. Thus, delayed for 4 days. Proceeded to pose doubt on

authenticity of the document itself, that same was stamped on 24/2/2022 but lodged electronically on 4/3/2022. Thus, rested by a prayer that the appeal be dismissed with costs for contravening time limitation.

In reply, the learned advocate for the appellant, categorically admitted that he filed a hard copy of appeal on 24/2/2022 due to challenges encountered in filing on line. Sometimes on 4/3/2022 the online filing was stable, hence, managed to refile online. Also contented that, there was/is no forgery and the appeal was timeously instituted on 24/2/2022. Added that the challenges encountered on electronic filing was outside the appellant's ability. Rested by a prayer that the appeal should proceed with full hearing by dismissing the objection.

In brief rejoinder, the respondent reiterated on his submission in chief by adding Regulation 24 (6) on electronic filing. Whatever challenge on electronic filing is answered in the cited regulation. Thus, the registrar has mandate to grant extension of time to lodge such document in court outside the time frame. However, in this appeal the one who signed or extended time was a court clerk contrary to the Electronic Rules. Therefore, insisted his prayerto dismiss this appeal with costs.

It is certain, time limitation is a material fact in any suit or action in a court of law. The essence of time limitation serves two interests, first is the interest of the parties and courts of law or tribunal; second is the interest



of the Republic in general under the Latin maxim of *interest Reipublicae ut sit Finis Litium*, meaning it is for the interest of the Republic that there should be an end to litigation.

To preserve this principle, the Legislature enacted not only the Law of Limitation Act, but in other statutes time limitation is provided. Whoever intends to appeal to the superior court must observe time limitation. Once the suit or appeal is caught in the web of time limitation, even for a single day, such law knows no mercy, like a merciless sword, which cuts deep to offenders of time limitation. There are numerous decisions on this point of law which I need not to refer them hereto.

However, in respect to this appeal, I took time to consider inquisitively on the grounds raised by the appellant that if there is any blame, the court shoulder it. Thus, revisited the court's electronic filing systems and if it has any challenge as submitted by the learned counsels. Above all, I ordered a clerk in charge at the filing department if at all there was any challenge as disclosed by the appellant's advocate. One Shukuru Mohamed Killo, an incharge of electronic filing section at the Integrated Justice Center Morogoro, affirmed by an affidavit dated 5th May, 2022 that the E-filing on JSDS2 encountered with serious challenges between February and March 2022 in submission and generation of bills. Thus, confirmed to have accepted hard copy filing of the appeal on 24th February, 2022.

Moreover, he was invited for questioning by advocates on 17th June, 2022. He responded positively on the challenges encountered with



electronic filing. Thus, outside his ability for he is not an expert on Information Technology, also he is not a lawyer but a mere court clerk.

Having heard all what happened in filing this appeal, I am satisfied that electronic filing system had some challenges, thus the hard copy of the Memorandum of appeal was filed on 24th February, 2022 but due to technological problems, the online filing was effected on 4/3/2022. In such circumstances, any delay was not caused by the appellant, if any, the blame may be directed to the court itself for failure of the court clerk to observe the governing rules on electronic filing.

For the reasons so stated, I proceed to order that the appeal was filed timeously on 24th February, 2022. Thus the objection is dismissed with no order as to costs.

I accordingly order.

Ruling delivered in chambers this 22nd day of June, 2022

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P.J. NGWEMBE

JUDGE

22/6/2022

Court: Ruling delivered in chambers on this 22nd day of June, 2022 in the presence of Mr. Kelvin Kachinga for Msando learned advocates for Applicant, and Mr. Salim Gogo for Thomas Mathias Advocate for the Respondents.

Right to appeal to the court of appeal explained.



A handwritten signature in blue ink, appearing to be "P.J. NGWEMBE", is written above the printed name.

P.J. NGWEMBE

JUDGE

22/6/2022