

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO.2 OF 2022**

*(Originating from Civil Case No.235 of 2019 Kinondoni District)*

**HASSAN NGONYANI.....1<sup>ST</sup> APPELLANT**

**LESCA HASSAN .....2<sup>ND</sup> APPELLANT**

**BEACHFRONT LIMITED .....3<sup>RD</sup> APPELLANT**

**VERSUS**

**HENRY MICHAEL DOMZALSKI.....1<sup>ST</sup> RESPONDENT**

**GEORGIA KAMINA.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 28/09/2022*

*Date of Ruling: 5/10/2022*

**POMO, J**

The Appellants herein were the defendants in Civil Case No.235 of 2019 Kinondoni Court at Kinondoni. The Judgment was against their favor and it was delivered on **13<sup>th</sup> October, 2012 Hon. D.D. Mlashani, RM.**



The Appellants are aggrieved with the decision as such on **13<sup>th</sup> January, 2022** they filed this appeal which contain two grounds of appeal, to wit: -

- 1. That having substantially discredited the inventory tendered by the respondent (exhibit PE3) showing list of property alleged to have been trespassed upon and converted by the appellants, the District Court erred in law and in fact in relying on the same and granting the Respondent USD 30,000 in specific damages*
- 2. That the District Court erred in law and in fact in awarding the Respondent Tsh 15,000,000 in general damages whereas the Respondent did not lead any evidence in his testimony in chief that he was praying for, and was entitled to, such relief.*

The first respondent in this appeal has raised a Preliminary Objection on point of law against the appeal to the effect that the Appeal is hopelessly time barred, the notice of which being filed in this court on 6<sup>th</sup> April, 2022.

The objection raised was heard on 28/09/2022 whereby the Appellants stood represented by Edson Mbogoro, the learned advocate while the first respondent was represented by Killey Mwitasi, learned advocate too.

Submitting in support of the raised preliminary objection, Mr. Mwitasi argued that their objection is on time limitation against the present appeal. He contended that the suit the subject of this appeal was regulated by the

**Civil Procedure Code, [Cap.33 R.E.2019]** by way of plaint, the Written Statement of Defence and the proceedings thereto.

Mr. Mwitasy argued further that the judgment, the subject of this appeal is Civil Appeal No. 235 of 2019 Kinondoni District Court, Hon. Mlashani, RM which was delivered on **13/10/2021** while this appeal, Civil Appeal No.2 of 2022 stand filed in this court on **13/1/2022** being **ninety-three (93) days** from the date the judgment was pronounced by the trial court. This is contrary to **Item 1 of Part II to the Schedule of the Law of Limitation Act, [Cap. 89 R.E.2019]** which sets time limit of **ninety (90) days** within which to file an appeal. He concluded by submitting that the appeal herein was filed out of time by three day hence time barred. He prayed the appeal be dismissed with costs

In reply, Mr. Mbogoro, the learned counsel for the appellant conceded to the raised preliminary objection with reservation that the appeal was lodged out of time by one day and not three days as alleged by the counsel for the 1<sup>st</sup> Respondent.

As for costs, he prayed for lenience of the court that each part be ordered to bear its own costs and left the same for discretion of the court.

This court, having gone through the trial court record, it is in agreement with both counsel that the trial court judgment was delivered on **13/10/2021** by Hon. D.D. Mlashani, RM and the appeal herein stand filed in this court on **13/1/2022**. The court find merits in this uncontested objection raised by the 1<sup>st</sup> Respondent that the Appellants' appeal is hopelessly time barred for being filed beyond the prescribed ninety (90) days contrary to **Item 1 of Part II to the Schedule of the Law of Limitation Act, [Cap. 89 R.E.2019]**. The provision provides thus: -

***"Item 1. An appeal under the Civil Procedure Code where the period of limitation is not otherwise provided for by any written law .....ninety days".***

That said, the Appellants' appeal is hereby declared to be incompetent before the court for being filed out of time as such the court has no jurisdiction to entertain the time barred appeal

Having so found the appeal to be time barred, what is the way forward then? The answer to this is **section 3(1) of the Law of Limitation Act, [Cap. 89 R.E.2019]** which provides as follows: -



*"S.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 therefor opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence**".*

Guided by the above provision of the law, this appeal is hereby dismissed with costs. It is dismissed with costs because there is no plausible reason advanced by the appellants to deny the 1<sup>st</sup> respondent his costs

It is so ordered.

Right of Appeal explained

Dated at Dar es Salaam this 5<sup>th</sup> day of October, 2022



  
Musa K. Pomo

Judge

5/10/2022

This ruling is delivered on this 5<sup>th</sup> October, 2022 in presence **Sauli Santi**,  
advocate for the Appellants and **Killey Mwitasi**, advocate for the first  
Respondent



A handwritten signature in blue ink, appearing to be "Musa K. Pomo".

Musa K. Pomo

Judge

5/10/2022