

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO.103 OF 2022

(Originating from Civil Appeal No. 107 of 2021 in the District Court of Rufiji at Rufiji)

ATHUMANI NGONWE MPATE..... APPELLANT

VERSUS

SAIDI ABDALLAH NGAMENYA.....RESPONDENT

RULING

Date of Last Order: 07/10/2022

Date of Ruling: 13/10/2022

Kamana, J:

Aggrieved by the decision of the District Court of Rufiji in Civil Appeal No. 103 of 2022, the Appellant Athumani Ngonwe Mpate preferred this appeal against Said Abdallah Ngamenya, the Respondent. In the hearing of the said appeal, the Appellant was represented by Mr. Leslie Koini, learned Advocate whilst the Respondent was not legally represented.

After hearing both parties, this Court was set to draft the Judgment. However, it came to the mind of the Court that the appeal was filed out of the time as per section 25(1) (b) of the Magistrates Courts Act, Cap. 11 [RE.2019]. According to that section, appeals emanating from the District Court in exercise of its appellate or revisional jurisdiction are required to be filed within thirty days from the date of the decision of the Districts Court. The said section reads:

'(1) Save as hereinafter provided—

(a) in proceedings of a criminal nature, any person convicted of an offence or, in any case where a

district court confirms the acquittal of any person by a primary court or substitutes an acquittal for a conviction, the complainant or the Director of Public Prosecutions; or

(b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.’ (Emphasis added).

From the records, the judgment against which the appeal was preferred was delivered on 23rd June, 2022. The appeal was filed electronically on 25th July, 2022 and court fees were paid on 29th July, 2022. If you count days from 24th June, 2022, thirty days lapsed on 23rd July, 2022. Hence, the appeal was filed electronically two days later after lapsing of thirty days. Further, the court fees were paid some days later after the expiration of thirty days.

In view of that, this Court invited the Parties to address it on whether the appeal was filed within the time prescribed by section 25(1)(b) of the Magistrates Court Act. In his submission, the learned Counsel submitted that the appeal was filed electronically on 25th July, 2022 being thirty two days from 23rd June, 2022 when the judgment of the District Court was pronounced. He contended that according to section

19(2) of the Law of Limitation Act, the day when the judgment was pronounced is excluded in counting the limitation period. In view of that, he was of the position that by excluding the 23rd June, 2022, the last day for filing the appeal was 23rd July, 2022.

He further submitted that since 23rd July, 2022 was Saturday, the appeal was filed electronically on the next working day which was Monday of 25th July, 2022. He contended that Rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 (GN. No. 148 of 2018) stipulate that the document is considered to have been filed when it is electronically filed before midnight, East African time, on the date it is submitted. It was his submission that the appeal was filed within the time though payment of fees was affected on 29th July, 2022. To substantiate his position, the learned Counsel submitted an extract of the electronic system which depicts that the appeal was submitted on 25th July, 2022.

In buttressing his stance, the learned Counsel referred this Court to persuasive decisions of this Court of **GGN Construction Ltd v. George Johansen T/I Magefa Timber Supply**, Misc. Civil Application No.33 of 2020, **FINCA Microfinance Bank Ltd v. Patrick Joshua Sanga**, Revision Application No.97 of 2021 and **Epimael Nko v. Frida Malya**, Misc. Land Application No. 6 of 2022.

On the other hand, the Respondent, being a lay person, did not have useful arguments. He prayed this Court to struck out the appeal.

At this juncture, the issue for determination of this Court is whether the said appeal was filed within the time stipulated under section 25(1)(b) of the Magistrates Courts Act.

At the outset, I agree with the learned Counsel that after excluding the date when the impugned judgment was pronounced (23rd June, 2022), the thirtieth day was 23rd July, 2022 which was Saturday. I further agree with the learned Counsel that 23rd July, 2022 being Saturday the next working day was 25th July, 2022. To me, the appeal was electronically filed within the thirty days stipulated in section 25(1)(b) of the Magistrates Court Act.

The question now is electronic filing under Rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 in the absence of payment of court fees a filing in the eyes of the law? To determine this question, I think it is pertinent to reproduce Rule 21(1) of the Electronic Filing Rules as follows:

'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.'

In interpreting Rule 21(1), this Court has divergent positions. The first position is to the effect that once the document is submitted through the electronic filing system, the same is considered to have been filed. The second position takes the opposite as it considers the document submitted through electronic filing system as completely filed upon the payment of court fees. This Court, in the case of **Emmanuel Bakundukize (Kendurumo) and Others v. Aloysius Benedictor Rutaihwa**, Land Case Appeal No. 26 of 2020 expounded the two positions as follows:

*'The First school of thought in this court is of the opinion that the filing of an appeal/application is considered when the appeal/application electronically registered in this court, regardless of payment of the fees and date of filing hard copies (see: **Mohamed Hashil v. National Microfinance Bank Ltd (NmB Bank) (supra)**. The reasoning of this school is that the electronic system is recognized by the law as a current means of filing documents in our courts as per the Electronic Filing Rules. The other school thinks that it is upon payment of court fees where registration is said to have been initiated (see: **Camel Oil (T) Ltd v. Bahati Moshi Masabile & Bilo Star Debt Collector (supra)** and **Mailande Augustine Mpemba v. Pius Rwegasira & Two Others**, Land Appeal No. 23 of 2020). The reasoning of this school is that the law in Electronic Filing Rules has not changed the law, procedure and practice of payment of court fees to be the recognition of registration of suits in courts.'*

It was in line of the first position that the learned Counsel for the Appellant contended that submission of the appeal through the electronic filing system establishes a proper filing regardless of non payment of court fees within the time.

However, it has been the practice of courts in Tanzania that payment of court fees is a condition precedent for any proceedings to be considered

as submitted before the Court. In this regard, despite the provisions of Rule 21(1) of the Electronic Filing Rules, 2018, a complete submission of the documents before the Court is considered to be effected when Court fees are duly paid. This practice has been stressed in **John Chuwa v. Athony Chiza** [1992] TLR 233; **Adamson Mkondya and Another v. Angelina Kukutona Wanga**, HC-Misc. Land Application No. 521 of 2018; **Misungwi Shilumba v. Kanda Njile**, HC- (PC) Civil Appeal No. 13 of 2019; **Camel Oil (T) Ltd v. Bahati Moshi Masabile & Bilo Star Debt Collector**, HC-Civil Appeal No. 46 of 2020; and **Mailande Augustine Mpemba v. Pius Regasira and Two others**, Land Appeal No 23 of 2020.

In the case of Mailande Augustine Mpemba's (Supra), the Court stated:

' ..it is settled law that for purposes of calculating limitation period where date of filing was contested, unless it was filed inform a pauperis it is date of exchequer receipt that counted unless through a formal application for extension of time/ which is not the case here/ it was sufficiently established,' (a) that for the purposes of payment the applicant was late in the day availed the control number (b) that the exchequer receipt was backdated (c) that the delay was caused by the Registry Officers in action.

In the case at hand, the impugned judgment was pronounced on 23rd June, 2022 and payment of fees for instituting the appeal was effected on 29th July, 2022 which was almost four days after the lapse of thirty

days. In such circumstances, it is clear that the appeal before this Court was filed out of time.

That being the position, the appeal is struck out. No order to costs.

It is so ordered.

Right to appeal explained.

DATED at DAR ES SALAAM this 13th day of October, 2022.



KS KAMANA

JUDGE



Delivered at Dar es Salaam in Chambers this 13th day of October, 2022
in the presence of both Parties.