

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

(DAR ES SALAAM DISTRICT REGISTRY)

**AT DAR ES SALAAM**

**PC. CIVIL APPEAL NO. 132 OF 2021**

(From the decision of the District Court of Kibaha at Kibaha in Civil Appeal No.09 of 2021, originated from Civil Case No.40 before Mkuza Primary Court)

**PASTOR BARAKA E. MSHUMA..... APPELLANT**

**VS**

**STANLEY ELIPHAS MRA ..... RESPONDENT**

Last order date: 5/8/2022

Date of Judgement: 30/09/2022

**JUDGEMENT**

**MANGO, J**

The Respondent Stanley Eliphas Mra instituted Civil Case No. 40 of 2021 before Mkuza Primary Court on behalf Walter Cristosia Mbando claiming payment of Tshs. 8,561,449/- being the value of building materials borrowed by the Appellant, Pastor Baraka Shuma. The trial Court ruled in favour of the Respondent and ordered the Appellant to pay a total of Tshs. 11, 621,449/- which comprises of the outstanding debt Tshs. 7,621,449/- and general damages Tshs. 4,000,000/-. Aggrieved by the decision of the trial Court, the Appellant appealed before the District Court of Kibaha via Civil Appeal No.

09 of 2021. The appeal was dismissed for being time barred. The Appellant approached this Court armed with three grounds of appeals which read as follows: -

- 1. That, the District Court of Kibaha erred in law and fact to hold that the appeal was time barred without considering the fact and the law relating to electronic filing process**
- 2. That the District Court of Kibaha erred in law for failure to consider the Appellants submission in respect of computation of time limit when the documents are filed electronically**
- 3. The District Court of Kibaha erred in law by holding that the copy of judgement is not a necessary document in appeals.**

On 30<sup>th</sup> June 2022 when the appeal was called for hearing, the Appellant was represented by Advocate Jethro Turyamwesiga while the Respondent appeared in person. The Court granted a prayer by the Respondent to have the appeal argued by way of written submissions.

In his submission in support of the Appeal, the Appellant Counsel abandoned the third ground of appeal. He submitted on the remaining two grounds of appeal.

On the first ground of appeal, the learned counsel submitted that the Appellant filed his appeal within time. He explained that, the judgement of

the Trial Court was delivered on 22<sup>nd</sup> July 2021. The Appellant had 30 days to file appeal and the 30 days expired on Saturday 21 August 2021. The Appellant filed his appeal electronically on 23<sup>rd</sup> August 2021 at 12:7:58. He cited Rule 21(1) the Judicature and Application of Laws(Electronic filing) Rules which recognises electronic filing and the case of **Mohamed Hashil versus NMB Bank Ltd** Revision No. 106 of 2020 High Court of Tanzania, Labour Division in which my brother, Hon. Mwipopo J considered the date the application was filed electronically to be the date of filing as opposed to the date the hardcopies of the application were brought to the Court.

On the second ground of appeal he argued that the Court did not consider the fact that the Appellant filed his appeal electronically. He is of the view that had the Court considered the appeal was filed electronically on 23<sup>rd</sup> August 2021, it couldn't have held that the Appeal was time barred merely because the appeal was physically processed by the Court on 27<sup>th</sup> August 2021.

In his reply submission, the Respondent insisted that the Appellant filed his appeal beyond the stipulated time limit. He argued that, the allegations that the Appellant filed his appeal electronically on 23<sup>rd</sup> August 2021 cannot serve the appeal as time limit for appeal lapsed on 21<sup>st</sup> August 2021. He also

disputed the act of the Appellant to attach evidence regarding his electronic filing of the appeal to his submission. Relying on the physical Court records, he argued that, Court record indicates that, the Appeal was filed on 27<sup>th</sup> August 2021 and not 23<sup>rd</sup> August 2021 as alleged by the Appellant.

The Respondent argued further that, the Judicature and Application of laws (Electronic filing) Rules 2018, GN. 148 of 2018 recognises electronic filing but it does not do away with manual filling system. He is of the view that, in establishing when the appeal was filed, the Court need to consider its physical records and the date of payment of filing fees. To buttress his views, he cited the case of **Muhusin Ramadhani Salim versus Hossein Haji and Another**, Misc. Land Application No. 716 of 2021, High Court of Tanzania, Land Division at Dar es salaam and the case of **Omary Shamte Ngweya versus Rahma Ally Mjie**, Misc. Land Application No. 186 of 2021, High Court of Tanzania at Dar es salaam in which my sister Hon. Mgeyekwa, J disregarded allegations that the matters were filed electronically due to lack of evidence to prove the alleged electronic filing. The Appellant had no rejoinder.

I have carefully gone through the submissions from both sides and Court records. It not disputed that, Civil Case No. 40 of 2021 was determined by



Mkuza Primary Court on 22<sup>nd</sup> August, 2021 and the copy of judgment was readily available on the same date. The only dispute is whether the appeal before the District Court, Civil Appeal No. 9 of 2021 was filed on time. In determining whether the appeal was filed within time or not, the first appellate Court had to consider when the appeal was instituted. It should be noted that the Judiciary of Tanzania has two modes of filing cases before its courts, physical filling system and electronic filing system. The two filing system, physical and electronic filing systems have equal status although the Judiciary is moving towards paperless recording system which if attained, physical filing system will no longer exist.

Physical Court Record indicates that the appeal was filed on 26<sup>th</sup> August 2022 as the date when the Appellant paid filing fees. Record establishes further that filing fees were paid via control number 991400492679 with a bill reference Number 921238065144387 and receipt number FH349101629983430 was issued by the Court to acknowledge payment of the filing fees on 26<sup>th</sup> day of August, 2021 at 16:10:30. However, the Appellant explained that, he filed his appeal electronically on 23<sup>rd</sup> August 2021 before physically approaching the Court. According to him, after filing his appeal electronically, registration of the appeal which was done physically

by the Court was finalised on 26<sup>th</sup> August 2021 that is why the physical Court record indicates that the appeal was filed on 26<sup>th</sup> August 2021. He attached a printout receipt which was generated by the system after he had filed his appeal electronically. I find it to be proper for such evidence regarding electronic filing of the appeal to be attached in the Appellant's submission because, the preliminary objection was heard by way of written submissions and the nature of the preliminary objection required proof as to when the appeal was filed.

According to the print out, the appeal was submitted for filing on 23<sup>rd</sup> August 2021 and the bill was generated by one Eunice Lugaina. The bill was paid via control number 991400492676. Similar information is contained in the receipt issued by the Court except the date that the appeal was submitted for filing which does not appear in the receipt issued by the Court. The law governing electronic filing system provides for the time when the document is considered to have been filed electronically. Rule 22(a) of the Electronic Filing Rules provides that: -

Where a document is filed with, served or delivered or otherwise conveyed to the Registrar or Magistrate in charge using the electronic filing service and

is subsequently accepted by the Registrar or Magistrate in charge, it shall be deemed to be filed served, delivered or conveyed.

The Appellant's appeal before the District Court was accepted, billed and given a control number electronically on 23<sup>rd</sup> August 2021. Applying the cited provision, I find the Appellant to have filed his appeal electronically on 23<sup>rd</sup> August 2021. It should be noted that, circumstances in the appeal at hand are very different from circumstances in the cases cited by the Respondent. In the two cases, **Muhusin Ramadhani Salim versus Hossein Haji and Another**, Misc. Land Application No. 716 of 2021, High Court of Tanzania, Land Division at Dar es salaam and the case of **Omary Shamte Ngweya versus Rahma Ally Mjie**, Misc. Land Application No. 186 of 2021, High Court of Tanzania at Dar es salaam, there was no evidence regarding the alleged electronic filing of the documents. In the appeal at hand the Appellant produced a printout establishing when the disputed appeal was presented for filing electronically.

In such circumstances, the Court ought to have relied on its electronic records instead of the physical record which was degenerated later after the electronic filing process. Since the Judiciary is now in transition from manual filing to electronic filing system with intent of having all Court record stored

electronically, Court officers need to be conscious of electronic records of cases whenever required.

I agree with the Respondent that time limit for appeal expired on 21<sup>st</sup> August 2021 which was a Saturday. Ordinarily, the appeal which was filed on 23<sup>rd</sup> August would have been filed out of time. However, the law, section 60(1)(e) of the Interpretation of Laws Act, [Cap.1 R.E 2019] excludes weekends and public holidays in computation of period fixed by the law for pursuing a legal remedy if such days fall on the last day of pursuing the legal remedy. The term used for those days is excluded day. The provision reads;

*60.-(1) In computing time for the purposes of a written law-*

*(e) where the time limited for the doing of a thing expires or falls upon an excluded day, the thing may be done on the next day that is not an excluded day;*

Section 60(2) of the Interpretation of Laws Act, defines what are excluded days for purposes of section 60 of Interpretation of laws Act. The section reads;

*(2) For the purposes of this section, "excluded day" means Saturday, Sunday or public holiday throughout or in that part of which is relevant to the event, act, thing or proceeding concerned.*

Applying the provision of section 60(1)(e) the appeal which ought to have been filed by 21<sup>st</sup> August 2021 which was a Saturday was properly filed on 23<sup>rd</sup> August 2021 as the next day following two excluded days, 21<sup>st</sup> August 2021, a Saturday, and 22<sup>nd</sup> August 2021, a Sunday.



For that reason, I find Civil Appeal No. 9 of 2021 before the District Court of Kibaha to have been filed within time. The appeal is hereby allowed and case file be returned to the District Court of Kibaha so that the appeal can be determined on merits preferably by a different Magistrate. Costs to follow events

Dated at Dar es Salaam this 30<sup>th</sup> September 2022



**Z.D. MANGO**  
**JUDGE**