

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 180 OF 2022

*(Appeal from Judgement and Decree of the District Court of Kinondoni before Hon.
Madam J, J Rugemalila, SRM dated 10th August, 2022 in Petition No. 158 of 2020)*

MERINA MARCELINO APPELLANT

VERSUS

GEORGE MANGULA RESPONDENT

RULING

5th & 14th December, 2022

MWANGA, J.

The preliminary objection on the point of law was raised by the respondent against Civil Appeal No. 180 of 2022 that the appeal is hopeless time barred.

The respondent made reference to item I part II of the Law of Limitation Act, Cap. 89 R.E 2019 that since there is no law prescribing the period of limitation in respect of the matter, the appeal was supposed to be lodged within 90 days. It was submitted further that, the

appeal before this court was filed on 01/04/2022 and the judgment was delivered on 10/08/2022, hence the appeal is time barred and the same shall be dismissed with costs.

The learned counsel for the appellant vehemently refuted the arguments by the respondent. It was argued that, the appeal from the District court of the High court shall be filed by a Memorandum of Appeal attached with the Decree of the Court. According to the available records, certified copies of the judgment and Decree were issued to them on 13/09/2022.

On her part, pursuant to Section 19(2) of the Law of limitation Act, the time for preparation and obtaining certified copies of the judgment is excluded on account of time to appeal to the High Court. It was her considered view that, once such time is excluded, the court shall find that the appeal was being lodged within the prescribed time according to law.

In support of her arguments, she cited the authorities in **Bukoba Municipal Council Vs New Metrol Mechanalise**, Civil Appeal No. 374 of 2021; (CAT (Unreputed) at page 11 and **Fannuel Mentiri Ngunda Vs Herman Mantiri Nguda & 2 others**, Civil Appeal No. 8 of 1995 TLR at page 155 and 156.

On the rejoinder, the learned counsel argued further that application of Section 19 (2) of the law of limitation Act is not automatic, one has to seek leave of the court for that matter.

I have same through submission of both parties and the issue is whether Section 19 (2) of the Law of Limitation Act provide for an automatic exclusion of time for obtaining a copy of decree or Judgment.

With the aid of authorities cited, specifically in the case of **Bukoba Mineral Council Vs New Metro Mechandise** (Supra), the Court of Appeal held that;

'Section 19 (2) and (3) of the LLA excludes a period spent in securing copies of judgment and decree in computing time prescribed for lodging an appeal, an application for leave to appeal, or an application for review of judgment.'

At page 11 of the typed judgment when the court addressed the issue whether an exclusion of time provided under Section 19 (2) of the LLA is subject to an order of the court, it land this to say;

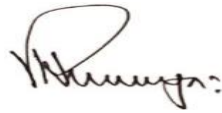
***`Given the clear position of the law that Section 19 (2) and (3) of the LLA provides for time requisite for obtaining a copy of the decree or judgement appealed from when computing the period of limitation for lodging an appeal, the High Court ought to have automatically excluded the period between the date of judgment and the date of obtaining a copy of the impugned judgment*`**

The availed record shows that the judgment, which is the subject of the appeal, was delivered on 10/08/2022 and the appeal was filed on 15/11/2022 subsequently, copies of judgment and decree was obtained on 13/09/2022.

On the basis of the above authorities and considering submission of the parties if the time for obtaining copies of judgment and decree is excluded as required by law, the appeal was within time for up to 13/12/2022.

For the foregoing, the preliminary objection is hereby dismissed with costs.

It is so ordered.

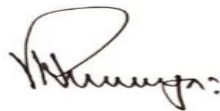


H. R. MWANGA

JUDGE

14/12/2022

ORDER: Ruling delivered in Chambers this 14th day of December, 2022 in the presence of learned counsel for the Respondent and absent of the applicant.



H.R MWANGA

JUDGE

14/12/2022