

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)
AT DAR ES SALAAM**

PC. CIVIL APPEAL NO. 138 OF 2021

(Arising from the decision of the District Court of Kinondoni at Kinondoni in Civil Appeal No. 25 of 2020, delivered on 30th August, 2021)

IREN LABAN MKINGA APPELLANT

VERSUS

RANDA MICROFINANCE LTD RESPONDENT

RULING

16th, & 22nd February, 2022

ISMAIL, J.

An appeal is pending in this Court, against the decision of the District Court of Kinondoni at Kinondoni in Civil Appeal No. 25 of 2021. The decision was delivered on 30th August, 2021, to the appellant's utter dismay and dissatisfaction, hence her decision to institute an appeal to this Court. The two-ground petition of appeal, which was instituted in this Court on 30th September, 2021, has encountered an impediment, by way of a preliminary objection. The respondent's contention is that the appeal is time barred.



When the matter came up for hearing, the appellant was represented by Mr. Tenzi Anthony, her duly appointed attorney, while the respondent enjoyed the services of Mr. Abdul Buberwa, learned counsel.

In his brief submission in support of the objection, Mr. Buberwa argued that, whereas the impugned decision was filed on 30th August, 2021, the instant appeal was instituted on 30th September, 2021. Learned counsel contended that reckoning from the date of the decision, the appeal was filed outside the time prescription enshrined in section 25 (1) (b) of the Magistrates' Court's Act, Cap. 11 R.E. 2019. It was Mr. Buberwa's contention that the appeal is time barred. Seeking inspiration from decisions of the Court in ***Majila Fadhili v. Vedasto Kahungu***, HC-(PC) Civil Appeal No. 54 of 2020; and ***Upendo Travel Coach v. Almas Twaha Msuya***, HC-Civil Appeal No 5 of 2020 (both unreported), the latter of which was to the effect that an appeal that is adjudged time barred should be struck out, learned counsel urged the Court to strike out the appeal.

In reply, the appellant maintained that the appeal is timeous. He argued that the word used in section 25 (1) (b) of Cap. 11 is ***after***, meaning that counting of the days under the provision begins on the day that succeeds the date on which the decision was delivered. He argued that this interpretation is also in line with the requirement provided in section 60 of



the Interpretation of Laws and General Clauses Act, Cap. 1 R.E. 2019. He contended that if days are counted from 31st August, 2021, the appeal was filed within time.

Mr. Buberwa maintained that even with the respondent's computation, the appeal is time barred as 30 days expired on 29th September, 2021 and not 30th September, 2021.

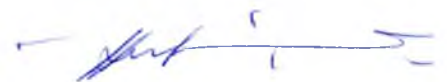
The issue for determination is whether the appeal is time barred.

The starting point in the disposal is reproduction of section 25 (1) (b) of Cap. 11, whose substance is the reproduced as hereunder:

"(1) Save as hereinafter provided-

*(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 therefrom to the High Court;** and the High Court may extend time for filing an appeal before or after such period of thirty days has expired."* [Emphasis supplied]

As unanimously submitted by both parties, time frame for instituting appeals to this Court is 30 days and, as the appellant submitted, reckoning of the time begins a day **after** the date of the order or decision sought to



be appealed against. This is consistent with section 60 (1) (b) of Cap. 1 which provides as hereunder:

"In computing time for the purposes of a written law-

(a) N/A

*(b) where a period of time is expressed to be reckoned from, or **after**, a specified day, **that day shall not be included in the period.** [Emphasis is added]*

What is undisputed is the fact that time for instituting the appeal began to run against the appellant on 31st August, 2021. This means, as Mr. Buberwa submitted, the appeal was filed in this Court on the 31st day, a day in excess of the 30 days which would be conformed to if the appeal was filed on 29th September, 2021. Since the filing of the appeal was late by one day the same is incompetent or untenable. While a day may be considered paltry, I am mindful of the Court's earlier decision in ***John Cornel v. A. Grevo (T) Limited***, Civil Case No. 79 of 2006 (unreported), in which it was observed:

"However unfortunate it may be for the Plaintiff, the Law of Limitation on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web."

The cited excerpt is in line with a canon of justice which is to the effect that, where a case is admitted by a court and it is discovered that the same



was instituted out of time and without leave of the court, the same deserves to be ignored for want of jurisdiction. The clear message here is that the question of time limitation is a fundamental jurisdictional issue (See: ***Hezron Nyachiya v. Tanzania Union of Industrial and Commercial Workers and Organisation of Tanzania Workers Union***, CAT-Civil Appeal No. 78 of 2001; ***East African Development Bank v. Blue Line Enterprises Ltd***, CAT-Civil Appeal No. 101 of 2009; ***MM Worlwide Trading Company Ltd & 2 Others v. National Bank of Commerce Ltd***, CAT-Civil Appeal No. 258 of 2017 (all unreported).

Having resolved the grand issue on the competence of the appeal, the next crucial issue is with respect to the next course of action. Mr. Buberwa has urged the Court to strike out the appeal with costs. In my considered view, the position taken by Mr. Buberwa is specious, and my contention is predicated on section 3 (1) of the Law of Limitation Act, Cap. 89 R.E. 2019, which provides as hereunder:

*"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 therefore opposite thereto in the second column, **shall be dismissed** whether or not limitation has been set up as a defence."*[Emphasis added]



What we discern from the foregoing is that the matter that is adjudged time barred faces a dismissal. This position has been underscored in several decisions of the Court of Appeal. In ***Tanzania National Roads Agency (TANROADS) & Another v. Jonas Kinyagula***, CAT-Civil Appeal No. 471 of 2020 (unreported), the superior Court adopted, with approval, its decision in ***Ali Shabani & 48 Others v. Tanzania National Roads Agency (TANROADS)***, CAT-Civil Appeal No. 261 of 2020 (unreported), which held as follows:

"In the light of the clear statement of the law, we are unable to disagree with the learned trial judge. He rightly held that the appellant's suit was time barred it being instituted beyond 12 months from the date on which the time accrued. As the suit was time barred, the only order was to dismiss it under section 3 (1) of the LLA. Accordingly, we find no merit in ground 2 and dismiss it."

In consequence, I uphold the respondent's objection and, invoking the provisions of section 3 (1) of Cap. 89, I dismiss the appeal with costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 22nd day of February, 2022.


M.K. ISMAIL

JUDGE

