

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA**

**PC. CIVIL APPEAL NO. 42 OF 2020**

**ROMANA JACOB TEMBA.....APPELLANT**

**VERSUS**

**ABU TWALIB KEYA..... RESPONDENT**

**(From the Judgment of Dodoma District Court-P.G. Mushi, RM)**

**Dated 26<sup>th</sup> day of June, 2019**

**In**

**Civil Appeal No.61 of 2018**

.....

**RULING**

**13<sup>th</sup>&20<sup>th</sup>May,2022**

**MDEMU, J:.**

In this appeal, counsel for the Respondent one Fred Peter Kalonga filed a notice of preliminary objection to the effect that, the appeal filed by the Appellant is out of time. On 25<sup>th</sup> of August 2020, the Appellant filed this appeal after she was granted leave to appeal out of time by this Court (Siyani, J.) on 24<sup>th</sup> of July, 2020.

Parties appeared before me on 13<sup>th</sup> day of May, 2022 represented by Mr. Fred Kalonga, learned Advocate and Dr. Emmanuel Baruti, learned Advocate who had the brief of Mr. Baraka Mkami learned Advocate with

instruction to proceed, for the Respondent and the Appellant respectively arguing this preliminary objection.

It was the submissions of Mr. Fred Kalonga that, appeal filed on 25<sup>th</sup> of August, 2020 in compliance with order of the court dated 24<sup>th</sup> of July, 2020 enlarging time to appeal is well beyond the prescribed period of thirty (30) days stated in the order. In his view, the Appellant ought to have filed the appeal latest by 23<sup>rd</sup> of August 2020. Given this, he urged me to dismiss the appeal for being time barred.

Having the floor, Dr. Baruti conceded that, on 24<sup>th</sup> of July, 2020 this court granted leave to the Appellant to appeal out of time and filed the appeal on 24<sup>th</sup> of August, 2020 as per the bank pay in slip. He added that, according to the calendar, the appeal was not filed on 23<sup>rd</sup> of August, 2020 which was Sunday. He thought this day be excluded and therefore the appeal filed was in time.

In rejoinder, the learned counsel for the Respondent insisted that, as the pay in slip indicates that the payment was effected on 25<sup>th</sup> of August, 2020, then that was the day the appeal was lodged because lodgement of

the appeal and payment date have to be effect the same day. These are what parties told the court.

It is not disputed that the Appellant filed Miscellaneous Civil Application No.46 of 2019 asking this Court to extend time for appealing. The application was allowed in which; the Appellant was given thirty (30) days within which to appeal. It is equally not contested according to the record that, this appeal had its way to court on 25<sup>th</sup> of August,2020. A simple arithmetic progression is indicative the appeal to have been filed within thirty-two (32) days excluding the 24<sup>th</sup> of July, 2020 being the date of the order.

As expounded in the foregoing, the appeal was filed out of time ignoring prescripts of the order of this Court requiring the appeal be brought within thirty (30) days. I have taken concern of the learned Counsel for the Appellant convincing this Court to hear the appeal on the ground that the last date towards time limitation was Sunday, thus be excluded in computation of time. In my view, this may not be the case. What is quite obvious, as ably submitted by Mr. Kalonga, in the instant appeal, the date of paying filing fee was the date of lodging the appeal.

Again, this being not an application for extension of time, it may not be easy to determine if there was sufficient cause for the delay as legally required. See in **Mikocheni Builders Merchants Limited vs. Daikin Tanzania Limited, Miscellaneous Civil Application No.210 of 2018** and in **Kassimu Hassan Msuri (Administrator of Estate of the Late Hassan Msuri) vs. Hassan Athuman and 4 Others, Miscellaneous Land Application No. 21 of 2021** (both unreported)

On that stance, the remedy for an appeal filed out of time without leave of the court to extend time is to dismiss it, as I hereby do. Each part to bear own costs.

It is ordered accordingly



**Gerson J. Mdemu**

**JUDGE**

**20/05/2022**

**DATED at DODOMA** this 20<sup>th</sup> day of May, 2022



**Gerson J. Mdemu**

**JUDGE**

**20/05/2022.**