

**IN THE HIGH COURT OF TANZANIA
IN THE SUB DISTRICT REGISTRY OF DAR ES SALAAM
AT DAR ES SALAAM**

LAND APPEAL NO. 14 OF 2020

(Originating from Misc. Civil Application No. 39 of 2020, From Temeke District Court)

SALOME EINHARD HAULEAPPELLANT

VS

JUMA ALLY TAMALAU.....1ST RESPONDENT

HAMISI SEIF MZUZURI.....2ND RESPONDENT

SELEMANI S. KAMBANGWA.....3RD RESPONDENT

IDD ALLY MTANDIKA.....4TH RESPONDENT

EINHARD DOMINICUS HAULE.....5TH REPENDENT

Date of Last Order: 31/08/2022

Date of Ruling: 24/02/2023

R U L I N G

MGONYA, J.

On the **06th November 2020**, the Appellant filed an appeal before this Court against Juma Ally Tamalau and 4 Others. The Appellant was being represented by **Mr. Mluge Karoli** learned Advocate while **Mr. George Muhanga** learned Advocate was representing the 1st Respondent. In filing the reply to the Appellant's appeal, the 1st Respondent filed a notice of preliminary to the effect that:

"The appeal is misconceived and bad in law as it is hopelessly out of time".

The Respondent in support of the objection submitted that the Appellant is appealing against the decision delivered on **08/07/2020** which was dismissed for being *Res judicata*. Being aggrieved by the said decision, the Appellant on **06/11/2020** lodged this Memorandum of Appeal which was more than **120** days after the decision was made.

The Respondent states that according to **Part II Item No. 1 of the Law of Limitation Act Cap. 89 [R. E. 2019]** the appeal ought to have been filed within **90 days**. It is therefore clear that this appeal is hopelessly out of time.

Moreover, the Respondent submits that the Appellant is automatically trying to apply the provisions of **section 19 (2) of the Law of Limitation Act**, that provides for computation of time on appeals. However the Appellant has not shown any proof to when copies of the ruling and drawn order were availed to her nor any document was shown that she even requested for the same. An automatic application for exclusion of days would have been applied if the Appellant had proved when the said documents were availed to her. The Appellant being late had to apply for an extension of time before filing the appeal.

In reply to the submissions for the objection, the Appellant strongly argued that, she obtained the copy of ruling on **17/08/2020** and that this fact needs evidence which is not part of a preliminary objection. The 1st Respondent has not ascertained as to when the Appellant obtained the copy of ruling. The Appellant avers that on **July 2020** after delivery of the said Ruling, the Appellant wrote a letter requesting for the same. She was then supplied with uncertified ruling and a wrong drawn order which did not reflect the ruling and on **30/07/2020**. The Appellant states to have notified the Court through a letter to rectify the said drawn order and to verify the ruling and the same were supplied on **17/08/2020**.

Further, the Appellant asserted that, for reasons reiterated above since it is undisputed that the appeal was filed out of time after **120 days**. There is a rebuttable presumption that it is time barred. The appeal is consequently saved by the provisions of ***section 19 (2) of the of Limitation Act***. The position in this provision has the effect of excluding the period of which the party was waiting to be supplied with copy of judgment and decree. The Appellant emphasizes that the appeal is not out of time as it is secured under ***section 19 (2) of the law of limitation Act***.

I have carefully considered the submissions made by the parties. The major question for consideration at this juncture is ***whether the appeal before this Court is hopelessly out of time.*** The 1st Respondent has argued for the objection while the Appellant has argued against the objection.

I have taken ample time to go through the records before me on the bases of the objection raised. The Respondent states that the ruling was delivered on the **08/07/2020** and an appeal by the Appellant was filed on the **06/11/2020**, hence the appeal had delayed for **120 days**. The Respondent does not dispute the said dates but goes further in stating that she filed the appeal on **06/11/2020**. Before that she was waiting to be supplied with the copies of ruling and drawn order of which at the time of supply had errors and not that she was negligent. Follow-ups had to be made for the same to be rectified. After rectifying the errors, the same were availed to her on **17/08/2020**.

From the records, the Appellant has not in any way demonstrated the efforts were made as stated, that letters were written to request for the copies of the said ruling and drawn order. Or even the letter informing the Court of the errors reflected in the drawn order.

Going through the copy of ruling so as to ascertain as to when the certified copy was availed to the Appellant the same do not show as to what date the certified copies were supplied to the Appellant. The Ruling and drawn order only bare the signature and office stamp of the trial Court and the date of delivery.

I am aware that both parties in their submissions have made reference to ***section 19 (2) of the law of limitation Act Cap. 89 [R. E. 2019]***, that provides for computation of time for the period that a party has requested for copies of a judgement until when the same has been availed. **From the records and for the interest of Justice, I am considering the above provision in alignment with submission by the Appellant.** Having being supplied with a drawn order that contained an error can not be faulted to the Appellant. The said drawn order would never be fit for Court's records unless rectified.

However, since the ruling and drawn order availed to her does not reveal as to when the Court furnished her with the said copies, of which is the duty of the Court to show as to when the certified copy was availed to the Appellant. A benefit of doubt is accorded in this circumstance since no party shall be injured nor prejudiced from the same. I find it prudent that the appeal be

heard on merits for **Substantive Justice** to have been seen to be done.

Therefore, having said all of the above and in consideration of the technical delay caused by the Court. ***This Court finds the objection raised has no weight and is hereby by overruled. The Appeal to proceed on merits.***

It is so ordered.

Costs to follow the event.



L. E. MGONYA

JUDGE

24/02/2023