

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MOROGORO DISTRICT REGISTRY**

**MOROGORO**

**CIVIL APPEAL NO. 1 OF 2023**

*(Arising from Civil case no 15 of 2021 at Morogoro District Court)*

**EFTA EQUIPMENT LOANS ..... APPELLANT**

**VERSUS**

**ARMSTRONG CHARLES KIWELO ..... RESPONDENT**

**RULING**

Date of Last Order: 14/02/2023

Date of Ruling: 03/03/2023

**MALATA, J**

This appeal traces its origin from the decision of District Court of Morogoro which ended in favour of the Plaintiff (the respondent herein). Being aggrieved by the decision of the trial Court the respondent (the appellant herein) filed an appeal to this court challenging the said decision.

Before the matter came up for hearing, it was confronted with a Notice of preliminary objection based on points of law to the effect that the appeal is bad in law for being filed out of time.

On the date of hearing, both parties appeared armed with advocates, the appellant was represented by Mr. Christopher Mgalla, learned advocate,

while the respondent appeared through Ms. Alpha Sikalumba, learned advocate. The point of objection was argued orally.

Submitting in support of the preliminary objection, Ms. Alpha stated that, the appeal is time barred as the impugned decision was delivered on 28/10/2022 while appeal was lodged on 04/01/2023 which is sixty days from the date of the judgement. The matter was dealt by the District Court in the exercise of civil jurisdiction thus a party aggrieved by the decision therefrom has to appeal to the High court in accordance with section 43(3) of the Magistrate's Courts Act, Cap 11 R.E 2019 (MCA). The Act does not provide for time limitation within which to appeal to the High Court, as such the provision of Law of limitation Act, Cap 89 R.E 2019 come into play. Ms. Alpha submitted that, paragraph 2 to part II to the schedule of Law of Limitation applies.

Ms. Alpha submitted further that; the appeal was to be filed in the High court within 45 days as paragraph 2 to part II to the schedule of Law of Limitation.

Also Ms. Alpha submitted that, the consequence of failure to file appeal within time gets an answer from Section 3(1)(2)(b) of the Law of Limitation, that is to dismiss the appeal. Finally, Ms. Alpha implored this court to dismiss the appeal with costs for being preferred outside the time limit prescribed by the law.

Responding to the submission by the respondent, Mr. Mgalla stated that the appeal arose from Civil Case no. 15/2021 and the same was governed by Civil Procedure Code, Cap 33, R.E 2019 (CPC). He further submitted that; it is not true that the appeal was governed by The Magistrate's Courts Act. He further stated that, Section 3 of the CPC defines the court

to mean District Court, Resident Magistrate Court and the High Court. The CPC is silent on the time limit to appeal to the High Court as such Paragraph 1 of Part II of the Law of Limitation was invoked. The paragraph provides for 90 days' time limit, and thus this appeal is within time. Finally, he submitted that, the appeal, is within time thus prayed for dismissal of preliminary objection with costs.

By way of rejoinder, Ms Alpha Sikalumba stated that the original jurisdiction which triggered the filing of the matter at the District Court. That the Magistrates Court Act establishes District Court, Resident Magistrate courts and provides for its jurisdiction. This is the specific law which provides for what should be done and the pecuniary jurisdiction. Section 4 of the Magistrates Court Act provides for establishment of the District Court and the Court of Resident Magistrate and Section 40 talks about powers. Therefore, the Magistrate Court Act is a specific Law governing all matters at District Court, Residents Magistrates Court of which the original jurisdiction is not provided under CPC. Where there is specific and general Law the specific law prevail over the general law, herein specific Law being the Magistrates Court Act and the general law is the CPC.

Now before determining as to whether or not the appeal between the parties is hopelessly out of time, I wish to resolve the problem that has arisen from the submissions by counsel for the parties concerning the applicable law and the period within which an appeal lies from the decision of the District Court or the decision of the Resident Magistrates' Court in the exercise of their original jurisdiction. Is it the Magistrates Courts Act or the Civil Procedure Code? Is it 30 days or 90 days?

Before moving any further, it is pertinent for ease of reference to import the relevant provisions which have been discussed by both counsel in relation to the current matter before us.

Learned Counsel for the respondent submitted that the applicable law is the Magistrates' Courts Act specifically section 43 (3) which reads;

*(3) Subject to the provisions of any law for the time being in force, all appeals, references, revisions and similar proceedings from, or in respect of, any proceedings of a civil nature in a district court or a court of a resident magistrate which are authorized by law shall lie to and be heard by the High Court.*

Item 1 part II provides

- 1. An appeal under the Civil Procedure Code where the period of limitation is not otherwise provided for by any written law ninety days.*

Item 2 part II provides

- 2. An appeal for which no period of limitation is prescribed by this Act or any other written law forty-five days.*

The heading of section 43 is Appellate and Revisional Jurisdiction, etc, of the High Court in relation to Proceedings Originating in District Courts and Courts of Resident Magistrate. This provision of the law provides that all appeals, references, revisions and similar proceedings from, or in respect of any proceedings of a civil nature in a District Court or a Court of Resident Magistrate which are authorised by law shall lie to and heard by the High Court.

There is no time provided for appeal against the decision of the District Court or Court of Resident Magistrate exercising its original jurisdiction in civil cases.

An appeal of this type in my view as correctly pointed out by Mr. Mgalla the learned advocate that the Magistrates Court Act provides only where to file an appeal but the suit subject of this appeal was regulated by Civil Procedure Code including filing of plaint, Written Statement of Defence and other subsequent proceedings.

This court therefore, finds no merit in this objection raised by the respondent that this appeal is hopelessly time barred for being filed beyond the prescribed time. As the law requires the appeal under the Civil Procedure Code, from the District Court or the Court of Resident Magistrate which the time to appeal has not been provided for by the law to be 90 days.

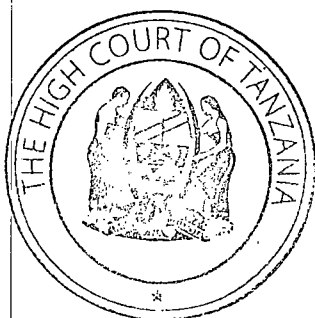
This was also the position in the case of **Mohamed Salimini vs. Jumanne Omari Mapesa**, Civil Application no. 345 of 2019 where the court of appeal confronted with the case arising from the District Court of Dodoma and one of the issues before the High Court was whether the appeal was within time, The Court of Appeal had this to say about the appeal from the District Court to the High Court.


*In the present case, after the trial court decree was struck out by the Court, the duty to procure a corrected and proper decree was upon the appellant, and this duty was expected to be exercised within reasonable time while mindful of the time prescribed for lodging and appeal before the High Court, **ninety (90) days**.*

All said and done, I am inclined to agree with the learned counsel for the appellant that the appeal was filed within time. Consequently, I dismiss the preliminary objection raised by the respondent. Each party to bear its own cost. The appeal shall proceed on merits.

It is so ordered.

**Dated at Morogoro** this 03/03/2023.



  
**G. P. MALATA**  
**JUDGE**  
03/03/2023