

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 127 OF 2022

(Originating from the District Court of Ilala, Civil Case No. 28 of 2019)

WINFRED MICHAEL BATAKANWA t/a

MARILYN NURSERY & PRIMARY SCHOOL.....APPELLANT

VERSUS

EFC TANZANIA MICROFINANCE BANK LIMITED.....RESPONDENT

RULING

4/11/2022 & 06/02/2023.

Luvanda, J.

The Respondent above mentioned raised a legal point of preliminary objection via a notice filed on 5/10/2022 that the appeal is hopeless time barred.

Ms. Cleophance James learned Advocate for the Respondent argued that this appeal was filed out of time contrary to the order of this Court dated 10/6/2022, which ordered the appeal to be filed within 30 days from the date of corrected judgment and decree. He submitted that the appeal was supposed to be filed on 13/9/2022 which was a deadline, instead the Appellant remained idle and filed on 14/9/2022, after time had expired. He

submitted that time started to run from 13/8/2022 when the judgment was corrected.

In opposition to the preliminary objection, G.S. Ukonga learned Counsel submitted that the copy of corrected judgment was handed over to him on 15/8/2022 and lodged this appeal on 14/9/2022, which logically was filed within 30 days from the date the Appellant was aware of the corrected judgment. That the corrected judgment was signed on 13/8/2022 which was on Saturday none working day and the Appellant could not be aware of the judgment on 13/8/2022.

That the day followed was Sunday also none working day. He argued that the appeal is not time barred.

It is true that when the first appeal of the Appellant to wit Civil Appeal No. 42/2021 was struckout on 10/6/2022, the Appellant was given leave to re-file it after obtaining the corrected judgment and decree.

The said order is clear that the same ought to be refilled within 30 days counting from the date of a corrected judgment and decree.

The version of a corrected judgment and decree was signed on 13/8/2022. The Appellant allege to have obtained the same two days

thereafter, to wit on 15/8/2022. After being supplied with the corrected judgment and decree, the Appellant stayed with it till on 14/9/2022 when he presented it from filing. This was after the expiry of 30 days as per the order of this Court.

The argument that on 13/8/2022 when the corrected judgment and decree were signed it was on Sunday none working day, is immaterial. Equally an argument that the Appellant became aware of the corrected judgment and decree on 15/8/2022 when he collected it, is untenable. To my view, the issue of knowledge does not arise and cannot be inferred, when the order of this court is unambiguous that the appeal ought to be filed within 30 days from the date of corrected judgment and decree.

I wonder why the Appellant stayed all long from 15/8/2022 to 14/9/2022 while re-filing the appeal was the issue of copying and pasting from the previous appeal.

The appeal is barred by limitation. The appeal is struck out with costs.



E.B. Luvanda
JUDGE
6/02/2022

