

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)**

AT IRINGA

CIVIL APPEAL NO. 10 OF 2021

(Arising from Civil Appeal No. 7/2022 of the District Court of Iringa before Hon. F. G. Kessy, RM, Original Civil Case No. 101/2021 of the Primary Court of Iringa District at Bomani before Hon. R. Telemkeni, PCM.)

TECLA WAPALILA

APPELLANT

VERSUS

WITO EZEKIEL DZOMBE

RESPONDENT

JUDGMENT

7th March & 2nd May, 2023

I.C MUGETA, J:

The respondent had sued the appellant together with another person in the Primary Court of Iringa District at Bomani on a claim of Tshs. 23,600,000. The respondent sued them because they were administrators of the estate of the late Godfrey Wapalila whom he owed that sum of money. The trial court decided in favour of the respondent. Consequently, the appellant was ordered to pay the respondent the claimed amount. The appellant's appeal to the District Court was struck out for being filed out of time. Still aggrieved, the appellant filed the present appeal on a single ground that the appellate court erred both in law and fact in holding that the appeal was time barred.

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The appeal was argued by way of filing written submissions. The appellant was represented by Mr. Seleman Kaganda, learned advocate whereas the respondent was represented by Mr. Joshua Chussy, learned advocate.

In supporting the appeal, the appellant's counsel submitted that the previous appeal was duly registered in the Judicial Statistical Dashboard System (JSDS) on 21st June 2022 and payment done on 24th June 2022. Thus, in his view, the appeal was within time in accordance with Rule 21(1) and (2) of the Judicature and Application of Laws (Electronic Filing) Rules of 2018 and the holding in the cases of **John Chuwa v. Antony Sizya [1992] TLR 233, Unita Exports Ltd v. EAC (1970) 403** and **Maliselino B. Mbipi v. Ostina Martine Hyera**, Misc. Civil Application No. 8 of 2022, High Court of Tanzania – Songea (unreported).

The respondent's counsel opposed the appeal as the appellant did not produce evidence to prove that her appeal was timely filed in the JSDS on the date alleged. In addition to that, he submitted that Rule 21(1) and (2) of the Electronic Rules and the **John Chuwa case** cited by the appellant provide that the filing date of a document is deemed to be the date of payment of fees. Thus, the appellant had a duty to show that the fees were paid on the date he alleges. That the appellant's memorandum of



appeal was endorsed by the court's stamp on 11/7/2022, thus, this is the filing date. This was also reflected in the ruling of the court which showed that the appeal was received in the JSDS on 11/7/2022. Therefore, the appellate court was justified in holding that the appeal was time barred as the appellant had not applied for leave before filing her appeal.

I have considered the submissions by both parties and the record. Indeed, the appellant's petition of appeal before the District Court was endorsed by the stamp of the court on 11/7/2022. The appellant alleges that her appeal was timely filed through the JSDS on 22/6/2022 and payment done 24/6/2022. However, the JSDS, which I have consulted, shows that Civil Appeal No. 7/2022 was filed on 22/7/2022. This is a period of almost 57 days from when the impugned judgment was delivered which is 26/5/2022. The appellant has not presented a print out of the JSDS report he received nor his payment receipt which I have failed to trace in the court file. Therefore, the District Court was correct in holding that the appeal was filed out of time.

The first appellate court having held that the appeal was filed out of time proceeded to strike it out. The law is clear per section 3 (1) of the Law of Limitation Act, [Cap. 89 R.E 2019] that the legal remedy for a time barred

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matter is to dismiss it. It is also the holding in the case of **Hezron Nyachiya v. Tanzania Union of Industrial Commercial Workers and another**, Civil Appeal No.79 of 2001, (unreported). The appeal was, thus, supposed to be dismissed. I, therefore, substitute the striking out order with a dismissal order.

In the event, this appeal fails and is, hereby, dismissed with costs.




I.C. MUGETA

JUDGE

02/05/2023

Court: Judgment delivered in the presence of the appellant and the respondent and Joshua Chussy, advocate for the respondent.

Sgd. I.C. MUGETA

JUDGE

02/05/2023