

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 45 of 2023

(Originating from Ilala District Court, in the Civil Case No. 36 of 2022)

INSURANCE GROUP OF TANZANIA APPELLANT

Versus

NASIBU BAKARY MBWAMBO RESPONDENT

RULING

14/06/2023 & 23/06/2023

BWEGOGGE, J.

The Respondent herein above named commenced civil proceedings against the appellant herein for breach of contract in the District Court of Ilala, claiming a total of TZS 105,000,000/= as specific damages, among others. The appellant defaulted to appear in court and the case was heard

ex parte. The trial court entered judgment in favour of the respondent. Hence this appeal.

Upon being served with the summons and the pleading filed in this court, the respondent raised a preliminary objection on point of law that the appeal before this court is time-barred and moved this court to dismiss the appeal with cost.

The appellant and respondent herein were represented by Messrs Grayson Laizer and Bwire Benson Kuboja, learned advocates. The counsel above named opted to argue the preliminary objection by written submissions. The substance of their arguments follows hereunder.

In substantiating the preferred preliminary objection, Mr. Kuboja submitted that the appeal herein is time-barred on the ground that the *ex parte* judgment in Civil Case No. 36 of 2022, which is a subject matter of this appeal, was delivered on 29th December, 2022 and the appeal herein was lodged on 11th April, 2023, making a total of 103 days from the date the trial court pronounced its judgement. Hence, this appeal was filed out of time contrary to Item 1 of Part II to the Schedule of the Law of Limitation Act [Cap 89 R: E 2019] which requires the appeal to be filed

within 90 days. The counsel concluded that the appeal herein should be dismissed according to section 3(1) of the same Act.

On the other hand, Mr. Laizer, counsel for the appellant, asserted that, the preliminary objection raised by the defendant lacks substance. He argued that Rule 21(1) of the Judicature and Application of Laws (Electronic Filing Rules) GN No. 148 of 2018, instructs that all pleadings should be filed electronically through the Judicial Statistical Dashboard System(JSDS) and be admitted by the deputy registrar before physical filing in court. That the appeal herein was filed electronically on the 31st of March, 2023 at 17:48 hrs which was the 90th day of the limitation period as the attached printout indicates. Therefore, the counsel asserted, it is misleading on part of the respondent's counsel to **conclude** that the appeal was filed out of time. The counsel cited the case of **Geita Gold Mining vs Christian Christopher** (Labour Revision No.90 of 2020) [2021] TZHC 5457 to bring home his point.

Based on the above premises, the counsel concluded that the appeal herein was filed in time. He prayed this court to overrule the preliminary objection advanced by respondents with costs.

In rejoinder, the respondent's counsel maintained his stance that the appeal was beyond statutory time. He argued that the annexed printout from the JSDS lacks the toolbar that shows the logo of the Judiciary of Tanzania and the user name, let alone the wanting status of an entry. Conclusively, the counsel opined that even if it is observed that the appeal was filed on 31st March, 2023, it is obvious that the appeal was filed after 92 days from the date of judgement which is beyond statutory time for filing appeal.

The issue for determination is whether the preliminary objection advanced herein has substance.

It is common ground that the time frame for filing an appeal to the High Court for matters originating from the District Courts is provided under Item 1 of Part II to the Schedule to the Law of Limitation Act whereas the period of limitation provided forth is strictly ninety days. The appellant's counsel contended that he filed his appeal electronically on 31st March, 2023 and it was physically presented on 11th April, 2023.

Notwithstanding the wanting information of the purported electronic filing, I opt to agree with the appellant's counsel in that the appeal herein was electronically filled on 31st March, 2023. However, the computation

of days from the date of judgment to the date of the purported electronic filing ascertains that the appeal was filed after 92 days. Therefore, it remains an uncontroverted fact that the appeal was filed beyond the statutory period of 90 days which is beyond the prescribed period. The provision of section 3(1) of the Law of Limitation Act Cap 89 R:E 2019, provides viz:

*"Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, **shall be dismissed whether or not limitation has been set up as a defence.**"*

Based on the above premises, it is patently clear that this court cannot do otherwise but let the unsympathetic sword of Damocles fall on the appellant's head despite his counsel's unflinching effort to insulate him.

In view of the foregoing, and subject to the foregoing clarifications, this court finds the preliminary objection advanced by the respondent with substance. It has been ascertained beyond controversy that the appeal herein was filed beyond the statutory time. The preliminary objection on

point of law is hereby sustained. The appeal herein is hereby dismissed with costs.

So ordered.

DATED at DAR ES SALAAM this 23rd June, 2023.



O. F. BWEGOGA

JUDGE