

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(DISTRICT REGISTRY OF MOROGORO)**

**AT MOROGORO**

**PC CIVIL APPEAL NO 6 OF 2023**

*(Arising from Civil Appeal No. 1 of 2021 at Ulanga District Court Originating from*

*Civil Case No. 29 of 1996 of Ilonga Primary Court)*

**SUZANA MAWANJA.....APPELLANT**

**VERSUS**

**ALLY NAMSA.....1<sup>ST</sup> RESPONDENT**

**HASSAN MYOLOWA.....2<sup>ND</sup> RESPONDENT**

**ALLY MWICHANDE.....3<sup>RD</sup> RESPONDENT**

**SAID MYOLOWA.....4<sup>TH</sup> RESPONDENT**

**MARILENA MCHWANGA.....5<sup>TH</sup> RESPONDENT**

**ABDALLAH NAMSA.....6<sup>TH</sup> RESPONDENT**

**MOHAMED MYOLOWA.....7<sup>TH</sup> RESPONDENT**

**JUDGMENT**

*Hearing date on: 5/9/2023.*

*Judgment date on: 19/9/2023.*

**NGWEMBE, J.**

This is a civil appeal emanating from a judgement of the district court of Ulanga, from Civil Appeal No. 1 of 2021 arising from the judgement and decree meted by Ilonga primary court. At trial, the court was determining an application for execution of court decree awarded in Civil Case No. 29 of 1996.

In order to fully understand the genesis of this appeal, it is imperative to have its brief historical facts. Originally, the appellant herein unsuccessfully sued the respondents in Civil Case No. 29 of 1996, before Ilonga Primary Court. That case was dismissed. Being aggrieved with that decision, she appealed to Ulanga District Court in Civil Appeal No. 8 of 1997. This time the decision was in her favour and the court declared that, she was the lawful owner of the disputed plot of land. Consequently, in year 1998 she applied for execution before Ilonga primary court. However, the respondents emerged and successfully applied for extension of time in Misc. Civil Application No. 174 of 1999 before the High Court of Tanzania at Dar es Salaam. The extension of time was for filing an appeal out of time against the judgement of Ulanga district court in Appeal No. 8 of 1997. The High Court granted the applicants fourteen (14) days, nevertheless the respondents herein never lodged their appeal as per the court order.

The appellant was aggrieved with the order of extension, consequently, she lodged an appeal to the Court of Appeal in Civil Appeal No. 60 of 2003. The Court of Appeal on 19<sup>th</sup> February, 2008 did strike out her appeal for want of prayers. Thereafter she decided to file an execution on 14<sup>th</sup> August, 2019 before Ilonga Primary Court. Unfortunate, same was dismissed on the account of being time barred.

She challenged the dismissal by filing an appeal against such decision via appeal No. 1 of 2021 before Ulanga District Court, whereas the decision of Ilonga Primary Court was upheld, thus her appeal was dismissed forthwith. Still aggrieved, but this time was caught in a web of time limitation, but being so smart, she successfully applied for extension of time via Civil Application No. 4 of 2022 before this court. Lastly, she filed this appeal basing on one grievance only, namely: -

*The trial court erred in law and fact for failure to compute the statutory time properly as a result it reached a decision that the application for execution is time barred.*

On 15<sup>th</sup> August, 2023 when the case was scheduled for hearing Ms. Kay Zumo, learned advocate for the appellant prayed that this appeal be disposed of by way of written submissions, this court accordingly granted the prayer and proceeded to schedule for dates of filing their written arguments. Parties complied with the scheduling orders.

In support to the sole ground of appeal, the appellant submitted that, it is not true that her application for execution was time barred. According to her, it is the lower courts which failed to calculate time limitation properly. He pointed specifically at the first page, first paragraph of the trial court judgment which rightly stated that the applicant filed her application for execution, on 14/8/2019. However, the first appellate court mistakenly mentioned the date of 19/2/2020 in its judgement to be the date of filing the application for execution. The appellant referred to the case of **Zuleia Katunzi and Others Vs. Tanzania Ports/ Harbours Authority Civil Appeal No, 123 of 2019 (High Court Dar District Registry)** where it was recapitulated that the time limit for execution of a decree is twelve (12) years.

Added that the Ilonga Primary Court erroneously ruled that, the last order of the court was made in 2002 which was not the case. But last order of the court was that of the Court of Appeal in year 2008, rightly as the District Court observed, she argued. To her, the first appellate court was correct on timing of the last order, but failed to properly point on the date of filing execution in court. Similarly, Ilonga Primary Court had a correct view as to when the execution was filed, but missed to identify the date of the last order. It was the applicant's



illustration that the last order is that of the Court of Appeal issued on 2008 and since the appellant filed an execution on 2019, it means that the application for execution was within time, hence not time bared as it was only eleven (11) years that has lapsed.

The failure by the both lower courts to properly compute the time, made their respective decision be tainted with illegality. She therefore prayed that both decisions be quashed and set aside, costs of the appeal be granted.

In reply, the respondents submitted that, the lower courts were correct in their computation of time. Their decisions reached were correct. The application for execution was indeed time barred. That after the judgement of the District Court of Ulanga in Appeal No. 8 of 1997, the respondents filed an application of extension of time No. 174 of 1994 before High Court of Tanzania, at Dar es salaam, and on 21<sup>st</sup> December, 2001 the ruling was delivered granting them fourteen (14) days together with stay of execution which expired on 4<sup>th</sup> January, 2002, but they did not file their intended appeal and it is when the counting should have started. That appellant claims that the counting should have started on 19<sup>th</sup> February, 2008 after the dismissal of her appeal No. 60 of 2003 by the Court of Appeal is a misconception.

Thus, taking into consideration that the appellant submitted the application for execution on 14<sup>th</sup> September, 2019 after 17 years counted from 2002, thus, out of time limitation of 12 years.

Respondents added that, the appellant also sued the wrong party. Ally Namsa died long time ago, instead of suing the administrator namely Hamis Hassan Mbugira who was appointed by the court to administer the estate of the deceased. Further added that, the source of this appeal is Civil Case No. 29 of 1996 from Ilonga Primary Court and Appeal No. 8 of 1997 at Ulanga District Court. The claim involved twenty

The position of the law is crystal clear on the time limitation under the circumstance. Section 3 (1) of **The Law of Limitation Act [Cap 89 R.E 2019]** provides specific time limitation. For easy of reference the section is hereunder quoted: -

**Section 3 (1)** *"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.*

Item 21 of Part III of **the Schedule to the Law of Limitation Act [Cap 89 R.E. 2019]**, clearly provides for twelve (12) years as the time to enforce a court judgment, decree or order. Gleaned from the above cited provision of law, it is without doubt that, the law demands all proceedings instituted after the period of limitation be dismissed.

The trial court ruling rightly observed that the application for execution was filed on 14/8/2019. However, in computing time it took the date of 21<sup>st</sup> December, 2001 the last order. It had a further reasoning that as the decision entered granted 14 days to the respondents, then 4<sup>th</sup> January, 2002 was the date when 14 days expired. By using such formula, the court arrived into conclusion that, the application was time barred as seventeen (17) years had lapsed from 2002 to 2019.

The District Court of Ulanga was faced with the same issue on appeal and arrived into the same conclusion, but through a different formula. On its side, it considered the last order to be the 19<sup>th</sup> February, 2008 when the last decision was made by the Court of Appeal dismissing the appellant's appeal. Yet it erroneously took 29/9/2020 as the date



which the appellant filed her execution application, thus came into conclusion that the application was out of time.

It is not in contention that the squabbles started in Civil Case No. 29 of 1996 before Ilonga Primary Court. The case went its way up to the highest court in the hierarchy of our jurisdiction, that is, the Court of Appeal via Civil Appeal No. 60 of 2003. The Court of Appeal disposed of the case on 19<sup>th</sup> February, 2008.

That being the case, it will be unjust to reckon time of execution from 4<sup>th</sup> January, 2002 on expiry of the 14 days granted by the High Court to the respondent, while the appellant preferred an appeal against that decision. This fact was properly handled by the first appellate court. It correctly considered 19/2/2008 as the date from which time for execution started to run. It just missed the proper date which the appellant filed her execution application by taking 29/9/2020 instead of the correct date of 14/8/2019. Computing from 19/2/2008 up to 14/8/2019, it is equal to eleven (11) years. The applicant's application was therefore within time at the time of filing.

While the trial court applied the wrong principle in reaching to its decision, the district court had the correct principle but applied to wrong facts that it as well reached into the same verdict which the trial court had. It is the wrong facts used in computation that led the district court into a wrong verdict. Had it properly identified the date, it would have reached into a correct finding as it was well aware that time limitation for execution of court's decree is twelve (12) years. See also the case of **Zuleia Katunzi and Others (Supra)**.

It has been stated several times by this court and the Court of Appeal that, the essence behind executing a court decree is to let the decree holder enjoy the fruits of the court judgment without much hustle. See the cases of **African Banking Corporation Tanzania**

**Limited Vs. Mture Educational Publishers Limited, Commercial Case No. 73 of 2010.** Much as I insist on the importance of adhering to time limitation, it is as well important to cautiously and carefully deal with issues of time limitation where any mistake may prejudice the judgment debtor in the way that extinguishes the rights awarded by the court.

Consequently, this Court finds that the appeal has merits and same is allowed. The decision of the first appellate court, and Ilonga Primary court are hereby quashed and set aside. The appellant is allowed to proceed with execution of her court decree. Each party shall bear his or her own costs.

**Order accordingly.**

**Dated at Morogoro this 19<sup>th</sup> September, 2023**



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**P. J. NGWEMBE**

**JUDGE**

**19/09/2023**

**Court:** Judgement delivered at Morogoro in Chambers on this 19<sup>th</sup> day of September, 2023 in absence of both parties.

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**A. W. MMBANDO**

**DEPUTY REGISTRAR**

**19/09/2023**

**Court: Right to appeal full explained.**



A handwritten signature in blue ink, appearing to be "A. W. Mmbando".

**A. W. MMBANDO**

**DEPUTY REGISTRAR**

**19/09/2023**