

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR-ES-SALAAM SUB-REGISTRY)**

**AT DAR-ES-SALAAM**

**P.C. CIVIL APPEAL NO. 24 OF 2022**

**EMILINE MANASE MOLLEL ..... APPELLANT**

**VERSUS**

**DOROTHEA AMBROSE LUSOZI ..... RESPONDENT**

(Appeal from the Judgment and Decree of the District Court of Kinondoni at Kinondoni)

(L. Silayo, RM)

Dated 31<sup>st</sup> day of August 2021

In

(Civil Appeal No. 117 of 2020)

**JUDGMENT**

Date 14/08/2023 & 08/03/2024

**NKWABI, J.:**

The dispute between the parties is over an amount of money allegedly lent by the appellant to the respondent. The trial Court decided in favour of appellant for an amount of T.shs 9,800,000/=. On appeal to the district court, the 1<sup>st</sup> appellate court overturned the decision of the trial Court. The appeal was allowed by nullifying the proceedings and the decision of the trial court.

The appellant was aggrieved by the decision of the district court. She filed a petition of appeal on 19/04/2022 after obtaining leave to appeal out of time within 14 days of the ruling delivered by this Court on 01/04/2022.

The appeal is battered by a preliminary objection on point of law as follows:

1. The appeal brought in this honourable Court is time barred.

Anchored in the above legal point of preliminary objection, the respondent is praying this Court to dismiss the appeal with costs.

The counsel for both parties preferred to argue both the preliminary objection and the merits of the appeal together by way of written submissions. I permitted that approach under the authority of **Elizabeth Mpoki & 2 Others v. MAF Europe Dodoma**, Civil Application No. 436/1 of 2016 CAT (unreported) where it was stated that:

*"We heard the learned advocates first on the preliminary objection which had earlier on been lodged and proceeded to hear their arguments on the merits of the application to save time hoping that should we sustain it, that will be the end of the matter and if we overrule it, we will proceed to determine the merit of the application without the need of calling the parties again."*

On a reflection, however, and for reasons that will be apparent shortly, I will not endeavor to determine the appeal on merits rather on the preliminary

objection. Meanwhile, Mr. John Carol Chogoro, learned counsel, submitted for the appellant while the respondent drew and filed her submission in person though seems to be represented by Ms. Rehema Mmanga, also learned counsel who appears on the proceedings.

In her submissions, in support of the of the preliminary objection it was observed that the ruling on extension of time to appeal to this Court was handed down on 1<sup>st</sup> April 2022 and the appellant was given 14 days within which to file the appeal. It is the view of the respondent that the appeal was filed in October or November 2022, thus time barred. The copy served to her was altered, the respondent expressed. She reinforced her argument by the decision in **Ratma v. Cumarasamy & Another** [1964] 3 All ER 933 where it was stated that:

*"The rules of court must be obeyed and in order to justify the time during which some steps in procedure required to be taken there must be some material on which can exercise its discretion. If the law were otherwise, a party in breach would defeat the purpose of the rules which is to provide time table for litigation."*

In response, the counsel for the appellant, stated that the preliminary objection is misconceived. He asserted that the High Court extended the time within which to file the appeal on 11/04/2022 in Misc. Civil Application No. 559 of 2021 whereby 14 days were given for the appellant to lodge her appeal. She filed it electronically through JSDS2 in the High Court Dar-es-Salaam zone registry. It was admitted on 19/04/2022 and submitted the hard copy on 19/04/2022 where she was told she had to file the same in the District Court, which she did on 19/04/2022 and supplied with an exchequer receipt, Mr. Chogoro explained. He backed his argument with the case of **Mohamed Hashil v. National Microfinance Bank Ltd (NMB Bank)**, Labour Revision No. 106 of 2020, HC as to electronic filing. He prayed the preliminary objection be overruled with costs.

Stemming from the arguments of both parties, it occurs to me that the counsel for the appellant is fully aware of the legendary position of the law that a delay of even a single day has to be accounted for as held in **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 192/20 of 2016 CAT (unreported). He is also absolutely apprised of mundane law that the filing process completes when the filing fee, if required, is paid as stated in **Inter-export Ltd v Customs** [1970] E.A. 648, **Gregory Raphael v**

**Pastory Rwehabula** [2005] T.L.R. 99 and **John Chua v Anthony Siza** [1992] T.L.R. 233. In **Gregory's** case (supra) it was held by this Court, Luanda, J., as he then was, inter alia:

*"... and the filing process is complete when the petition of appeal is filed upon payment of the requisite court fees."*

The above position of the law would definitely shine light to the counsel of the appellant to the effect that the stance of the law as stated by this Court in **Hashil'** case (supra) is distinguishable, because that is a labour matter which is not subject of payment of filing fee, as opposed to the matter under consideration which payment of filing fees is mandatory save where exemption is granted, for instance suits involving the Government, which is not the case in this appeal. In this matter, the counsel for the appellant undisguisedly confesses the payment of filing fee was done on 19/04/2023. That being the position, the lodgment of the petition of appeal on the JSDS2 would not assist because without payment of the filing fee, the filing process would not be complete.

I got the impression I have revealed above from the attempt by the counsel for the appellant to claim that the ruling extending time within which to file

the appeal out of time was delivered on 01/04/2023 as stated in the proceedings instead of the date indicated on the coram (11/04/2022) which appears to be a slip of the pen (typing error). He also suggested, which is not borne by the record, that there is alteration on the copy supplied to appellant.


Because the ruling extending time to file the appeal was delivered on 01/04/2022, the time so extended lapsed on 15/04/2022. It follows therefore lodging the petition of appeal in the district court on 19/04/2022 was time barred because it was filed 4 days after expiration of the extended time. In the premises, the current appeal was hopelessly filed out of time contrary to section 25 (1) (b) of the Magistrates Courts Act Cap. 20 R.E. 2019, thus, I sustain the preliminary objection. For avoidance of doubt, I need not discuss the merits of this appeal owing to the fact that the appeal is time barred.

In conclusion, this appeal deserves to be dismissed for being time barred, and I proceed to so dismiss it with costs.

It is so ordered.

**DATED** at **KIGOMA** this 8<sup>th</sup> day of March 2024.



  
J. F. NKWABI  
**JUDGE**