

**UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**HIGH COURT OF TANZANIA**  
**BUKOB A SUB REGISTRY**  
**AT BUKOB A**  
**PC. CIVIL APPEAL NO. 35 OF 2023**

*(Arising from Civil Revision No. 5 of 2022 of Bukoba District Court from original Civil Case No. 178  
of 2019 of Bukoba Urban Primary Court)*

**RAMADHAN SELEMAN NURU .....APPELLANT**

**VERSUS**

**SAMBA SERVICE COMPANY LTD ..... 1<sup>ST</sup> RESPONDENT**

**JEOPRY PROTACE ..... 2<sup>ND</sup> RESPONDENT**

**RULING OF THE COURT**

Date of last Order: 27/02/2024

Date of Ruling: 07/03/2024

**BEFORE: G.P. MALATA, J**

Aggrieved by the decision of Bukoba District Court, the Appellant appealed to this court challenging the decision in Civil Revision No. 5 of 2022 of Bukoba District Court originating from Civil Case No. 178 of 2019 of Bukoba Urban Primary Court. When the matter came for hearing on 27/2/2024, this court *suo motto* raised the

point of law that, the appeal was time barred. In view thereof, this court invited the parties to appeal to address on the point of law raised *suo moto* by the court.

Both parties herein appeared unrepresented. The appellant argued that, the appeal is within time as the decision was delivered on 31/3/2023 and that he collected judgement on 17/4/2023 and filed petition of appeal on 22/5/2023. This is proved by exchequer receipt No. 24849441 for payment of prescribed fees whereby the filing fees was paid on 22/5/2023. The appellant explained further that, he is aware that the appeal has to be filed **within 30 days** from the date of decision but the appeal was filed after 35 days from the date of collection of judgment and being **52 days** from the date of judgment.

In his struggle to get away from being entombed by time bar, it became extremely impossible like a camel attempting to pass through a needle hole. Really mathematics never lie. The appellant found getting out of breath for lack of words to justify that, the appeal was within time. Finally, he raised up his hands and surrender to the dictates of law that, the matter was really time barred. He thus admitted that, the appeal was time barred as it was filed outside the time *limine* prescribed by the law. This marked the end of struggle by the appellant in his attempt to convince the court that, the appeal was within time.

In their brief reply, both respondents who appeared unrepresented submitted that, the appeal is time barred and prayed for dismissal of appeal with costs. However,

the respondents wanted to enjoy for fruits for dismissing the appeal no without injecting any energy or resources for researching and coming with the said point of law.

Having gone through the court records and appeal, it is apparent that, the petition of appeal was filed on 22/5/2023 while the decision was delivered on 31/3/2023. It is a well settled principle of law that, an aggrieved party by the decision of the District Court exercising appellate jurisdiction has to appeal in accordance with section 25 (1) (b) of the Magistrates' Courts Act, Cap. 11 R.E.2019.

section 25(1) (a) reads that;

*(1) Save as hereinafter provided-*

*(a) in proceedings of a criminal nature, any person convicted of an offence or, in any case where a district court confirms the acquittal of any person by a primary court or substitutes an acquittal for a conviction, the complainant or the Director of Public Prosecutions; or*

Section 25 (1) (b) reads;

*"In any other proceedings any party if aggrieved by decision or order of the District Court in the exercise of its appellate or revision jurisdiction may **within thirty days** after the date of the decision or order appeal there from to the High Court ....."*

It is therefore evident that, the appellant was aggrieved by the decision of primary court appealed to the District as first appellate court. Either party who is aggrieved by the decision of the District court exercising appellate or revisional mandates has to appeal to this court in accordance with section 25 of the Magistrates Courts Act, Cap. 11 R.E.2019. the marginal notice of the said section reads that;

*"Appeals etc., from district courts in their appellate and revision jurisdiction"*

On the strength of the above cited provision of law, it is evident that, the appellant is required to file appeal within **thirty (30) days** after decision appealed against. In the present appeal, the appellant lodged an appeal on 22/05/2023 whereas the district court delivered its decision on 31/03/2023. Counting from 31/03/2023 to 22/05/2023, it is clear **fifty-two (52) days** has passed. Thus, the appeal was filed out of time.

On the other hand, the appellant alleged to have collected decision appealed against on 17/04/2023 and filed appeal on 22/05/2023. Counting from 17/04/2023 to 22/05/2023, it is clear **thirty-five (35) days** passed which also confirms that the appeal was filed out of time. Both scenarios did not assist the appellant from being netted by time bar.

Courts and tribunals have no jurisdiction to entertain the matter was filed out of time, unless extension of time was sought and granted to file such suit out of time. Doing otherwise is to perpetuate illegalities.

The appellant agreed to have filed appeal out of time based on the analysis of facts and law referred herein above.

Having so said, it is trite law well propounded by court decisions that, the courts and tribunals have jurisdiction to try the matter which is time barred unless leave was sought and granted by the relevant authority to file such proceedings out of time. In the case of **Nbc Limited and Immma Advocates Vs Bruno Vitus Swalo**, Civil Appeal NO.331 of 2019, CAT-Mbeya the court held that;

*".....Courts are enjoined not to entertain matters which are time barred. Limitation period has an impact on jurisdiction. Courts lacking jurisdiction to entertain matters for which litigation period has expired."*

Further, while revisiting its previous decision in **John Barnabas Vs Hadija Shomari**, Civil Appeal No.195 of 2013, CAT and **Baklays Bank (T) Limited Vs Jacob Muro** Civil Appeal No.357 of 2009, CAT, it held that,

*"Consequently, in line with what we have endeavoured to traverse above, we hold that, the ward tribunal of Kinyangiri, lacked jurisdiction to entertain the land dispute which was lodged by the respondent because it was time*

*barred. As a result, the proceedings before the ward tribunal and those subsequent thereto, were a nullity and we nullify them."*

In the case of **D.P.P vs. Benard Mpangala and Two Others**, Criminal Appeal No. 28 of 2001, the court of appeal had these to say,

*"Admittedly, limitation is a legal issue which has to be addressed at **any stage of proceedings as it pertains to jurisdiction.** However, parties have to be given a right of hearing, especially as in this case where there was a need to give some explanation and even to tender proofs"*

In the case of **Sospeter Kahindi vs Mbeshi Mbashani**, Civil Appeal No. 56 of 20217 (unreported) the court held that:-

*"The question of jurisdiction of a court of law is so fundamental. Any trial of any proceedings by a court **lacking requisite jurisdiction** to seize and try the matter will be adjudged on appeal or revision".*

The question which follows next is what is the consequence of the appeal which is filed out of time. Reference shall be made to numerous courts' decisions to wit; the case of John **Cornel vs. A. Grevo (T) Ltd**, Civil case no. 70 of 1998 cited in the case of **Nyanza Folklore Research Institute**

**(NFRI 1985) vs. Mwanza City Council and others**, High Court of Mwanza, Land Case no. 04 of 2020 where it was held that;

*"However, unfortunate it may be for the plaintiff; **the law of limitation is on action knows no sympathy or equity. It is a merciless sword that cut across and deep into all those who get caught in its web**"*

The above position is cemented by section 3(1) and (2) (b) of the Law of Limitation Act

*(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.***

*(2) For the purposes of this section a proceeding is instituted-*

*(a) in the case of a suit, when the plaint is presented to the court having jurisdiction to entertain the suit, or in the case of a suit before a primary court, when the complaint is made or such other action is taken as is prescribed by any written law for the commencement of a suit in a primary court;*

*(b) in the case of an appeal, when the appeal is preferred either by filing a memorandum of appeal or in such other manner as may be prescribed by any written law;*

*(c) in the case of an application, when the application is made.*

In the case of **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, Civil Appeal no 19 of 2016 the court of appeal had these to say;

*"Finally, therefore there was no basis for the High Court Judge to strike out the complaint that had been presented in court after expiration of 60 days.....In view of that position of the law, it is our conclusion that, the learned High Court Judge should have **resorted to section 3(1) of the Act to dismiss** the complaint instead of striking it out as she did."*

Having ascertained that, **PC. CIVIL APPEAL NO. 35 OF 2023** is time barred, in the exercise of mandates under section 3 (1) and 2 (b) of the Law of Limitation Act, Cap.89 R.E. 2019, I hereby dismissed the appeal. Supplementary, it is ordered that, each party shall bear its own cost as the point of law was raised by the court, *suo motto*.



**IT IS SO ORDERED**

**DATED** at **BUKOBA** this 7<sup>th</sup> March, 2024.



G. P. MALATA

**JUDGE**

07/03/2024

**DELIVERED** at **BUKOBA** in chamber this 7<sup>th</sup> March, 2024 in the presence of  
Appellant and respondents.



G. P. MALATA

**JUDGE**

07/03/2024

