

**IN THE HIGH COURT OF TANZANIA
TANGA SUB- REGISTRY
AT TANGA**

PC. CIVIL APPEAL NO. 16 OF 2023

*(Arising from the decision in Civil Appeal No 03 of 2023 of Tanga District Court;
originating from Civil case No. 80 of 2023 of Pongwe Primary Court.)*

JUMA MOHAMEDI MSIMBE

APPELLANT

VERSUS

RICHARD OKELLO JEREMIAH

RESPONDENT

JUDGMENT

K. R. Mteule, J

15/4/2024 & 15/4/2024

The dispute leading to this appeal was originally determined by Pongwe Primary Court in Tanga District within Tanga region in **Civil case No. 80 of 2023**. It arose when the Appellant Juma Mohamed Msimbe who was the Plaintiff in the Primary Court claimed to have given **TZS 7,000,000** to the Respondent Richard Okello Jeremiah who was the Defendant in the Primary Court for performance of an assignment but the Appellant never performed the assignment and the money was never returned to the him. The Primary Court decided the suit in favour of the Appellant and ordered the Respondent to pay the amount of TZS 7,000,000.00 and compensation of TZS 500,000.00.

Being dissatisfied by the decision of the Primary Court, the Respondent preferred an appeal in the District Court of Tanga vide **Civil Appeal No.**

3 of 2023 with 5 grounds of appeal. Basing on one ground which was the fourth, the 1st Appellate Court found serious miscarriage of justice and nullified the proceedings of the Primary Court and ordered retrial.

The appellant was not pleased with the decision of the District Court hence, he preferred this appeal challenging the decision of the District Court on the following grounds.

1. THAT, the Hon. Appellate, Magistrate's decision lacks reasoning, supporting authority or law.
2. THAT, the Hon. Appellate Magistrate was legally wrong in failing to take judicial notice that the duty of prosecuting or defending a case in civil suits is upon the parties that should not be shifted to the Court.
3. THAT, the Hon. Appellate Magistrate's decision is irrational resulting to miscarriage of justice on the part of the Appellant.

The Appellant therefore prayed for this appeal to be granted with costs.

The parties argued the appeal by written submissions. In his submission, the Respondent alerted the court that there was a preliminary objection which was not determined. The Respondent proceeded to argue the

preliminary objection which was challenging the timeliness of the Appeal. Unfortunately, the Appellant did not file any response to the submission concerning the timeliness of the appeal.

From the record, I noted and confirmed the existence of the preliminary objection referred to by the Respondent which was not argued by an oversight. Cognizant of this oversight, and taking into account that timeliness of a matter constitutes a legal issue which ought to have been determined before the merits of the appeal, the court called upon the parties to submit on the matter. The court is also cognizant of the principle that legal issues can be determined at any stage of proceedings hence found a need to determine this legal issue raised in the preliminary objection.

Parties appeared before the court on 15th April 2024 to submit on this legal issue of time which was raised in the preliminary objection and argued in the respondent's submission against the appeal.

The respondent told the court that all of his arguments concerning the preliminary objection were in the written submission. He prayed for the court to adopt what is in the written submission as his submission and determine the Preliminary objection accordingly.

In is submission, the respondent argued that the appeal was filed out of time contrary to Section **25 (1) (b) of the Magistrates' Courts Act Cap 11** and the **Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules 1963 (GN 312/1964)**, as it was filed beyond 30 days after the Judgement was delivered.

According to the Respondent, the impugned decision was delivered on 28th July, 2023 and the Appeal was filed on 22nd September, 2023 which is 57 days after the Judgement was delivered. In his view, the Appeal was supposed to be lodged before this Court on or before 26th August 2023, and short of that the Appellant ought to have applied for extension of time. He referred to the case **of ISACK KAHWA V. BANDORA SALUM (PC) CIVIL APPEAL NO. 6 OF 2020 (UNREPORTED)** where it was held that.

"It is uncontroverted fact that appellant's appeal originates from the primary court as the decision sought to be impugned is from Civil appeal No. 37 of 2018 originating from Civil Case No.166 of 2018. This being the case, the appellant ought to have filed his appeal with thirty days after the District Court's decision".

On his side, the Appellant did not dispute the assertion that the appeal is time barred. He submitted that he brought it out of time because the

District Court Clerk did not give him the drawn order timely. He urged for the court to consider the situation that he is a layman and decide basing on its own wisdom. He was ready for any court decision as he knew that the matter was supposed to go back to the primary court for a fresh trial pursuant to the order of the District Court.

Having gone through the parties' submissions, the issue is whether the appeal is time barred. It is apparent that the appellant is not disputing that the appeal was filed out of time. He gave the reasons for that delay in filing it that he was not timely supplied with copies of drawn orders. Nevertheless, he appeared to be ready for any court decision.

I agree with the Appellant that the time taken to apply for, and being supplied with the copies of drawn order could be excluded from the time provided as limitation to file the appeal. This is pursuant to Section 19 (2) of the **Law of Limitation Act, Cap. 89 R.E. 2002 (R.E. 2019)** (the LLA). See also **Bukoba Municipal Council vs New Metro Merchandise (Civil Appeal 374 of 2021) [2022] TZCA 413 (11 July 2022)**. Section 19 (2) allows automatic exclusion of the time used to obtain the copies of drawn order. However, the Appellant's information was not sufficient to enable the court to do that exclusion. It was upon the Appellant to state when he applied for the said drawn

order and when it was supplied to him. Lack of this information renders the time to reckon from the date when the Judgment was delivered since there is no date indicated as the time when the said copy of drawn order was supplied.

As submitted by the Respondent undisputedly, the impugned decision was delivered on 28th July, 2023 and the Appeal was filed on 22nd September, 2023 which is 57 days from the date of decision instead of 30 days. Unless informed when the copies of drawn order were supplied, then the counting must start from the date the judgment was delivered. It is due to this reasoning I am inclined to agree with the Respondent that the Appeal is time barred and hence answer the framed issue in the affirmative.

The preliminary objection is therefore upheld and the Appeal is dismissed for being time barred. No order as to costs. It is so ordered.



Dated at Tanga this 15th Day of April 2024.

A handwritten signature in blue ink, appearing to read "Ks", is written over the printed name.

KATARINA REVOCATI MTEULE

JUDGE

15/4/2024