

IN THE HIGH COURT OF TANZANIA

DAR ES SALAM SUB REGISTRY

AT DAR ES SALAAM

CIVIL APPEAL NO. 27283 OF 2023

(Originating from Civil Appeal No. 16 of 2023 in the district court of Temeke at
Temeke)

ZUBERI JAFARI SHAHA APPELLANT

VERSUS

ALLY MAULID ALLY RESPONDENT

RULING

Date of Last Order: 17.05.2024


Date of Ruling: 29.05.2024

NGUNYALE, J.

This is the ruling against the preliminary point of objection raised by the respondent that:

This honorable court lacks jurisdiction to entertain this appeal for being time barred.

Before this court, this is the second appeal by the appellant trying to fault the decision of the district court. At the district court the appellant filed an appeal against the decision of the primary court which awarded the respondent Tsh. 8,900,000/= being purchase price for a house that

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the respondent wanted to buy from the appellant. The district court heard the parties on merit and upheld the decision of the trial court.

The appellant herein, being not amused with the judgment of district court dated 25th October, 2023 he filed the instant appeal on 08th December, 2023.

At the hearing, the appellant was represented by his legal representative Maalim Abeid Mikongo and the respondent appeared in person and they both agreed that the objection raised be disposed by way of written submission. The court scheduled the dates of filing the submissions as follows: the respondent to file his submission in chief on or before 09.04.2024, the appellant to file his reply submission on or before 18.04.2024 and rejoinder by the respondent if any on 30.04.2024. The respondent filed his submission as scheduled by the court; however, the appellant submission was not found in the system (e-CMS). On 30.04.2024 when the parties appeared before the court, the appellant claimed to have filed his submissions, he was ordered by the court to make follow-up with the registry and make sure that the submissions are in the system before 17th May, 2024 when the matter will be called for mention. On 17th May, 2024 when the parties appeared before the court, the appellant's submissions were still missing in the online file. The appellant again claimed to have refiled the submission as directed

by the court before, as the same was not found he was given a last chance to make follow-up with the registry and make sure that his submission is properly filed in the system before 23rd May, 2024 so that the ruling can be composed. The dates passed with no submissions filed.

Failure by the respondent to file written submission is as good as failure to appear on the date of hearing. This was discussed in the Court of Appeal case of **Godfrey Kimbe versus Peter Ngonyani**, Civil Appeal No. 41 of 2014 that:

"In the circumstances, we are constrained to decide the preliminary objection without the advantage of the arguments of the applicant. We are taking this course because failure to lodge written submissions after being so ordered by the Court, is tantamount to failure to prosecute or defend one's case"

See also the Court of Appeal case of **National Insurance Corporation of (T) Ltd & another v. Shengena Limited**, Civil Application No. 20 of 2007.

From the above position, I am in a settled view that failure by the respondent to file his written submissions as scheduled by the court entitle the court to proceed with the ruling by considering only the

submission filed by the respondent.

In his submissions the respondent averred that the appeal before the court is governed by the **Magistrate Courts Act**, (Cap 11 R.E 2019) whereby to section 25 (1) (b) of the Act provides that;

"In any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired." (emphasis added)

He stressed that the courts records indicate that the decision of the 1st appellate court (Temeke District court) was delivered on 25th October, 2023 and the present appeal was filed in court on electronic Case Management System (e-CMS) on 8th December, 2023 which is exactly 45 days from the date when decision was delivered. That means the appeal at hand was filed out of time for 15 days and the applicant never sought extension of time to file the same. He insisted that the matter is time barred. He referred the case of **Wegesa Lameck Mwita v Juma Adam Ngwadi**, PC Civil Appeal No. 53 of 2010 which borrowed wisdom from the case of **Herzon M Nyachiya v Tanzania Union of Industrial and Commercial Workers and Organization of**

Tanzania Workers Union, Civil Appeal No. 79 of 2001, where the Court of Appeal at page 5-6 stated:

"Generally speaking, the laws of Limitation play many rules including the following one, to set time within which to institute a proceeding in Court of Law. Two, to prescribe the consequences where proceedings are instituted out of time without leave of the Court..... After finding that the appeal was filed out of time and no leave was obtained first before the filing of appeal is obvious this court had no jurisdiction to entertain the appeal and it's hereby dismissed with cost."

Appreciating the submissions by the respondents regarding the objection raised. I agree with him that time for filing an appeal from the district court which originating from primary court to the High court is regulated by the **Magistrates courts Act** (Cap 11 R.E 2019) under section 25 which sets the time limit to be 30 (thirty days) from the date of judgement of the 1st appellate court. The same section allows an aggrieved party who is out of the prescribed thirty days to file an application for extension of time within which to file an appeal.

From the court record, as rightly submitted by the respondent the decision of the district court was delivered on 25th October, 2023 and the instant appeal was filed in court on 8th December, 2023 which is 45 days

after the decision of the district court. There is no leave obtained by the appellant to file the appeal out of time, therefore I am in a humbled position to rule that the appeal is time barred.

The Court of Appeal in **Yusuf Khamis Hamza vs. Juma Ali Abdalla**, Civil Appeal No. 25 of 2020, observed that: -

*"We are alive with the settled position of the law that time limitation **goes to the Jurisdiction issue of the Court**, and it can be raised at any time."*

Also, the Court of Appeal in **Moto Matiko Mabanga v. Ophir Energy Plc & Others**, Civil Appeal No. 199 of 2021 reiterated with approval its decision in the case of **Swilla Secondary School v. Japhet Petro**, Civil Appeal No. 362 of 2019 where it was stated that:

*"The law is settled that the issue of jurisdiction for any court is basic as it goes to the very root of the authority of the court or tribunal to adjudicate upon cases or disputes. **Courts or tribunals are enjoined not to entertain any matter which is time barred and in any event they did so, the Court unsparingly declare the proceedings and the consequential orders a nullity.**" [Emphasis added].*


From the above position this court lacks jurisdiction to entertain the appeal as it is time barred and the consequence then is to dismiss it as it

was held in the case of **Hezron** (supra).

All said and done, I find the raised objection merited hence it is sustained with costs. Appeal dismissed.

Dated at Dar es Salaam this **29th** day of **May, 2024**.




D. P. Ngunyale

JUDGE

Ruling delivered this **29th** day of **May, 2024** in presence of both parties in person.




D. P. Ngunyale

JUDGE