

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM SUB- REGISTRY

AT DAR ES SALAAM

CIVIL APPEAL NO. 55 OF 2023

(Originating from Kilosa District Court in Civil Case No. 12 of 2016)

IGNAS ROMWARD MSAGAYA APPELLANT

VERSUS

LIVINUS SAMATO..... 1ST RESPONDENT

BLESS MAKANGANYA..... 2ND RESPONDENT

JUDGMENT

23^d November, 2023 & 22nd February, 2024

BWEGOGGE J.

The respondents herein jointly commenced civil Proceedings against the appellant herein above mentioned in the District Court of Kilosa in Civil Case No. 12 of 2016, claiming damages for malicious prosecution. The trial court entered judgment in favor of the respondents herein. The appellant herein was not amused. Hence, this appeal

The appellant raised six (6) grounds of appeal as hereunder reproduced:

- 1. That the learned trial magistrate erred in law and facts by holding that the appellant falsely imprisoned the respondent whilst they were detained by a legally sanctioned authority.*
- 2. That the learned trial magistrate erred in law for not holding that the investigation is controlled by the police and prosecution is controlled by the Director of Public Prosecution Office and the appellant is not one of them.*
- 3. That the learned trial magistrate erred in law in interpretation and application of principles governing malicious prosecution.*
- 4. That the learned trial magistrate erred in law in holding that the respondents were acquitted in the criminal case whilst they were convicted and imprisoned.*
- 5. That the learned trial magistrate erred in law by shifting the burden of proof by requiring the appellant to disapprove the suit.*
- 6. That the learned trial magistrate erred in law and fact in entering judgment in favour of the respondents without evidence in support thereof.*

When this case was scheduled for hearing, the respondents herein filed notice of preliminary objections on points of law as follows:

"This court has no jurisdiction to entertain this case."

In pursuit to expedite the determination of the matter herein, this court allowed the parties to argue both the appeal and objection raised by way of

written submissions so that if the objection is overruled this court would proceed to determine the appeal on merit. Mr. Jackson Liwewa, learned advocate argued written submission in chief for the respondents herein whereas Mr. Shalom Msakyi, learned advocate, argued the written submission in reply for the appellant herein.

For the reason that the preliminary objection raised herein has the capacity to dispose the appeal, I find it pertinent to canvass the veracity of the preliminary objection advanced by the respondent prior to the determination of the appeal herein.

In arguing his objection, Mr. Liwewa submitted that, this court has no jurisdiction to entertain this appeal because it was filed out of time. That the appellant was granted an extension of time of clear 21 days to file this appeal commencing from 28/03/2023. That the extension period expired on 17/4/2023. The respondent contended that the appellant served the respondents with two memorandums of appeal. The earlier memorandum was filed on 2/5/2023; hence, lodged out of time for 16 days. The latter was filed on 28/4/2023 being late for 11 days. It was forcefully contended that the date of payment of court fees is actually the date of filing of the case in

court. The cases; **John Chuwa v Antony Ciza** [1992] TLR 233 and **Msasani Peninsula Hotels Limited & Others vs Barclays Bank Tanzania Limited & 2 Others**, Civil Application No.192 of 2006 CA (unreported) were cited to buttress the point. The counsel concluded that as the appeal herein was filed out of prescribed time, this appeal is time-barred.

In reply, Mr. Msakyi firstly pointed out that, On the 31st May, 2023 the respondents filed the same preliminary objection in that the matter herein is time barred, of which was dismissed on the 20th September, 2023 for want of prosecution. That, in substance, the respondent has raised the same objection though in different terms. Thus, the counsel contended that it is a settled law that once a preliminary objection has been disposed of, then a party is barred from raising the same in the same matter. The case of **Maria Chrysostom Lwekamwa vs. Palcid Richard Lekamwa & Another** (Civil Application 549 of 2019) [2022] TZCA 563 was cited to reinforce the point.

Otherwise, in responding to the relevant objection, Mr. Msakyi argued that, they filed the document in time but it's the rigorous judicial administrative system that delayed them. Further, he contended that Rule 21 (1) of accords legal recognition of the electronic filing of the documents. That the document

which has been filed through electronic system is considered to be filed in court on the date it was filed. He cited the case of **Amandi Matei and Abdulmarik Muhawiya (As a Guardian of Farhiya Marik Muhawiya) vs. Zainabu Maulid Jumbe (The Administratrix of the estate of the late Romano P. Salekio)** Misc Land Application No 108 of 2021 (2022) TZHC13909, among others, to bolster the point.

Likewise, counsel contended that the case of **Msasani Peninsula Hotels Limited & Others vs Barclays Bank Tanzania Limited & 2 Others** (*supra*) cited by the respondents' counsel is inapplicable in this case as it was decided in 2006 prior to promulgation of the law pertaining to electronic filing.

In rejoinder submission, Mr. Liwewa argued that the law permits raising the jurisdiction issue at any stage of the case. That as the objection touches the jurisdiction of this court to entertain the appeal herein, this court is obliged to determine the same. Further, the counsel contended that court order ought to be complied with to the letter. The case of **Daud Goodluck Sollo vs. Dar Es Salaam Institute of Technology Saccoss Ltd** (Misc. Application No. 197 of 2022) [2022] TZHCLD 930 was cited to fortify the point.

In tandem to the above, the respondent's counsel maintained that the legal position that the document is completely filed when the court fees are duly paid has not been altered by rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules G.N. 148 of 2018. This is all about the submissions made by the parties herein.

The point of determination is whether the preliminary objection raised herein is merited.

From the outset, I find it pertinent to address one issue raised by the appellant's counsel. He contended that on the 31st May, 2023 the respondents filed the same preliminary objection in that the matter herein is time-barred, of which was dismissed on the 20th September, 2023 for want of prosecution. That, in substance, the respondents have raised the same objection though in different terms. Thus, the counsel contended that it is a settled law that once a preliminary objection has been disposed of, then a party is barred from raising the same in this same case. With due respect to the appellant's counsel, the record of this court has it that the relevant objection raised was struck out for failure of the respondent's counsel to appear on the date scheduled for hearing. As the preliminary objection was

struck out, the respondents were not precluded from raising the same objection. Likewise, as rightly argued by the respondent's counsel, as the objection touches the jurisdiction of this court in determining the appeal, this court is obliged to rule thereon.

That said, I now attend the objection raised. It is undisputed fact that the appellant herein was granted 21 days of filing this appeal commencing from 28/3/2023. Likewise, it is undisputed fact that the court fees were paid on 28/4/2023, which is 11th day from the date of expiry of the extended period. Admittedly, there are numerous authorities expounding that the date of payment of court fees is actually the date of filing of the case in court, among others, **John Chuwa vs. Antony Ciza** [1992] TLR 233; **Msasani Peninsula Hotels Limited and 6 others vs. Barclays Bank Tanzania Limited & 2 Others**, Civil Application No.192 of 2006, CA (unreported) and **Chris George Kasalile vs. Tanzania Institute Education & Another**, Miscellaneous Cause No. 26 of 2022[2022] TZHC 11389 and **Muganda Michael vs. Simon Liduckey** (Misc. Civil Application 23 of 2023) [2023] TZHC 19960. The first two cases mentioned above, as rightly contended by the appellant's counsel, were decided prior to the promulgation of the

applicable rules guiding electronic filing of cases namely, Judicature and Application of Laws (Electronic Filing) Rules, G.N. No. 148 of 2018. And, the latter case, among others, was decided by this court after the promulgation of the rules mentioned above. I am of the considered view that each case should be decided on its own circumstances. I think, we should not turn a deaf ear to the sheer truth exposed by the legal practitioners in respect of challenges facing the same in filing the cases electronically. We are alive of the circumstances whereby having the case admitted, the generation of control number for payment of fees would take several days. The above stated circumstances are the gist of the provision of rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules, G.N. No. 148 of 2018 which plainly provides:

"Rule 21 (1): A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected."

I am, therefore, of the view that it would be unreasonable for the court to penalize the litigant who had lodged his case in time in accordance with the rules mentioned above, but delayed by the electronic payment system to

effect timely payment of prescribed fees, unless it is ascertained that the delay is patently inordinate.

Now, at this juncture, a pertinent question arises herein; *when did the appellant lodge his appeal in this court?* The appellant's counsel refrained from stating when exactly he lodged his appeal in this court in his reply to the charge that the appeal herein was lodged out of prescribed time. He merely responded that *"we filed the document in time but it's the rigorous judicial administrative system that delayed us."* No further particulars were given. I had expected the counsel herein to have enlightened this court when exactly he lodged his appeal in this court and on which date it was admitted. I had made an attempt to have the electronic record of this case. Unfortunately, I could not see any other filing date than 28/04/2023 which is the same date the respondent's counsel alleges that it was beyond the prescribed period.

Therefore, taking the memorandum of appeal filed earlier as the relevant appeal lodged in court, the appellant seems to have lodged the same 11 days beyond the prescribed period pronounced by this court in which the appellant was obliged to file appeal. Based on this finding, I am constrained

to subscribe to the respondent's counsel assertion that the appeal herein is time barred. As the preliminary objection disposes the appeal herein in its entirety, I need not canvass the grounds of appeal advanced to defeat the decision of the trial court.

For the foregoing reasons, I find the preliminary objection on point of law raised by the respondents with merit. I hereby sustain the objection. Accordingly, the appeal herein is hereby dismissed for having filed beyond the prescribed time.

So ordered.

DATED at **DAR ES SALAAM** this 22nd February, 2024.



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

O. F. Bwego

JUDGE