

**IN THE HIGH COURT OF TANZANIA
MOROGORO SUB-REGISTRY
AT IJC MOROGORO**

PC. CRIMINAL APPEAL NO.08 OF 2023

(Arising out of Criminal Appeal No.65/2021 in the District Court of Kilosa which originated on Criminal Case No.88 of 2022 in the Kimamba Primary Court)

ABDON JACKSON MKUCHU..... APPELLANT

VERSUS

KUYA LEMBAGWA MUNDE.....1ST RESPONDENT
ANNA MENDERU KUYATEI.....2ND RESPONDENT
NAOMI MTUGO.....3RD RESPONDENT
MAHALANDA KOMIAMI.....4TH RESPONDENT
KASIRIO MAKALA.....5TH RESPONDENT
SAMWEL DAFU.....6TH RESPONDENT

RULING

02nd of April, 2024.
MANSOOR, J.

In the primary Court of Kimamba herein referred as "the trial court" the respondents herein were prosecuted with the offence of malicious prosecution contrary to section 326(1) of the Penal Code (Cap 16 R.E 2022). At the conclusion of trial, the court entered the decision in favour of the respondents owing to reason that the offence was not proved beyond reasonable doubt in addition and consequently the respondents were set free.

Mansoor



Disgruntled, the appellant unsuccessfully appealed before the District Court of Kilosa herein referred as the "1st appellate court" against the whole judgement of the trial court vide Criminal Appeal No.65 of 2022, since the judgement of the trial court was upheld.

Dissatisfied again and still adamant for his right the appellant has presented the instant appeal seeking to challenge the whole decision of the 1st appellate court.

In response to the appellant's memorandum of Appeal, the Respondents filed the reply thereto coupled with one point of preliminary objection as reproduced here under:

1. That this appeal is hopelessly time barred.

I had to firstly determine the preliminary objection before embarking into the merits or otherwise of the Appeal as it now a trite law that a preliminary objection once has been established as such, must be heard first because it has a legal effect of disposing the whole matter. The Court of Appeal of Tanzania instructively aired this position of the law in the case of **Shahida Abdul Hassanali v. Mahed M.G. Karji T**, Civil Application No. 42 of 1999 (CAT).

With the leave of the Court, the hearing of the preliminary objection was canvassed by way of written submission by the order of this Court dated 04th of March, 2024. The appellant appeared personally and unrepresented while the respondents on their part enjoyed the representation by Mr. Kisawani Mandele the learned counsel.

Submitting in support of the preliminary objection the learned counsel for the respondents highlighted that, the impugned judgement was delivered on 01/06/2023 by the District Court of Kilosa exercising its appellate jurisdiction and the present appeal has been preferred on 04/07/2023, according to him the appeal was filed after delay of 3 days without the leave of this honourable court.

Supporting his contention, he was fortified with the provision of section 25(1)(b) of the Magistrate Courts Act (Cap 11 R.E 2019) which provides for the time limits to file the appeals to the High Court when the District Court exercises its appellate jurisdiction. The learned counsel for the respondents thus, submitted that the instant appeal was not filled within the prescribed 30 days. He demonstrated further that under the instant circumstances even if it could be assumed that the appellant was delayed on obtaining the copies of judgement the same cannot be considered as

the defence. To substantiate his position, he averred that the law that allow exclusion of the days on obtaining the copies of judgement are the Criminal Procedure Act, Cap 20 R.E 2022 under section 361(b) and the Law of Limitation Act Cap 89 R.E 2019 cannot be applied in the matters originating from the Primary courts.

To maintain his stance, the learned counsel referred this court to the case of **Barclays Bank Tanzania Limited v. Phylisiah Hussein Machehi**, Civil Appeal No.19 of 2016 at page 11 where the Court of Appeal categorically stated as follow;

'however unfortunate it may be for the plaintiff, the law of limitation on action knows no sympathy or equity, it is a merciless sword merciless that cuts across and deep into all those who get caught in its web'

He therefore urged this court to strike out the instant appeal for being preferred out of time.

Responding to the respondents' arguments, it was the appellant firm submission that the appeal was filed within the prescribed period of limitation. He referred this court to the provisions of section 19(2) and (3) of the Law of Limitation Act (Cap 89 R.E 2019) which provides for an

automatic exclusion of time requisite for obtaining a copy of decree or judgement appealed from when computing the period of limitation for lodging an appeal to the High Court. The appellant submitted that the law as it stands is very loud and clear that it allows automatic exclusion of the period of time requisite for obtaining a copy of decree and judgement appealed from the computation of the prescribed time, he reasoned that the impugned judgement was delivered on 01/06/2023 and he was supplied with the copies of judgement on 30/07/2023 when he had remained with a single day on the prescribed 30 days to appeal. To support his contention, he referred this court to the case of **Methusela Enoka v. National Microfinance Bank Ltd** in Civil Appeal No. 266 of 2016.

The appellant demonstrated further that, the respondent in calculating the time that the instant appeal was filed on 04th of July, 2023 he didn't consider that there was a public holiday in between that is EID AL-ADHA and Independence day as well as two days which was Saturday and Sunday which have to be excluded. To add weight on his argument the appellant was fortified with the case of **Swahiba Ibrahim Shasha v. The Registered Trustee Masjid Quablatain** in Civil Reference No. 05 of 2021 at page 8.

He concluded that the instant appeal was filed within time and he urged this court to dismiss the instant preliminary objection.

I have objectively gone through and considered the records of both the trial court and 1st appellate court as well as the rival submissions made by the parties. The crucial issue for consideration, determination and decision thereon is whether or not the instant preliminary objection has merit.

As the record speak for itself, parties are in agreement and right that under section 25(1)(b) of the Magistrate Courts Act (Cap 11 R.E 2019) appeal originating from primary court to this court has to be filed within thirty days. Furthermore, that the impugned decision was delivered on 01/06/2023 and the appeal filed on 04/07/2023.

Therefore, counting from 01/06/2023 after the impugned judgment was delivered to 04/07/2023 when the when the instant appeal was filed is thirty-one days not thirty-three days as claimed by the respondent counsel. That means two days has been excluded (01/06/2023 when the judgment was delivered and 04/07/2023 when the appeal was lodged) and thus the appellant is bounded to tell this court as to why his petition should not be considered time barred for one-day delay on filling.

On justifying that he was not late, the appellant amplified the reason that he was not supplied with the copies of the impugned judgement on time and thus he is entitled to the automatic exclusion of the delayed days and he claimed further that there were public holidays and the weekend days which also has to be excluded.

On his part the counsel for the respondent resisted the application of the Law of Limitation Act under the circumstances of this appeal arguing that the law does not apply to the appeals originating from the primary court.

To deliberate on the applicability of the Law of Limitation (supra) under the instant case I wish to highlight that the Law of Limitation imposes strict time limits, known as limitation periods, within which civil actions must be commenced in court and thus this being the criminal matter one does not need a crystal ball to see that the Law of Limitation Act cannot be applicable.

Regarding exclusion of non-working days on computation of time limit, at the onset I agree with Mr. Kisawani that public holidays and weekends are excluded in computing periods for limitation purposes however a public holiday and weekend must have coincided with the last day of the period in question, in which case the next following working day is counted as the last day to file the relevant proceeding. The Court of

Appeal in the case of **Barclays Bank (T) Ltd 5 vs Jacob Muro** Civil Appeal No. 357 of 2019 considered section 60(2) of the Interpretation of Laws Act and stated that;

'First, we are aware that in reckoning days prescribed by a statutory provision a court is enjoined to apply the provisions of section 60 of the Interpretation of Laws Act, Cap. 1 R.E. 2002 (now R.E. 2019) ("the ILA") ... Secondly, while both section 60 (2) of the ILA and Rule 4 (2) of the Rules provide for exclusion of non-working days (Saturday, Sunday and public holiday) if the last day of any prescribed period of limitation falls on any such day, none of the said provisions has the effect of excluding all weekends and public holidays falling within a particular period as suggested in the above holding. Thus, it means the exclusion by Nyerere, J. of five days falling on weekends throughout the period of thirty-three days was manifestly erroneous.'

In this case the last day was 02.07.2023 which was a Sunday and 03.07.2023 was EID AL-ADHA the public holiday as rightly stated by the appellant which justifies filing the application on Tuesday 04.07.2023. In other words, the applicant was justified to have filed the instant appeal on 04.07.2023.

In view of the above explanations, I am satisfied that the appellant filed his petition of appeal within the prescribed time.

For reasons I have given, I hereby overrule the preliminary objection raised by the respondents' counsel and I consequently dismiss it with cost and I order the instant appeal to proceed on merits.

It is so ordered.

**DATED AND DELIVERED AT MOROGORO THIS 02nd DAY OF
APRIL, 2024**


(LATIFA MANSOOR, J.)
JUDGE
02.04.2024

