

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

(CORAM: MBAROUK, J.A., MZIRAY, J.A., And KWARIKO, J.A.)

CIVIL APPEAL NO. 225 OF 2017

FATUMA MOHAMED APPELLANT

VERSUS

CHAUSIKU SELEMA RESPONDENT

(Appeal from the decision of the High Court of Tanzania

at Mwanza)

(Ebrahim, J.)

dated the 8th day of April, 2016

in

Land Appeal No. 13 of 2012

RULING OF THE COURT

KWARIKO, J.A.:

Having been aggrieved by the decision of the High Court of Tanzania at Mwanza, (Ebrahim, J.) dated 8/4/2016, the appellant filed this appeal before the Court on 23/3/2017.

Whereas in response thereof, the respondent through the services of Kailu Law Chambers filed preliminary objection on the following three points of law;

- 1. The appeal is time barred;*

2. *That, the memorandum of appeal contravenes Rule 93 (3) of the Tanzania Court of Appeal Rules, 2009 for not being dated.*
3. *The records of appeal are defective for being accompanied by uncertified exhibits and proceedings of the Court.*

When the appeal was called on for hearing, the appellant appeared in person unrepresented, while the respondent appeared in person along with his counsel Mr. Julius Mushobozi, learned advocate.

As it is the practice of the Court, we sought first to dispose of the preliminary objection. Hence, when Mr. Mushobozi took the stand to argue the preliminary objection, he started by abandoning the 2nd and 3rd points of objection. He thus argued the first point only. In his submission Mr. Mushobozi contended that the certificate of delay dated 23/1/2017 issued to the appellant excluded the time between 2/5/2016 and 30/12/2016 within which the appellant was waiting to be supplied with a copy of the proceedings in the High Court. That, the appellant lodged her appeal on 23/3/2017 which was outside sixty (60) days provided in law under Rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). He contended that the appellant filed the appeal after a lapse of 81 days and she did not seek for extension of time to file it.

For the foregoing, Mr. Mushobozi argued that the appeal is incompetent for being out of time. He referred the Court to the case of **SHABIR TAYABALI ESSAJI VS FARIDA SEIFUDIN ESSAJI**, Civil

Appeal No. 180 of 2017 (unreported) to fortify his contention. In the circumstances, he prayed for the appeal to be struck out with costs.

In her reply, the appellant being a lay person did not have much to say. She only referred the court to the list of authorities she filed in Court on 29/3/2019 to show that her appeal is within time. Those cases by this Court are, **NATIONAL BANK OF COMMERCE LIMITED (NBC) V. SAO LIGO HOLDINGS LIMITED & ANOTHER**, Civil Application No. 267 of 2015 and **OTTU ON BEHALF OF P.L. ASSENGA & 106 OTHERS and 3 OTHERS V AMI TANZANIA LIMITED**, Civil Application No. 35 of 2011 (both unreported). She prayed for the preliminary objection to be overruled.

In his rejoinder, Mr. Mushobozi insisted that the appeal is time barred and that the cited authorities are distinguishable as they do not relate to the issue of limitation.

On our part, as rightly submitted by Mr. Mushobozi, the appeal ought to have been filed within sixty (60) days from 30/12/2016, the last excluded day within which the appellant was waiting for a copy of the proceedings in the High Court. This appeal was filed after 81 days had elapsed hence being out of time by twenty one (21) days, thus contravening Rule 90 (1) of the Rules. We also agree that the cases cited by the appellant are distinguishable from the instant case. In the case of **NATIONAL BANK OF COMMERCE LIMITED (NBC)** (supra) the issue

was delay to file written submission. While in the case of **OTTU ON BEHALF OF P.L. ASSENGA & 106 OTHERS & 3 OTHERS** (supra) the issues were presence of parallel proceedings with that application and wrong citation of the enabling provision of the law.

Therefore, we find that the appeal is incompetent for being time barred and we hereby strike it out with costs.

DATED at **MWANZA** this 2nd day of April, 2019.

M. S. MBAROUK
JUSTICE OF APPEAL

R. E. S. MZIRAY
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

I certify that this is true copy of the original.




B.A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL