

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM
CIVIL APPEAL NUMBER 124 of 2009

NATIONAL INSURANCE CORPORATION (LTD)

1st APPELLANT

PARASTATAL SECTOR REFORM COMMISSION

2nd APPELLANT

VS

BISH INTERNATIONAL

RESPONDENT

(Originating from RM Civil Case No. 104 of 2003- M.M. J. LUGURU-PRM)

RULING

Date of last Order: 21-06-2010

Date of Ruling: 30-08-2010

JUMA, J.:

J.B. Ngeleshi the learned Advocate for the respondent (Bish International) filed on 6 May 2010 a preliminary objection on two points of law. In the first point of objection, respondent contended that this appeal is time barred because the appellant filed its appeal on 28th September 2009 against a Judgment and Decree dated 22nd September 2005. In the second ground, respondent contends that the appeal is misconceived, incompetent and amounts to an abuse of the court process because the appellant has filed a Notice of Appeal to the Court of Appeal of Tanzania against the decision of this Court (Mihayo, J.). With this outstanding Notice of Appeal, contends the respondent; the appellant should

not have preferred an appeal to this Court. I propose to dispose of this second ground of objection at this very outset. The appellants, in their reply to the respondents have to my satisfaction shown that this second point of objection has no substance. Records of the Court of Appeal included in the submissions of the appellant clearly show that on 24 September 2009 the appellants herein withdrew their Notice of Appeal which they had filed to the Court of Appeal of Tanzania (**see Misc. Civil Notice Number 10 of 2009-A.S.L. Ramadhani-CJ**).

The background leading to the remaining Notice of Preliminary Objection is the Civil Appeal Number 124 of 2009 which the appellants herein (National Insurance Corporation Ltd and the Parastatal Reform Commission) are appealing against the Judgment and Decree of the trial Resident Magistrate's Court of Dar es Salaam at Kisutu (M.M.J. Luguru-PRM). The trial magistrate delivered his decision on 22 September 2005 went in favour of the respondent BISH INTERNATIONAL. Appellant's memorandum of appeal was filed on 28th September 2009. Appellants annexed to their grounds of appeal a copy of the decree and a copy of Exchequer Receipt to support their contention that appellants obtained a decree of the trial court on 16th September 2009 after they had paid Tshs 1,500/=.

The Respondent, through its Counsel Mr. J.B. Ngeleshi submitted that this appeal was filed four years and five days after the judgment and decree of the subordinate court. Mr. Ngeleshi assert

that section 3-(1) of the **Law of Limitation Act, Cap 89** has prescribed 90 days as time limit within which to file appeals from subordinate District and Resident Magistrates Courts. Respondent noted that at first, appellant had filed an appeal to this Court (Civil Appeal Number 35 of 2006- Mihayo, J.) which was struck out on 23 April 2008 because it was supported by a defective Decree. Further, respondents observe that there is nothing in the court file to show the appellant had requested for a copy of the Decree. Neither did the appellant seek an enlargement of time to file this appeal after its first attempt had been struck out.

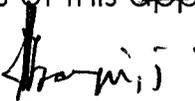
Responding to this first point of objection on behalf of the appellants, Msemwa & Co Advocates contended that appellant obtained valid copies of judgment and decree on 16 September 2009 as shown in exchequer receipt annexed to the Memorandum of Appeal. Twelve days after receiving the valid copy of judgment and decree, appellant filed this appeal. Appellants believe that their Civil Appeal Number 124 of 2009 is within the prescribed time. In addition, the learned Advocate for the appellants has invited this Court to look at one of the grounds of appeal which centres on the subordinate court having lacked requisite jurisdiction. Appellant contends that it being a specified public corporation the trial magistrate had no jurisdiction over it and this ground raises an important issue of law which should be heard on appeal by this Court.

I have considered the rival arguments made by the opposing sides of this appeal on whether the appeal before me is barred by the period of limitation. A period of 90 days is prescribed by Part II of the Schedule to the **Law of Limitation Act, Cap 89 R.E. 2002** for those aggrieved by the decisions of Resident Magistrate's Court to appeal to the High Court. It is not disputed that the Judgment and the Decree against which appellants have filed this appeal are dated 22nd September 2005. It is common ground that the appellants lodged their appeal on 28th September 2009, which is not only over four years after the delivery of the Judgment of the trial court but also well beyond the prescribed 90-day period within which to lodge an appeal to this Court.

In the circumstances of this appeal I am prepared to find that the appeal before me is barred by the prescribed period of limitation. Statutory right of appeal is distinct from the statutory right to seek an enlargement of time within which to file an appeal out of time. Appellants should have first sought an enlargement of time under section 14 (1) of the **Law of Limitation Act, 1971** before lodging this Civil Appeal Number 124 of 2009. The explanations by the appellants that they had earlier filed Civil Appeal Number 35 of 2006 which was struck out by Mihayo, J. on 23 April 2008 because it was supported by a defective Decree are more relevant to establish sufficiency of reasons for purposes of application for an enlargement of time. In addition, with this appeal being barred by limitation; the question whether one of the grounds of appeal touching on the jurisdiction makes the intended appeal stand a

good chance of success can better be determined in an application for enlargement of time.

In light of my foregoing findings the objection is sustained. Respondent is awarded the costs of this ~~application~~^{appeal}.


I.H. Juma
JUDGE
30-08-2010

Delivered in presence of:

Mwamanenge Aliko Adv. (For appellant) and
Ngeleshi, Adv. (For respondent).


I.H. Juma
JUDGE
30-08-2010

