

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

PC. CIVIL APPEAL NO. 17 OF 2020

(C/f Civil Appeal No. 38/2019 in Arusha District Court and originated from objection proceeding on Execution of Arusha Urban Primary Court Civil Case No. 169/1997 of Arusha Urban Primary Court)

ZAINABU MUSA MMBAGA

(Administrator of Estate of late Edhena Hassan Msuya).....APPELLANT

VERSUS

SADI IBRAHIM

(Administrator of Estate of late Ibrahim Ramadhani).....1st RESPONDENT

MELEMBUKI KITESHO2nd RESPONDENT

JUDGMENT

26/10/2021 & 21/01/2022

GWAE, J

The appellant, Zainabu Musa Mmbaga is appealing against the order of the Arusha District Court dated 13th March 2020 which sustained the preliminary objection raised by the respondents' advocate Mr. Lengai Nelson Merinyo to the effect that, the appeal before the District Court was time barred since it was filed after lapse of 30th days since the judgment appealed was delivered by Arusha Primary Court.

In his petition of appeal filed on the 20th March 2020, the appellant is armed with one ground of appeal, to wit; That, the first appellate court erred in law for sustaining preliminary objection that appeal is out of the prescribed time.

The deceased person, Edhena Hassan Msuya passed away while this appeal is pending before the court as a result the hearing was adjourned to wait for appointment of an administrator of the estate. Eventually, one Zainabu Musa Mmbaga now appellant was formally joined in this appeal on the 26th October 2019.

When this appeal was called on for hearing before me, the appellant and respondents were represented by advocates, namely; Mr. Mnyiwala Mapembe assisted by Miss Anna Ngoty and Mr. Lengai Nelson Merinyo respectively.

Arguing for the appeal, Mr. Mapembe strongly stated that the District Court erroneously held that the appeal before it was time barred, according to the appellant's advocates, the primary court decision was delivered on the 28th June 2019 whereas the appeal to the District Court was filed on the 29th July 2019 vide exchequer receipt 25308720.

It was the opinion of the appellant's counsel that, thirty (30) days within which to file an appeal to the District Court ought to start reckoning from 29th July 2021 pursuant to section 20 (3) Magistrate Court Act, Cap 11 Revised Edition, 2019 (Act) read together with section 60 (1) (b) of the Interpretation of Laws, Cap 1 Revised Edition, 2019. The counsel went on arguing that, the appeal would be filed either on 27/7/2021 or 28/7/2021 as those days were Saturday and Sunday which ought to be excluded. The appellant's counsel then urged this court be pleased to make a reference to a decision of the Court of Appeal of Tanzania in the case of **Mechmar's VIP Engineering and marketing** Civil App No. 9/2011 (unreported) and Section 19 (1) of the Law of Limitation Act, Cap 89, Revised Edition, 2019.

Resisting this appeal, Mr. Lengai vehemently argued that the District Court correctly dismissed the appeal before it pursuant to section 3 (1) of primary courts Customary Rules 1964 for being time barred since the appeal in question was received on the 26th July 019 and that there was no reason as to why the court's fees was paid on the 29th July 2019. It was further his argument that appellant was to file an application for extension of time in which he could explain why he failed to pay court's fees on 26th July 2019.

Mr. Lengai further argued that the delay of even a single day ought to have been accounted for. He bolstered his argument by citing a case of **Bushire Hassani v. Latifa**, Civil Application No. 3 of 2007 (unreported-CAT) adding that the case cited by Mr. Mapembe of **Mechmar vs. VIP Engineering** is no worth of being relied as the same is neither signed nor certified as was discussed by the Court of Appeal in POP **Vriend (T) Ltd V Melembuki Kitesho Mollel**, Civil Review No. 01/2018

Finally, Mr. Lengai submitted that in VIP's case the Court of Appeal, considered none day (weekend days) seriously and was of the view that the best way would be to file an application according to 5 (2) of the Adjudicature and Application of Laws Act, Cap 358, Revised Edition, 2002.

In their rejoinder, the counsel for the appellant stated that, as rightly admitted by the respondents' counsel, an appeal is deemed filed when court's fees is paid, thus the appellant's appeal was within time.

Examining the records of the lower courts, it is evidently clear that, the ruling of Arusha Urban Primary court (Sedoyeka, RM) in respect of the objecting proceeding instituted by the deceased person, Edhena Hassan Msuya (wife of the late Ibrahim Ramadhani) was delivered on the 28th June

2019 in favour of the respondents. It is further revealed by the records that the appellant's appeal against the impugned primary court decision/ruling was duly filed on the 29th July 2019 as evidenced by an exchequer receipt. However, it is evident that the appellant's Petition of Appeal was duly admitted on the 26th July 2019 which was within thirty days as required under section 20 (3) of the Act which provides

"23 (3) Every appeal to a district court shall be by way of petition and shall be filed in the district court **within thirty days** after the **date of the decision or order** against which the appeal is brought (emphasis supplied)"

According to the clear wording of section 20 (3) of the Act, an appeal to the District Court against a decision or order of a primary court, if preferred, must be filed within thirty days after the date the decision to be appealed was delivered and in the event the intending appellant has failed to comply with the prescribed period of thirty-days, he or she shall file an application for extension of time upon giving sufficient cause for his or her delay as per section 20 (4) (a) of the Act as rightly argued by the respondents' counsel as delay of even a single day ought to have been accounted for.

According to the quoted provision of the law above, the thirty (30) statutory days started to reckon or run against an aggrieved party of the decision or order of the primary court after the date of the decision or order which in our case the time started reckoning on the 29th July 2019 (Friday) and the last date within which to file the intended appeal to the District Court was on the 28th July 2019 (Sunday). This is pursuant to section 60 (1) of the Interpretation of the Laws Act (supra) and section 19 (1) of the Law of Limitation Act (supra) which exclude the date on which a decision or order was made or in other words the date on which the period is to be computed should be excluded. That being the case the delay was only of one day and not two days as wrongly argued by the counsel for the respondents since the statutory period within which to file the Petition of Appeal was to expire on the 28th July 2019.

The question that follows, therefore is whether there is exclusion clause for last day when it falls on Saturday or Sunday none working days.

The advocates for the appellant have seriously urged this court to make reference to section 60 (1) of Cap 1 (supra) and section 19 (1) of Cap 89 (supra). If the Law of Limitation Act was applicable in proceedings emanating from primary court, it is not doubtful that on the 28th July 2019

was Sunday, the day which would be excluded as per section 19 (6) of the Act which reads;

“(6) Where the period of limitation prescribed for any proceeding expires on a day when the court in which such proceeding is to be instituted is closed, the proceeding may be instituted on the day on which the court reopens”.

Looking closely at the parties’ arguments and considering the fact that, on the 28th July 2019 was Sunday, the exclusion clause would be applied if the Law of Limitation Act (supra) was applicable in these proceedings. That being the case, I should now look at the provision of the Interpretation of Laws Act Cap 1 (supra) and decision of the Courts. According to section 60 (1) (e) and 60 (2) of the Law of Interpretation of Laws Act, Sunday is among the excluded days, Section 60 (1) (e) of CAP 1 provides;

“60 (1) (a)-(d) not relevant

(e) Where the time limited for the doing of a thing expires or falls upon an excluded day, the thing may be done on the next day that is not an excluded day”

As subsection (2) of section 60 of Cap 1 defines the term “excluded day” to mean Sunday, Saturday, Public Holidays throughout or party of it which is relevant to the event or proceedings concerned. In **Nyarbungu Tin Mines Ltd and another v. Attorney-General** [1972] 1 EA 339, in this case, the plaintiffs sued the defendant for damages for tort. The accident occurred on the 31 October 1970. The plaint was not filed on the 31st November 1971 because it was a Sunday. Counsel for defendant raised a preliminary objection that the suit was time-barred, the Judge of the High Court of Uganda held;

“(i) The day of accident is excluded from the computation of the limitation period;

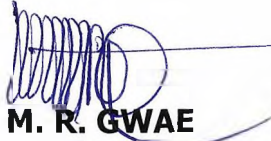
(ii) October 1971 being a Sunday, the suit could be filed on the next day and the suit was not statute-barred”.

I am therefore persuaded by the counsel for the appellant that the appellant’s appeal was not time barred since the last day expired on the 28th July 2019 which was Sunday (an exclude day) as opposed to the case of **Mechmar vs. VIP Engineering (supra)** where courts’ vacation days were not considered as excluded days since Courts’ Registries used to be open for judicial services.

In the final event, the appellant's appeal is not without merit, the same is hereby allowed without an order as to costs. Considering the nature of the appeal before the District Court. I also order that, the appellant's appeal is heard and determined by a different magistrate of competent jurisdiction.

It is so ordered.




M. R. GWAE
JUDGE
21/01/2022