

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR ES SALAAM  
COMMERCIAL REVIEW NO. 8 OF 2022  
(Arising from Commercial Appeal No. 2 of 2022)  
BETWEEN**

**EXIM BANK TANZANIA LIMITED ..... APPLICANT**

**VERSUS**

**SAI ENERGY & LOGISTICS**

**SERVICES LIMITED.....RESPONDENT**

Last order: 09<sup>th</sup> February, 2023  
Date of Ruling: 20<sup>th</sup> March, 2023

**RULING**

**NANGELA, J.**

This ruling is in respect of an application for Review of Commercial Appeal No. 2 of 2022, following the decision of this Court issued on 17<sup>th</sup> October, 2022, which struck out the Appeal and upheld a Preliminary Objection raised by the Respondent to the effect that, the said appeal was filed out of time.

The Review Application was brought before this court by way of a Memorandum of Review filed under Section 78 (1) (a), and Order XLII Rule 1 (1) (a), 2 and 3 of the Civil Procedure Code Cap 33 R.E 2019 and Rule 2 (2) of the High

Court (Commercial Division) Procedure Rules, of 2012 as amended by GN.NO.107 of 2019.

The Applicant's Memorandum of Review which contains one ground asserting that:

1. The Ruling of the Court contains manifest and serious errors on the face of records in calculating days within which to file appeal from Resident Magistrate Court to this Court resulting in reaching erroneous findings hence occasioned failure of justice to the Applicant mainly as follows:

- (a) That the Court erroneously upheld the preliminary objection raised by the Respondent that the appeal was filed out of time and proceeded to struck it out with costs while the same was filed within 30days as counting from 8<sup>th</sup> February, 2022 to 9<sup>th</sup> March, 2022.

Following the ground of review, the Applicant prays that this Honorable Court be pleased to order the following:

- i. That, the Ruling of the Court (Nangela, J.) dated 17<sup>th</sup> October, 2022 be reviewed and the order of striking out the appeal with costs be vacated and set aside and Commercial Appeal No. 2 of 2022 be restored.
- ii. Costs be borne by the Respondent
- iii. Any other order that the Honourable Court may deem fit.

On the 8<sup>th</sup> day of December 2022, the parties appeared before me for the hearing of the application. The Applicant enjoyed the services of Mr. Jovinson Kagirwa, learned advocate, while Mr. Mussa Mhagama learned advocates, represent the Respondent. On the material date, this Court directed the parties to dispose of the matter by way of filing written submissions.

A scheduling order was given and I am gladly that the said order was complied with. I will, hence, summarize the parties' submissions before I make my verdict.

In his submission in support of this review application, Mr. Jovinson Kagirwa contended that, the Applicant moved the Court to review its decision because there is apparent error on the face of the record of the Court and, that, there is sufficient cause to grant this application.

He submitted that, as a sufficient cause which warranting the granting of this review, an apparent error in the face of records does exist which was occasioned by misapprehension of law in computation of the period of time to file Appeal before this Court.

Mr. Kagirwa, pointed out the provision of Order XLIII of the Civil Procedure Code which laid down the procedure on the filing an application for review and supported his views by relying on the case of **Emmanuel Jagero and 3 others vs Multimodal Transport Africa Limited, Review No. 2 of 2012, which** laid down the principles that, for an application for review to be entertained:

- (a) there must be a party aggrieved  
by the decision;
- (b) there must be a discovery of a  
new and important matter of  
evidence;

- (c) there was an error apparent on face of record; and
- (d) there must be a sufficient reason.

Mr. Kagirwa contended that, these principles were well stated not only on the above case but also in the case of **N. S. C vs. Cosmas M. Mukoji** [1986] TLR, 27. The Applicant also relied on the case of **Patty Interplan Ltd vs. TPB Bank PLC**, Civil Application No. 103/01 of 2018, and **OTTU on behalf of P.L Asenga & 106 others & 3 others vs. Ami (Tanzania) Ltd**, Civil Application No. 20 of 2014.

Mr. Kagirwa contended that, the appeal which this Court struck out was filed on time unlike what the Respondent argued in the preliminary objection, that it was filed out of time.

He submitted that, such was the fact because, the records show that the proceedings were certified on 7<sup>th</sup> February, 2022 and the filing date on 9<sup>th</sup> March 2022, i.e., the appeal was filed within time. Mr. Kagirwa relied on section 19 (1) of the Law of Limitation Act which requires the date of the act to be excluded.

Moreover, he contended that, it was clear that counting from 7<sup>th</sup> February 2022 to 9<sup>th</sup> March 2022 the appeal was filed on the 30<sup>th</sup> day as required by the law under Rule 70 (1) of the Commercial Court Rules.

Mr. Kagirwa, was of the view, therefore, that, in the Ruling delivered by this Court, there was an error apparent on the face of record as the Court was misled to when considering the provision of Section 19 (1) of the Law of Limitation Act, especially on the computation of the time to file an appeal. Mr. Kagirwa submitted, since Courts are manned by human, they are subject to human error and erroneous decision. In view of that, he urged this Court to grant the application as prayed.

In his reply submission, Mr. Mhagama strongly opposed the application. He contended that, this Court rightly computed the days for the filling of the appeal. According to him, it was wrong to the Applicant to rely on the provision of Section 19 (1) of LLA while there is a specific provision which state clearly as to when the days start to accrue as it was elaborated under Rule 70 (1) of the High Court (Commercial Division) Procedure Rules, G.N. No.250 of 2012, as amended by GN.No.107 of 2019.

I think that is legally a correct submission and a right principle of law. Where there is a specific law providing for the accrual of time, the general law does not apply. See the case of **NBC Holding Corporation & Another vs. Agricultural & Industrial Lubricant Supplies Ltd and 2Others**, Civil Appl.No.42 of 2000. But, will that make any difference from what Mr. Kagirwa has submitted?

In his submission, Mr. Mhagama was of the view that, the counting of the days started to accrue on the date when the documents were certified, and, in our case at hand it was supposed to be counted from the 7<sup>th</sup> of February, 2022 which was the date of the certification of the decree and judgment and, that, the Court cannot fault its ruling because the days were well calculated.

In his further submissions, Mr. Mhagama opposed the prayer made by Mr. Kahirwa urging this Court to vacate the order of striking out the appeal with costs and restore appeal No. 2 of 2022. He contended that, the law excludes period of time requesting for obtaining a copy of judgment and decree and not time to obtain proceedings.

To strengthen his position, he referred to this Court section 19 (2) of the LLA. He averred that, the judgment of

Iringa Resident Magistrate was delivered on 30<sup>th</sup> September, 2021 and on 11<sup>th</sup> October, 2021 the Applicant lodged an appeal and later requested for certified copy of the judgment and decree which were readily made available to him on the 30<sup>th</sup> September, 2021. He submitted, therefore, that, the days started to accrue on the certification date.

From that understanding of his, Mr. Mhagama submitted that, the Appeal before this Court was filed on 9<sup>th</sup> March, 2022, that is to say 4 months from the date of certification of the judgment on 30<sup>th</sup> September 2021, and, hence, making it to be one filed out of the prescribe time within which an appeal from the subordinate court to the High Court is to be filed.

Besides, Mr. Mhagama relied on Rule 70 (1) of the High Court (Commercial Division) Procedure Rules, 2012 for which it is stipulated clearly that, appeals have to be filed in Court within 30 days. It was Mr. Mhagama's submission that, according to Rule 70 (2) of the High Court (Commercial Division) Procedure Rules, 2012, the mandatory documents that need to accompany the Memorandum of Appeal, as per requirement of the law, were the judgment and decree of the Court only.



To summarize his submissions, it was Mr. Mhagama's view that, in the circumstance and given that, the Appellant's time to file this appeal commenced to run on 30<sup>th</sup> September 2021 when the mandatory documents to file an appeal were ready for collection, that is to say the judgment and decree, the appeal was filed out of time and not otherwise.

To back up his submissions further, reliance was put on the Court of Appeal decision in the case of **Bukoba Municipal vs New Metro Merchandize** Civil Appeal No. 374 of 2021 CAT at Bukoba (unreported), in which the Court of Appeal was of the view that, that the date of certification is the date of running the time to file an appeal to the High Court. In view of the above submissions, he invited this Court not to allow the application for review with costs.

In his rejoinder submission, Mr. Kagirwa, submitted that, the gist of the Applicant's submission rests on the wording of Rule 70 (1) of the Commercial Court Rules and section 19 (2) of the law of Limitation Act. He insisted that since the word used under Rule 70 (1) of the Rules is **FROM**, then the 7<sup>th</sup> February 2022 ought to be excluded.

To bolster his position, he pointed out the case, **Kenafric Industries Limited vs. Lakairo Investments Co. Limited**, Commercial Case No. 7 of 2019. Where the court ruled out that if the word used was **FROM** and not **OF**, hence, the day of an event ought to be excluded. He cited also the case of **Patty Interplan Ltd vs. TPB Bank PLC** Civil Application No. 103/01 and others on behalf of **P.L Asenga & 106 others & 3 others vs Ami** (Tanzania) Ltd, Civil Application No. 20 of 2014.

He contended that, from the above cited cases, there was misapprehension as to the facts or the law which was one of the grounds of the review. He, therefore, urged that, the Court out of human error in delivering of the Ruling not considering the provision of section 19 (1) of the LLA and that is among the ground for review. Finally, he reiterated his submission in chief and prayed for this court to allow the application at hand.

I have carefully examined the submissions filed in this Court by both parties, and the matter which the Court needs to determine is whether to grant this review or not. I think there is a point in what the Applicant has brought to the attention of this Court.

Having revisited the matter, I find that, there was indeed an error in computation of the time since, as per section 60(1)(b) of the Law of Limitation Act, the law is clear that:

“where a period of limitation of time is expressed to be reckoned **from**...a specified day, that day shall not be included in the period.  
”

In his submission, Mr. Kagirwa argued that, this Court should have taken guidance from section 19(1) of the Law of Limitation Act. However, as rightly agreed earlier, the Law of Limitation of Act is a law of general application and where there is a specific law providing for specific timelines and when one is to compute such timelines, then, the specific law will govern the matter and provide the requisite guidance.

In our case, the relevant law to look at is not the Law of Limitation Act, Cap.89 R.E 2019 but the High Court (Commercial Division) Procedure Rules, 2012 (as amended 2019), in particular, section 70(1), requires that, a Memorandum of Appeal be filed within 30 days **FROM** the date of Receipt of a notification under Rule 69 (6).

When the word "**FROM**" is construed in light of what section 60 (1)(b) of Interpretation of Laws Act, Cap.1 R.E 2019 provides, then, it will be clear, therefore, that, the day when the documents were notified to the Appellant ought to be excluded. That, is to say, the counting should not have been reckoned from the 7<sup>th</sup> February 2022 but from the 8<sup>th</sup> February 2022, a fact which makes the Memorandum of Appeal to be one filed within the prescribed time under Rule 70(1) of the High Court (Commercial Division) Procedure Rules, 2012 (as amended).

From the foregoing, I find that the Review Application has merit. That being said, this Court settles for the following Orders, that:

- (a) the prayers sought by the Applicant are hereby granted with costs.
- (b) The Ruling of this Court (Nangela, J.) dated on the 17<sup>th</sup> October 2022 and its orders are hereby reviewed, vacated and set aside.
- (c) The Commercial Appeal No. 2 of 2022 is hereby restored.

(d) Parties are to appear before the Court for further orders in respect of the restored Appeal No.2 of 2022 on a day to be notified to them by the Court.

It is so ordered.

**DATED AT DAR-ES-SALAAM ON THIS 20<sup>th</sup> DAY OF  
MARCH 2023**



.....  
**DEO JOHN NANGELA**  
JUDGE