

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

CIVIL APPEAL NO. 12 OF 2020

(Arising from the Ruling of the District Court of Tarime at Tarime (Hon. V.A. Balyaruha-RM) in Civil Appeal No. 33 of 2019)

SAMSON KIMSO OKARO APPELLANT

VERSUS

KARUME OSODO RESPONDENT

JUDGMENT

Date of Hearing: 20/10/2020

Date of Ruling: 20/10/2020

KISANYA, J.:

This appeal arises from ruling of the District Court of Tarime at Tarime in Civil Appeal No. 33 of 2019 which upheld the preliminary objection on point of law that, the appellant's appeal against the judgement of the Shirati Primary Court in Civil Case No. 176 of 2018 was timed barred. Consequently, the District Court went on to dismiss the said appeal.

Dissatisfied, the appellant has knocked at the doors of this Court. He registered six grounds of appeal. Upon noting that, the appellant conceded to preliminary objection, the Court asked him to address one ground related to the order issued by the District Court. That is, whether the first appellate Court erred in law in dismissing the appeal instead of striking out the same.

At the hearing of this matter, the appellant appeared in person while the respondent was represented by Mr. Onyango Otieno, learned advocate. In

addition to the above stated ground, I asked the parties to address the Court on whether the appeal before the District Court was time barred. That issue was raised after noting that, the appeal was filed on the 30th day after the date of the impugned judgment.

When called upon to submit in support of the application, the appellant contended that, he appealed in time and that, it is the District Court which delayed to admit his appeal. He went on to submit that, the District Court ought to have struck out the appeal to give him time to file an application for extension of time within which to appeal.

On his part, Mr. Onyango Otieno, was of the view that, the appeal before the District Court was time barred. However, upon being probed by the Court to read the provisions of section 20(3) of the Magistrates Courts Act, Cap. 11, R.E. 2019 (the MCA) and section 60(1) (b) of the Interpretation of Laws Act, Cap. 1, R.E. 2019 (the ILA), the learned counsel admitted that, the appeal was not time barred. He then moved the Court to remit the case file to the District Court for hearing of the appeal on merit.

Having considered the evidence on record and the parties' submissions, I am of the opinion that, this appeal can be disposed of by addressed the issue raised by the Court, *suo motu*. That is whether the appeal before the District Court was time barred.

Pursuant to section 20 (3) of the MCA, the time within which to appeal against the decision of the primary court is thirty (30) days after the date of the impugned decision. The said section provides as follows:

*“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.”*

The decision subject to the appeal before the District Court was delivered by the Shirati Primary Court on 09/09/2019. Therefore, pursuant to section 20(3) of the MCA, the appellant was required to lodge his appeal within thirty days (30) after 09/09/2019.

The law provides further that, if a period of time is stated to start **after** a specified day, that day is not included in calculating the time specified by the law. This is stated under section 60 (1) (b) of the ILA which reads:

“60.-(1) In computing time for the purposes of a written law:

(a)

(b) Where a period of time is expressed to be reckoned from, or after, a specified day, that day shall not be included in the period.”

In the light of the above, the time started to run against the appellant on 10/09/2019 and not 09/09/2019 when the judgment of the Shirati Primary Court was delivered. Therefore, the appeal ought to have been lodged on or before 9/10/2019. It is on records that, the appeal was duly filed on 9/10/2019.

For that reason, I am in agreement with Mr. Onyango that, the appeal before the District Court was not time barred. It was filed on the last day. As this ground is sufficient to dispose this appeal, I find no reason to consider other ground of appeal.

In view thereof, the appeal is meritorious and allowed. I accordingly quash and set aside the ruling and order of the District Court of Tarime in Civil Appeal No. 33 of 2019. The original case file in respect of Civil Appeal No. 33 of 2019 is

remitted to the District Court of Tarime at Tarime to proceed on merit. I make no order as to costs because the issue which has disposed of this appeal was raised by the Court, *suo motu*. Order accordingly.

Dated at MUSOMA this 20th day of October, 2020.




E. S. Kisanya
JUDGE

Court: Judgment delivered this 20th October, 2020 in the presence Mr. Onyango Otieno, learned advocate for the appellant and the respondent in person. Bench Clerk, Ms Mariam present.




E. S. Kisanya
JUDGE
20/10/2020