



**IN THE HIGH COURT TANZANIA  
AT BUKOBA**

(Bukoba Registry)

(PC) CIVIL APPEAL NO. 10 OF 2004

*(From the decision of the District Court of Karagwe Civil Appeal No 5 of 2000 and  
original civil case No. 19/2002 of Kituntu Primary Court)(Before:D. D. Komba  
Esq., DM )*

**LWEYENDERA HAMISI===== APPELLANT**

**VRS**

**VENANT TINATUMILE=====RESPONDENT**

**JUDGMENT**

**LUANDA, J.**

The appellant in this PC appeal one **LWEYENDERA HAMISI** informed this court that he is not late in filing this appeal because he was awaiting for a copy of judgment. He did not say why he did so.

The record show that judgment of the district court was delivered on 21/1/2003. The appellant filed this appeal on 3/12/2003 vide ERV 19919745. Copy of judgment was supplied to him on 25/11/2003 vide ERV 19919737. So it is his contention that time of appeal started to run after receiving copy of judgment i.e.from

26/11/2003. And as he filed his appeal on 3/12/2003, his appeal is within the prescribed time of appeal to this court namely within 30 days.

In law if one is aggrieved with a decision of a district court exercising its appellate or revisional jurisdiction in matters originating from primary courts and intends to appeal to this court he is required to do so within 30 days after the date of the decision (See S. 25 (1) (b) of the Magistrates' Courts Act, 1984). The question is when does time starts to run? Does it starts after getting a copy of judgment?

To answer that question one has to see how a PC appeal is filed in this court. The answer is provided under S. 25 (3) of the MCA, 1984. The section reads:

25 (3) Every appeal to the High Court **shall be by way of petition and shall be filed in the district court from the decision or order of which the appeal is brought.** (Emphasise supplied).

From the above quoted sub-section it is clear therefore, that if one intends to appeal to this court from <sup>a</sup> decision of a district court in the exercise of its appellate jurisdiction in matters Originating from primary courts, he must file his appeal in the very district court which handed down the decision. But how? It is by way of petition of appeal. But what is a petition of appeal? This in turn will bring us to what constitute a petition of appeal.

The Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, 1963 (GN 312/1964) which is the applicable law in dealing with civil appeals Originating from primary courts provide us with the answers. The term petition of appeal has been defined by Rule 2 of the said Rules. It defines thus:-

“The petition of appeal” include the record of the grounds of appeal where the same have been stated orally and recorded

by the district court under the provisions of paragraph (b) of the proviso to sub-section (3) of Section 20 of the Act.

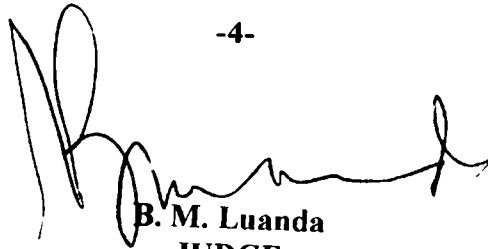
And what the petition of appeal should contain, Rule 4 of said Rules, give us the answer. Rule 4 reads:

4. (1) Every petition of appeal to a district court from a decision or order of a primary court and every petition of appeal to the High Court from a decision or order of a district court in the exercise of its appellate or revisional jurisdiction shall set out precisely and under distinct heads numbered consecutively the grounds of objection to the decision or order appealed against and shall be signed by the appellant or his agent.
- (2) Every petition of appeal to the high court shall be filed in duplicate.

From the Rule quoted above, it is crystal clear that there is no other condition imposed like attachment of copy of judgment, order or decree. To put it differently attachment of Judgment, order or decree is not a condition precedent in instituting an appeal in this court on matters originating in primary courts. In addition the law doesnot say you must rely on a copy of judgment when you are preparing your petition of appeal. You may apply for a copy of judgment so as to enable you prepare your petition of appeal. But you should always be aware that time of appeal of 30 days starts to run after the date of judgment, notwithstanding late supply of copy of judgment.

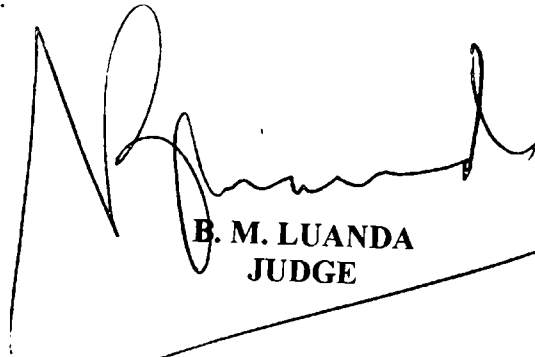
In our case time started to run from 22/1/2003. The appellant is late by more than 30 days. And he filed his appeal without seeking leave of this court. The appeal is hopelessly time barred.

As the appeal is time barred, the same is hereby dismissed with costs.



**B. M. Luanda**  
**JUDGE**  
**12/8/2004**

Judgment delivered  
Appellant – Present  
Respondent – Present.



**B. M. LUANDA**  
**JUDGE**

**AT BUKOBA**  
**12/8/2004**