

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**(PC) CIVIL APPEAL NO. 99 OF 2007**  
(Original Ilala District Court Civil Appeal No. 61 of 1999  
and Ilala Primary Court Probate & Administration  
Cause No. 84 of 1999)

**GEORGE MAKWILO SEMKIWA ..... APPELLANT**

***VERSUS***

**HIZA GEORGE HIZA ..... DEFENDANT**

*Date of last order: 04/11/2010*

*Date of Ruling: 08/12/2010*

**R U L I N G**

**Dr. F. Twaib, J:**

This ruling relates to a preliminary objection on point of law raised by the Respondent to the effect that the appeal is time-barred. The appeal is from the judgment and decree of the Ilala District Court delivered on 17<sup>th</sup> January 2002. The appeal was filed on 31<sup>st</sup> July 2002. That is more than the 30 days allowed for filing appeals to the High Court from decisions of District Courts in appeals originating from Primary Courts. counsel for the Respondent submitted that rules 4 and 5 of the Civil Procedure (Appeals Originating in Primary Courts) Rules, 1963, do not require a party intending to appeal to wait for a copy of the judgment and/or decree. Under rule 5, counsel argued, a party:

"...is supposed to file his appeal within 30 days from the date of the judgment. The rule states that the grounds may even be given orally after the judgment in the District Court, and the same may be recorded....It is not necessary for a copy of judgment and decree to accompany the petition of appeal. That is merely procedural."

In support of his submission, Mr. Mafuru cited two unreported cases, **Hassan S. Makolosi v Gaudensia Paul**, PC Civil Appeal No. 82/02 and **Zainabu Abeid v Salim Abeid**, PC Civil No. 45/96. These are decisions of this Court and, though highly persuasive, are not binding on me. However, these cases do not apply to the present situation since they deal with appeals from the Primary Court to the District Court.

With respect, I wonder how counsel could impute into the two rules the allowance that a party intending to appeal to this Court may institute his appeal by simply pronouncing it orally and having it recorded, without the need for a written Petition of Appeal. The relevant law that deals with appeals from District Courts in their appellate and revisional jurisdiction is section 25 of the Magistrates' Court's Act, Cap 11 (R.E. 2002). It states:

(1) Save as hereinafter provided—

(a) [not relevant]; or

(b) in any other proceedings [other than criminal proceedings] any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court; ....

(2) [not relevant].

(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 in respect of which the appeal is brought:

One wonders as to how could one “file” a petition of appeal in the District Court which is not written but oral, as Respondent’s counsel argues. As if this is not enough, the requirement of filing a written petition is clearly implied in one of the very rules that counsel seeks to rely on to support his preliminary objection. Rule 4 (1), which deals with the form and content of petitions of appeal, requires that the petition should set out the grounds of appeal “precisely and under distinct heads numbered consecutively”, which “shall be signed by the appellant or his agent.” How could the Appellant set out the grounds under numbered distinct heads, and then orally “sign” the petition?

In addition, rule 4 (2) requires that an Appeal to the High Court should be filed “in duplicate”. How could anyone file an *oral* petition “in duplicate”? On the reasoning I have herein advanced, I am far from being persuaded that the law allows a party seeking to appeal from a decision of a District Court in cases originating in Primary Courts to do so orally and, therefore, cannot invoke the provisions of the Law of Limitation Act that excludes the time needed to obtain copies of judgment, decree and proceedings from the time allowed to appeal.

***I let the two rules (rule 4 and 5), speak for themselves,,,,.*** Further, rule 5 requires that once the Petition of Appeal to this Court has been filed in the District Court, the District Court shall cause the date of filing to be endorsed on the petition before dispatching it to the High Court.

It would appear, with respect, that the provision relied upon by Respondent’s counsel (rule 5 (2) of the Rule), though not so specifically cited by counsel, who simply mentioned rule 5 as a whole, refers only to appeals to the District Court and not those going to the High Court. Only appeals from Primary Court to District Court can fall under sub-rule (2) of rule 5. Those are the ones capable of being given orally and recorded. In

an appeal to the High Court, the applicable sub-rules are sub-rules (3) and (4), which, as we have seen, require a written petition. It follows, therefore, that an appellant to this Court is entitled to rely on the exclusion provisions contained in section ,,, of the Law of Limitation Act.

In the final analysis, therefore, the preliminary objection is without merit and I hereby dismiss it. Costs are to be in the cause.

Dated at Dar es Salaam this 8<sup>th</sup> day of December, 2010.

**Dr. Fauz Twaib**

**Judge**

8<sup>th</sup> December 2010