

IN THE HIGH COURT OF TANZANIA
AT IRINGA

APPELLATE JURISDICTION

(Iringa Registry)

(PC) CIVIL APPEAL NO. 2 OF 2011

(From the decision of the District Court of Makete
District at Makete in Misc. Civil Application No. 1 of 2009
Original Civil Case No. 10 of 2008 of
Matamba Primary Court)

OTINERI MBOKA APPELLANT

VERSUS

LUHANGANO NGOLOKA RESPONDENT

20/6/2014 & 15/8/2014

JUDGEMENT

MADAM SHANGALI, J.

This appeal originates from the decision of the Matamba Primary Court, original Civil Case No. 10 of 2008 where the present appellant Otineri Mboka was dissatisfied with the decision pronounced on 18/9/2008. That decision was pronounced in his favour but he was not satisfied with the decretal amount awarded to him against the present

respondent Luhangano Ngoloka.

The appellant was required to file his appeal to the District Court within a period of thirty days from the date of the trial Primary Court decision as provided under Section 20 (3) of the Magistrate Court Act, Cap. 11. Unfortunately the appellant was late to do so. As a result he filed an application before the District Court seeking for leave to file his appeal out of time relying on Section 20 (4) of the Magistrate Court Act, Cap. 11.

In the hearing of that application the District Court find the following facts.

1. The Decision of Matamba Primary Court was delivered on 18th September, 2008
2. The appeal period of 30 days expired on 18th October, 2008.
3. The application letter seeking for a copy of judgement of trial Primary Court for the purposes of filing appeal was dated 6th April, 2009 i.e. about 6 months after the expiry of the prescribed period of appeal.
4. That even the application itself seeking for leave to file the appeal out of time is hopelessly time barred under

the provision of Section 3 read together with the item 21 of the 1st Schedule to the law of limitation Act, Cap. 89.

5. That reasons advanced by the appellant/applicant that the delay was due to the failure by the trial Primary Court to supply a copy of judgement in time was rejected.
6. That the application was filed more than fifteen (15) months i.e. 450 days and therefore hopelessly out of time.

Represented by Mr. John Owegi, learned advocate, the appellant has filed this appeal intending to impugn that decision of the District Court. The respondent is represented by Ms. Wambali, learned Solicitor. The record of this appeal is somehow intriguing. According to the record of proceedings of this court the parties were granted leave to argue the appeal by way of written submission and a schedule for filing their written submission was agreed on 12/6/2012 before Hon. Kihio, J. However, for reasons beyond my comprehension that order was not complied with by the parties. Another order was granted by the same court (*Hon. Kihio, J.*) on 25/10/2012.

On 10/4/2014 when the case file was assigned and brought before me for the first time I noticed that the written

submissions were ready and lying in the file. Parties have been absent since 18th December, 2013. I decided to go ahead and compose this judgment.

Having carefully gone through the record of the proceedings of the lower courts and having critically examined the written submissions filed by the counsels, I am certain that this appeal is devoid of merit.

The counsel for the appellant concedes that there was inordinate delay to file the appeal but fend himself with allegation that it was the Primary Court Magistrate who gave misleading information to the appellant who is a layman about the correct procedure to pursue his appeal process. With due respect to the appellant's counsel, there is no scintilla of evidence to substantiate his wanton allegations and claim against the alleged Primary Court Magistrate. Furthermore, the Primary Court Magistrate have no legal duty to give legal advice to the litigants after deciding their cases or to advise them how to pursue their appeal process. I entirely agree with the counsel for the respondent that there was no any misconceived advice because the Magistrate informed the appellant about his right to appeal within a period of thirty days.

Mr. Owegi contended that the ruling of the District Court should have considered that the applicant being a lay person

and ignorant of the appropriate court rules and procedure was not and could not have been properly guided in pursuing his intended appeal. Ms. Wambali replied that the position of law is that ignorance of law and its procedure is no defence and the law does not provide any special attention to the lay persons in the adjudication. I agree with Ms. Wambali and hold that ignorance of procedural rules by a lay person may in some cases constitute a sufficient reason where there is no inordinate delay, complacency, negligence or inactions. In the instant case the situation was horrible and disgusting.

In conclusion this appeal is hereby dismissed with costs for lack of merits.

M. S. SHANGALI

JUDGE

15/8/2014

Judgement delivered in the absence of all parties and their advocates. Let the judgement be typed and supplied to both parties as early as practicable.

M. S. SHANGALI

JUDGE

15/8/2014