

**IN THE HIGH COURT OF TANZANIA
AT DODOMA**

(PC) CIVIL APPEAL NO. 5 OF 2016

*(Arising from the decision of the District Court of Dodoma in
Miscellaneous Civil Application No. 42 of 2015 and Original Probate
Cause No.09 of 2015 at Makole Primary Court)*

ANGELO BUSHOKE **APPELLANT**

VERSUS

SIMBA MOHAMED MANGIRINGIRI..... **RESPONDENT**

JUDGMENT

11/10/2016 & 31/10/2016

SEHEL, J.

The present appeal is prompted by the appellant, Angelo Bushoke after being refused by the District Court an extension of time to lodge an appeal against the judgment and decision of the Primary Court in Probate Cause No. 9 of 2015.

The appellant through the services of R.K. Rweyongeza & Company Advocates lodged three grounds of appeal to this Court. The grounds are:

1. That the Honourable Magistrate erred in law and in fact by disregarding the reasons that caused the failure to appeal within time;



2. That, the Honourable trial Magistrate erred in law and in fact by reaching a decision in favour of the respondent basing only on fabricated evidence of the respondent; and
3. That, the trial Magistrate erred in law and in fact by ruling out that the appellant reason for failure to appeal within time did not constitute a good reason without taking into consideration that the appellant being a lay person and unrepresented was likely not to be aware of legal technicalities.


At the hearing of the appeal, Ms. Masai appeared to argue the appeal on behalf of the appellant. Mr. Ndwata, learned advocate who was holding brief for Mr. Ngwigulu, learned advocate for the respondent appeared to represent the respondent and had full instructions to proceed with the hearing.

Ms. Masai argued all the three grounds simultaneously. Ms. Masai attacked the Honourable Magistrate's finding that the appellant slept on her rights after noting that the appellant received a copy of judgment on 7th May, 2015, that is, after a period of eight days from the date the judgment was delivered. She said the Honourable Magistrate failed to consider the fact that the appellant is a layperson who does not know the legal procedures. She contended that the Primary Court in its decision only told the parties that "haki ya rufaa imeelezwa" without informing the parties where and when the appeal need to be lodged. It was her submission that

the appellant advanced sufficient reason at the District Court that she is a layperson thus she is not conversant with legal procedures in filing appeals. In support of her submission, she cited the case of **Yusuph Same and Hawa Dada Vs Hadija Yusuph, Civil Appeal No. 1 of 2002 (Unreported)** where it was stated that sufficient cause should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons and causes which are outside the applicant's power and control or influence resulting in delay in making any necessary steps. For these reasons, Ms. Masai prayed for the appeal to be allowed with costs.

Mr. Ndwata replied that there are no justifiable reason advanced by the appellant since the proceedings of the Primary Court clearly indicate that parties were informed of their right to appeal, that the appellant being dissatisfied with the decision of the Primary Court applied for a copy of judgment which was supplied to her in time but for unknown reasons decided not to pursue for her right, and that the appellant had a duty to seek legal advice immediately after obtaining a copy of the judgment.

Ms. Masai insisted that the appellant had advanced justifiable reasons for her to be granted extension since she was not able to understand the meaning of "haki ya rufaa imeelezwa".

From the submission of both parties, there is common understanding that the time to appeal to the District Court expired and that the appellant in her application for extension of time to 

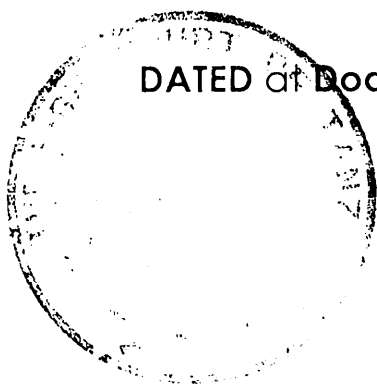
lodge her appeal out of time had to advance sufficient reason. The reason which the appellant has all along being advancing is that she is a layperson and she was not told by the Primary Court as to when and where to lodge her appeal. This reason has also been seriously refuted by the respondent that it is not sufficient because the proceedings clearly shows that they were informed their right to appeal and even the appellant secured her copy of judgment just eight days from the date the judgment was delivered for the purposes of appeal. The issue that this Court is invited to determine is whether the reason advanced by the appellant at the District Court was sufficient enough for the Court to invoke its discretionary power.

What amounts to sufficient cause has not been defined. However in the case of **Tanga Cement Company Limited Vs. Jumanne D Masanga and Amos A mwalwanda Civil Application No. 6 of 2001 (Unreported) (CAT)** the Court of Appeal stated that a number of factors have to be taken into account in determining sufficient cause, amongst them includes whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant.

In the matter at hand, the decision of the Primary Court was delivered on 30th April, 2015. A copy of the decision was availed to the appellant on 7th May, 2015. That is after the lapse of eight days (8). That is within a very reasonable time so as the appellant could

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be able to lodge her appeal within thirty (30) days as prescribed by the law. Unfortunately, the appellant failed to appeal within time and on 11th June, 2015 through the services of R.K. Rweyongeza, the appellant lodged her application for extension of time within which to lodge her appeal to the District Court. The application for extension of time at the District Court was filed after expiry of 41 days with the reason that she did not know the appeal procedures until told by her counsel. The Honourable Magistrate was not convinced with this flimsy reason which I fully concur with her because the proceedings are loud and clear that parties were well informed of their right to appeal and that is why even the appellant sought a copy of the judgment immediately and a copy of it was supplied to the appellant within eight days. However, the appellant failed to lodge the appeal within time for the reasons best known by her and now she wants to shoulder it to the Court. I, therefore, see no merit in the appellant's appeal. I do hereby dismiss it with costs for lacking merit. It is so ordered.



DATED at Dodoma this 31st day of October, 2016.

B.M.A Sehel

JUDGE