

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

MISC. CIVIL APPLICATION NO. 698 OF 2018

*(Arising from Iiaia District Court at Samora Avenue in
Civil Revision No. 18 of 2017; Originating from Buguruni
Primary Court in Mirathi No. 64 of 2008)*

ALFRED GAUDENCE MAPUNDA.....1ST APPLICANT

JACKLINE GAUDENCE MAPUNDA.....2ND APPLICANT

VERSUS

SUSAN MAPUNDA.....RESPONDENT

RULING

Date of Last Order: 15/10/2019

Date of Ruling: 05/12/2019

S.M. KULITA, J.

This application has been brought by the applicants under Section 25(1)(b) of the Magistrates Court Act [Cap 11 RE 2002] and

Section 95 of the Civil Procedure Code [Cap. 33 RE 2002] seeking this Court to grant extension of time for them to file an appeal to this Court. The application has been supported by the affidavit of the applicants.

The reason for the delay as stated in paragraph 6 of the applicants' affidavit in support of the application was that despite early request of the lower Court ruling and drawn order, they were not supplied to them in time.

Mr. Harry A. Mwakalasya (Advocate) appeared for the applicants while Mr. Thobias Kavishe John (Advocate) appeared for the Respondent.

During the hearing of this application counsel for the applicants submitted that the applicants have several reasons indicated in the affidavit explaining as to why they didn't manage to file their appeal in time. He said that the applicants are administrators of the estates of the late Gaudence A.S. Mapunda. On the course of their administration under mirathi No. 64 of 2008 at Buguruni Primary Court they were sued by the respondent Suzan Mapunda at Ilala District Court in Civil Revision No. 18 of 2017. Among other things the respondent was seeking is to remove the applicants from the administration and the claim that the two

landed properties which were in dispute at the lower court are her personal properties. Her application was successful. The applicants being aggrieved by the decision of Ilala District Court, intended to appeal to the High Court.

On the effort to appeal the applicants requested to be supplied with the copies of ruling and drawn order from Ilala District Court. The ruling was delivered on 18/10/2017 and the applicants filed their letter requesting for it on 24/10/2017 with no response. They wrote a reminding letter and the order was drawn on 10/12/2017. The ruling and drawn order were supplied to them on 27/12/2017.

Having received the said copies, the applicants went to prepare the application for extension of time as the time was already lapsed. The Misc. Land Application No. 5 of 2018 as actually filed before this Court but unfortunately it was struck out for technical reason that there was a wrong citation of the law. There was a leave to refile the application. The applicants also wrote a letter requesting for the drawn order to the High Court on 17/10/2018. The applicants were not successfully availed with the copies and they wrote a reminding letter and they received the copy of the drawn order on 5/11/2018. On 6/11/2018 they prepared the application and on 8/11/2018 they filed it to the High Court.

So the learned Counsel for the applicants demonstrate before this Court that the delay an appeal at the High Court was caused by the delay to be supplied with the copies by the District Court of Ilala which were necessary for them to be advised by their lawyer for better grounds of appeal as well as for attachment in the pleadings as the tradition of the Court that decree, order and judgment be attached. They could have not filed their appeal without those documents. It is the applicants' prayer that their application be granted.

Responding to the submission by the learned counsel for the applicants, the respondent's counsel submitted that the applicants have to demonstrate sufficient reasons to warrant the Court to grant them their application. The reasons advanced by the applicants' counsel were not sufficient. Being supplies late with the ruling and drawn order by the District Court is not a sufficient ground. The proceedings are regulated by the Magistrates' Court Act [Cap 11 RE 2002]. The Respondent's Counsel submitted that the matter at the District Court was a Revision case arising from Buguruni Primary Court. He said that a party aggrieved by the decision of the District Court exercising revision jurisdiction has to appeal to the High Court within 30 days. There is no provision in the Magistrates' Court Act which makes it mandatory for the

copies of judgment, decree and drawn order to be attached. It only appears under the Civil Procedure Code [Cap 33 RE 2002] which makes it mandatory to attach these documents for appeal purposes at the High Court. The attachment of those documents by the applicants were not necessary.

The respondent's counsel submitted further that Section 25 of the Magistrates Court Act makes clear that for the appeal arising from the District Court in exercise of its revisional or appellate jurisdiction, the said appeal has to be lodged at the District Court and it is the duty of the District Court to prepare the records from the Primary Court and those of the District Court and send them to the High Court. Therefore this was not the duty of the applicants.

It is the submission of the learned counsel for the respondent that after the ruling of the District Court being delivered, the applicants were just required to lodge the notice of appeal at the District Court within 30 days and it was upon the District Court to prepare those documents and take them to the High Court. So it is the respondent's counsel prayer that the application be dismissed with costs.

Having gone through the submissions of both sides, the issue to be determined by this Court is whether the applicants have advanced sufficient reasons to warrants their application to be granted.

This application has been brought under **Section 25 (1) (b) of the Magistrates' Courts Act, Cap. 11 R.E 2002**. There is no dispute that the matter originated from Buguruni Primary Court. The above provision states:

"In any other 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; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired".

Section 25(3) and (4) of the Magistrates' Courts Act provides that:

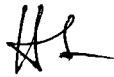
(3) ***"Every appeal to the High Court shall be by way of petition and shall be filed in the district court from the***

decision or order in respect of which the appeal is brought”.

(4) "Upon receipt of a petition under this section the district court shall forthwith dispatch the petition together with the record of the proceedings in the primary court and the district court, to the High Court”.

From the above provisions, it is clear that appeal to the High Court from the decision or order of the District Court exercising appellate or revision jurisdiction on a matter originating from the primary court, the law applicable is the Magistrates’ Courts Act [Cap. 11 RE 2002]. What the party who is intending to appeal to the High Court is required to do is just to file a petition to the District Court which passed the decision or order and it is the duty of the District Court to dispatch the proceedings of the primary court and those of the District Court to the High Court. It is wastage of time for the applicants to wait to be supplied with the copies of the decision and order for the purposes of appealing to the High Court where the matter he is appealing originates from the Primary Court. This is not the requirement here as the matter is not governed by the Civil Procedure Act which under Order XXXIX Rule 1(1) requires the copies of judgment and decree to be attached to the memorandum of appeal.

From the above reasoning I find that the applicants have not advanced sufficient reasons to warrant the court to grant extension of time to file an appeal to this court. Therefore, the application is hereby dismissed with costs.



S.M. KULITA

JUDGE

05/12/2019