

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM  
PC CIVIL APPEAL NO. 64 OF 2019**

*(Originating from Rulings by Temeke District Court in Civil No. 67/2017 and Misc. Civil Application No. 72/2018)*

**NOVATUS MLOKOZI..... APPELLANT**

**VERSUS**

**LEOGRASIA MUJWAUZI..... RESPONDENT**

*Date of last Order: 22/10/2019*

*Date of Judgment: 08/05/2020*

**J U D G M E N T**

**MGONYA, J.**

Aggrieved by both decision of Temeke District Court, the Appellant in this matter sought for an appeal before this court with 3 grounds of appeal against the decision, as herein below:-

- 1. That, the Magistrate of Temeke, District Court erred in law and fact to hold that judgment is not mandatory in case of an appeal from Primary Court to District Court. While it is a fact that the grounds of appeal are normally derived from the judgment.***

***2. That, the Resident Magistrate of Temeke District Court erred in law and fact to hold that the delay in obtaining the copy of judgment cannot amount to sufficient cause while in actual fact if the copy of the judgment is not supplied in time which is prescribed by law the Appellant cannot be in a position to appeal in time;***

***3. That, the Resident Magistrate of Temeke is being faulted for not having evaluated economic circumstances which are contained in the judgment of Temeke Primary Court which is dated 24/5/2017 and its impact on both parties;***

During the Appeal the Counsel for the Appellant Mr. Kalijuna learned Advocate prayed that the Appeal be disposed of by way of written submissions, the prayer which was accordingly granted.

In his submission the Appellant states that the Primary Court delivered judgment on the **24/05/2017** sought out for an extension of time to appeal to the District Court via **Misc. Application No. 72/2017** and pleaded that although the Primary Court Magistrate of Temeke delivered judgment on

**24/05/2017** but he received copies of judgment on **31/05/2017** and copy of proceedings on **10/07/2017** and that is why he was not able to file petition of appeal within the prescribed period of **30** days as state by the Magistrates Court Act [Cap. 11 R.E 200].

It is the Appellants submission that for the days that he had received the copy of judgment and proceedings it was not easy to meet the time to appeal as prescribed by law. Therefore it was not his fault to have been out of time due to untimely being served of the proceedings and judgment.

It is the assertion by the Appellant that the Magistrate of the District Court of Temeke relied on the decision of ***BENEDICT MUMELLO VS BOT, Civil Appeal No. 12 of 2002*** in weighing the ground of the Appellant whether they amounted to sufficient cause; and ruled out that the grounds are immaterial since an appeal from the Primary Court to the District Court does not mandatorily require a copy of judgment to be attached. Hence delay in being supplied with the copy of judgment and proceedings do not fall within sufficient cause for the Court to exercise its powers.

The Appellant claimed that the question of attachment of decree, judgment and proceedings to the Memorandum of Appeal or petition of Appeal is a mandatory requirement unless there are express directions of the court to do away with such requirement, not abiding to such requirement renders the appeal incompetent. The Appellant cited the case of ***JUMA IBRAHIM MTALE VS K. G KARMAL TANGANYIKA LAW REPORT 1983*** in support of his argument.

It is the Appellant's prayer that from the submission, this court allows the appeal with costs and decision of the District Court be set aside and time be enlarged to appeal out of time.

In reply to the Appellant's submission the Respondent submitted that, the reiteration of the Appellant's failure to have failed to appeal within time and the assertion that **section 39 Rule 1(i) of the Civil Procedure Code Cap. 33 [R. E. 2002]** requires lodging a Memorandum of Appeal to contain copy of decree appealed against is a misconception since the Civil Procedure Code is not applicable to matters originating from Primary Court. **Section 2 of the code (supra)** was cited and quoted to support this argument.

Respondent further averred that, appeals originating from the Primary Courts are regulated by the **Magistrates Courts Act (supra)** particularly **S. 20 (3)** of the Act and the rules known as **The Civil Procedure (Appeals in proceedings originating in Primary Courts) G.N No. 312 of 1964**. In the named Act and Ruling above judgment is not a necessary requirement and mandatory document to be filed alongside a petition of appeal to the District Court or High Court in matters originating from the Primary Court.

The Respondent maintained that the District Court was correct in the decision delivered for it was the Appellants negligence to have been seeking copies of judgment and proceeding while it is not a mandatory need to attach the same when appealing to the District Court from matters originating from the Primary Court. Either, the appellant has not provided a reasonable cause to sufficient for the Court to grant extension of time.

Moreover the delay by the Appellant was justified by the District Court in dismissing the Appellants' Application since the applicant had raised the reason of delayed supply of necessary documents. It is the Respondents' view that, there was no injustice in the Primary Court as stated by the Appellant, since all

parties afforded equal opportunity to defend their case. Further, the Respondent submitted that, it is a well settled principle of law that no one should benefit from their own wrong and that whoever comes to equity must come with clean hands, therefore the Appellant should not be allowed to reap from his own wrongs.

It is the Respondent's prayer that from the above submission, this Honourable Court be pleased to dismiss the Appellant's Appeal with costs.

Having gone through the grounds of appeal and the submission of the parties; I proceed to determine the grounds of appeal as posed by the appellant before this Honorable Court.

Beginning with the first ground of appeal, the Appellant stated that the court erred in law and fact to hold that judgment is not mandatory when appealing from primary Court to District Court, while grounds of appeal are derived from the judgment. It is further claimed by the Appellant that after the Primary Court delivered its judgment, he was aggrieved by the decision and intended to appeal to the District Court against the said decision. It appears to the Respondent that the act of the Appellant to

have been seeking for copies of judgment and proceedings to appeal was a negligent act.

An appeal from the Primary Court to the District Court when one is aggrieved by the decision delivered is governed under **The Civil Procedure (Appeals in proceedings originating in Primary Courts) G.N No. 312 of 1964** and not the **Civil Procedure Code (supra)** as relied upon by the Appellant. It is however in practice that when one is aggrieved by the decision of the Primary Court appeals to the District Court without a copy of the Judgment by lodging one's ground and a calling for record is issued and the whole file from the Primary Court is sent to the District Court. It is not the requirement of law that a copy of judgment be attached as claimed by the Appellant. **The Civil Procedure (Appeals in proceedings originating in Primary Courts) (Supra)** also allows a party to state his/her grounds orally before the District Court. The Appellant had that room and slipped over it. It is from the above, that **I find the 1<sup>st</sup> ground meritless.**

On the 2<sup>nd</sup> ground, on the declaration of the Applicant that the Court erred in holding that the delay in obtaining copies of judgment does not amount to sufficient cause is an error for if a

party does obtain copies of judgment in time cannot be in the position to appeal in time. It is my firm view that "**sufficient cause**" has been out sourced in a number of decisions. **Sufficient cause** has to be intensively established to enable the court exercise its powers on extension of time.

The above position was observed in the case of **REGIONAL MANAGER, TANROADS KAGERA VERSUS RUAHA CONCRETE COMPANY LIMITED, Civil Application No. 96 of 2007, CAT** where it was held that:

***"..Sufficient reason to extend time the time to file an application what constitutes "sufficient cause", cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that an Applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend time limited by rules".***



The same position was also held in the case *of RATMA CUMARASAMY and Another (1964) 3 ALL ER 933, Lord GUEST.*

The Appellant being supplied the copies of judgment and proceeding for the reason that he was required to attach the same in the Petition is not a sufficient reason since it is not a mandatory requirement of the law.

The above position was well elaborated in the case of **SOPHIA MDEE VS. ANDREW MDEE & 3 OTHERS, Civil Appeal No. 5 of 2015 CAT, Luanda J.A** it was stated that;

***".....attachment of a copy of judgment along with the petition of appeal of is not a legal requirement in instituting appeals originating from Primary Court".***

From the above **I proceed to dismiss the 2<sup>nd</sup> ground of appeal.**

In the last ground of appeal, the Appellant states that the Magistrate Court faulted for not evaluating economic circumstances which were contained in the judgment of the Temeke Primary Court. I find it an abuse of court process of how the Appellant has appealed before this Honorable Court. In the

heading the Appellant has illustrated that he is appealing against two different decisions. One, Ruling by Temeke District Court in **Civil appeal No. 67 of 2017** and **Misc. Civil Application No. 72 of 2018**. For ease of reference below is the heading of the Appellants Petition:

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


**PC CIVIL APPEAL NO. 64 OF 2019**

*( Arising out of judgemnet of Temeke Primary Court in Matrimonial Cause No. 31 of 2017 which was deievered by Hon. Pijia Primary Court Magistrate on 24<sup>th</sup> May 2017 and both Ruiings by Temeke District Court in Civil No. 67/2017 and Misc. Civil Application No. 72/2018)“.*

It has never be a procedure in law that one can appeal against two different decisions in one appeal. A party ought to appeal against one decision in an appeal. To me, the appeal before this court can be referred to an **omnibus appeal**. The Magistrate was correct in not determining the economic circumstances for the appeal was rendered time barred an objection that wholly vacates the appeal from the Court. From the error of the appellant this **ground to is meritless**.

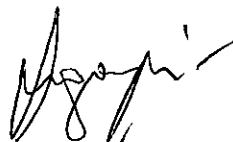
Baring the reasons above **I hereby dismiss the appeal before this Court with costs and uphold the decision of Temeke District Court.**

Order accordingly.



**L. E. MGONYA  
JUDGE  
08/05/2020**

**Court:** Judgment delivered in the presence of the Appellant in person, the Respondent in person and Ms. Janet Bench Clark in my chamber today 08<sup>th</sup> May, 2020.



**L. E. MGONYA  
JUDGE  
08/05/2020**