

**IN THE HIGH COURT OF TANZANIA**

**AT SUMBAWANGA**

**PC – CIVIL APPEAL 05 OF 2018**

(From Mpanda District Court Civil Appeal No. 06/2017 Org Mpanda urban  
Primary Court Civil Case No 12 of 2017)

**DAUDI SIULANGA ..... APPELLANT**

**Vs**

**ISTIQAMA SECONDARY SCHOOL ..... RESPONDENT**

**JUDGEMENT**

**W.R. MSHAURI, J.**

**28/07/2020 & 24/08/2020**

This is the judgment of an appeal in which the appellant after being dissatisfied with the Mpanda decision of the District Court dated 25<sup>th</sup> May, 2018 here in appealed to this honourable court on the following ground:-

1. That, the appellate court erred in law and in fact in entertaining the appeal which was time barred.
2. That, the appellate magistrate court erred in law in reversing the trial that the disputes / matter which does not involve CMA (commission for Mediation and Arbitration) which reached a wrong decision in favour of the respondent (appellant before district court)

3. That, the appellant court erred in law and in fact not taking into account that appellant is a legal managing director /principal officer of the Public Security Service Co. (T) Ltd
4. That, the trial court judgment was correct in favour of the appellant ( respondent before the district court into considering the standard of proof and preponderance balance of probabilities which the appellant court disregarded and over looked the same.

Upon service of summons, respondent enter appearance in Court. On 18<sup>th</sup> February, 2019 appellant filed notice of preliminary objection of two grounds one; that reply to the petition of appeal is defective by not signed by respondent as required, the second ground was that the respondent's reply was presented and filed by the TRIBUNAL CLERK who is not a proper registry officer of the High Court. After being entertained the preliminary objection the court overruled the same.

On the 7<sup>th</sup> May, 2020 respondent prayed to dispose of the matter by filing written submissions, appellant had no objection. The prayer by parties to dispose of their appeal by written submissions was granted, both parties filed accordingly as to the scheduling order.

In the submissions, Applicant was represented himself and respondent was represented by one Yunus Masoud Seif. In his submission, appellant submit that; in respect of ground one, he submit that, the primary Court judgment was delivered on 12<sup>th</sup> July, 2017 and the respondent supposed to file his appeal within 30 day from the date of judgment which was 12<sup>th</sup> August, 2017 but instead, respondent filed his appeal at Mpanda District court on 13<sup>th</sup> December, 2017 which is almost 120 days without leave of the court, contrary to the requirement of law. Appellant cited S. 20(3) of the **Magistrate Court Act**, the case of **Mathew T. Kitambala Vs Rabson Grayson** in PC – Criminal Appeal No. 05/2015 HC at Mbeya (unreported), also the case of **Tima Haji Vs Amiri Nohamed Mtoto & another** Civil Revision No. 6/2003 (unreported)

In respect of ground two, appellant submit that, appellate court misinterpreted the concept of Salaries and mishahara. On 1<sup>st</sup> April, 2015 appellant entered on contract to provide security guard service to the respondent, the respondent supposed to make payment for service rendered by appellant; there were no labour relationship between appellant and respondent. The allegation by the respondent that the issue was for CMA is not true and the appellate court overlooked.



As to ground three and four together, appellant submit that, the appellant is managing director and principal officer of the company and representing the company since company is the artificial person, who cannot represent in its own state. That was it.

Respondent in his reply of 1<sup>st</sup> ground, submit that, it is true primary court judgment delivered on 12/07/2017, respondent requesting copy of judgement and no way he can file appeal without attaching a copy of judgment. He added that time of appeal began to run after appellant has been furnished with a copy of judgment, which furnished to respondent lately. The ground is baseless. As to 2<sup>nd</sup> ground of appeal, respondent submit that, respondent in primary court was claiming for salaries from respondent, it was proper finding of the appellate court that the issue of salaries can be determined by the CMA as per Employment and Labour Relations Act, 2004. Going through the 3<sup>rd</sup> ground, respondent submit that, the appellate court in determining this issue stated that, it was illegal for the appellant to sue the respondents for and on behalf of Public security Service Co. Ltd, it is true he was one of the director of the said company, since upon incorporation the company acquire the status of legal position and has a right to sue or be sued on its name. The appellant ought to have sued in the name of

company and not on his own name. This ground is baseless. Lastly in 4<sup>th</sup> ground, appellant submitted that, this ground is grammatically incorrect, the appellate court reasonably considered the evidences offered at primary court and consequently allowed the appeal. Hence this ground lack legal base and he prayed to dismiss the appeal. That was it.

In rejoinder, appellant was submitted that, petition of appeal to District Court shall be filed within 30 days, beyond that; the aggrieved party shall make application for leave to grant extension of time to file appeal out of time. He added that appellant complain for payment of security guard service offered against the respondent, there was no labour relationship as respondent states. Thereat he closed his rejoinder.

After those submissions this court has one issue at hand; whether the appeal has a merit?

In covering this appeal, all grounds shall be entertained separately as submitted. Let me starts with ground one, that, the appeal is time barred. In that, Applicant submission based on dates of judgment and filing date of appeal to District Court, The respondent defence on that, was, the delayed copy of judgment from the trial court (Primary Court) hence time lapsed to file his appeal, the standing of appeal court was, time of appeal starts taken from the date of certified judgment. To that



defence of respondent, I found myself that; respondent agreed to lodge appeal out of time by reason of delayed copy of primary court judgment. My question is; is this agreeable reason to file petition of appeal out of time? No! My answer is negative, for me, I think delayed copy of judgement was a sufficient reason for extension of time to file appeal to hold otherwise would amount to permit a decision, which in law might not exist, to stand. This court has this to say, with respect of delayed copy of judgement, in the case of:- **Anthony Lucas Vs Mosi Mwita** PC Civil Appeal 80/2016 HC at Dsm. Arufani J said;

*"As for the argument that she delayed to get the copy of the judgment of the trial court which would have assisted her to prepare the sound grounds of appeal the court has found that, the said argument would have been used in seeking for extension of time to lodge the appeal out of time and not to lodge the appeal out of time without seeking for leave of the court to file the appeal out of time."*

It is settled that, No medication to cure lapse of time except extension of time with due reasons, it is bad in law to file and entertain appeal which is time barred regardless any big reason they were adduced by a

court or appellant. All statutory procedure in time barred and appeal must be observed.

As a matter of procedure to be observed, some question must be solved. One of the questions is; is a copy of Primary Court judgment is mandatory requirement in appeal to District Court? Appeal is statutory rights and the law provides is the **Magistrate Court's Act**, Cap 11 S. 20(3) which laydown that,

*"Every appeal to a district court shall be by way of petition and shall be filed in the district court within thirty days after the date of the decision or order against which the appeal is brought".*

Requirement procedure of appeal from Primary Court as to the law is petition. How appellant petition of appeal is prepared?, it is orally to district magistrate (**see – S. 20(4) (b) of Cap 11**) here is where magician turned magistrate as writer of the petition of appeal instead of appellant.

It is statutory position that, copy of primary court judgment was not mentioned in the provision of law; petition of appeal from Primary Court to District Court does not depend on copy of judgement, nowhere copy

of judgment mentioned as legal requirement in appeal. Eventually, our practice also realize that, an appeal from Primary Court to District Court copy judgment is not legal requirement (**see – Gregory Raphael Vs Pastory Rwechubula** P.C. Civil Appeal 30/200 HC Bukoba (2005) TLR 99) moreover our supreme Court in **Sophia Mdee Vs Andrew Mdee & 3 Others** Civil Appeal No. 05 of 2015 CAT at Arusha, July 2015 (unreported) has this to say:

*"from the foregoing it is clear that attachment of a copy of judgment along with the petition of appeal is not a legal requirement in instituting appeal originated from Primary Court"*

Since copy of judgment was not legal requirement in appeal from primary court to district court, reason of respondent has perished naturally and no way time storm might leave him.

**Magistrate Court Act** declares that appeal from Primary Court to District Court is thirty (30) days. The question, when it starts to run? Is answered by **S. 20(3) of Cap 11** (supra) (**see – page 7 above**), the records show that judgment of primary court was delivered on 12<sup>th</sup> July, 2017 and Petition of Appeal lodged on 13<sup>th</sup> December, 2017.



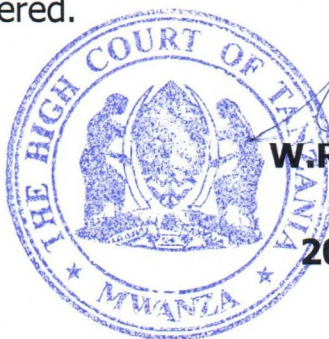
Mathematically, it is about five (5) months lapsed; the appeal is totally out of time.

As to circumstances above, the appeal from Primary Court to District Court it was out of time, District Court Magistrate had no door neither window to step inside the primary court proceedings and decision to touch, turn or sharp anything therein.

It is my findings that, all appeal proceedings, ruling and judgment of District Court is void ab-initio, for serving my energy and without wasting much court's time, this ground only is exhaustive and suffice to dispose of this appeal. Therefore I hereby nullify the whole District Court proceedings, set aside the judgement, ruling and orders, if any. The Primary Court judgement is hereby sustained.

I hereby allow this appeal with costs.

It's so ordered.

 *W.R. Mashauri*  
**W.R MASHAURI**  
**JUDGE**  
**20/08/2020**

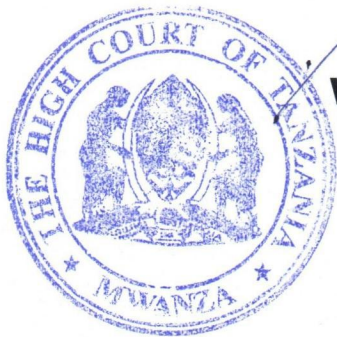
Date: 24/8/2020

Coram: Hon. W. R. Mashauri, J

Applicant: } All absent  
Respondent: }

B/c: Felister Mlolwa, RMA

**Court:** Judgment delivered in court through video conference in absence of all parties this 24/8/2020. Parties to be informed of the outcome.



  
**W. R. MASHAURI**

**JUDGE**

**24/8/2020**