

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

(PC) CIVIL APPEAL NO. 6 OF 2020

(Arising from Civil Appeal No. 37 of 2018 of Shinyanga District Court originating from Civil Case No 166 of 2016 of the Urban Primary Court- Shenyanga)

ISACK KAHWAAPPELLANT

VERSUS

BANDORA SALUM.....RESPONDENT

RULING

Date of the last Order: 16/06/2020

Date of the Ruling: 3/8/2020

E.Y.MKWIZU, J.

Upon a petition of appeal filed on 31/12/2019 by the appellant, the respondent, BANDORA SALUM raises three preliminary points of objections on points of law that;

- i. This appeal is incompetent for being filed in the improper court contrary to the law*
- ii. That having being saved with Petition of Appeal and having perused the court the Appellant's Appeal is time bared.*

iii. In view of objection above the court lack Jurisdiction to entertain this appeal.

The matter was heard by way of a written submissions, appellant had no legal representation, while the Respondent enjoyed the service of Mr. Emanuel B. Musyani (advocate).

Arguing in support of the preliminary objection, Mr. Emanuel submitted that the petition of appeal was filed in the High Court contrary to section 25 (3) of the Magistrate Court Act Cap 11 R:E 2002. He cited the case of **London Association for the Profession of Trade & Another Vs Greenlands Ltd** (1916) Ac 15 where the court held that;

"The rules of the court must be strictly adhered and if hardship or inconvenience is thereby cause, it would be that easier to make an amendment the particular rule it would be wrong to regard the rules of the court as of no substance. A rule of practice, however technical it may be appear, is almost always based on a legal principle involved "

On the second point of objection, counsel for the respondent contended that , appeal is time barred .It was filed after the expiration of statutory time of 30 days after the impugned judgment contrary to section 25 (1) (b) of the Cap 11 .He said, the judgment was delivered on 27/ 08/2019 and the appeal was filed on 31/12/2019 after four months without first seeking extension of time. On his view, copy of judgment is not a mandatory document required on appeals originating from Primary Court.

He concluded that the appeal should be dismissed with costs.

On his part, appellant attacked the preliminary objection, he submitted that the provisions of section 25 (3) of the Magistrate Court's Cap 11 R:E 2002 were complied with. He said, the petition of appeal was lodged at the District Court -Shinyanga which he said, bears two stamps, one of the District Court showing the date the appeal was filed and the second one is a stamp of the High Court Registry showing the date the petition was received by the High Court.

On whether the appeal is time barred, appellant said, his appeal is not time barred in the sense that, the judgment of the District court was delivered on 27/08/2019 but he was supplied with a copy of the judgement on 16/12/2019 and presented his appeal to the District Court on 31/12/2019 only 15 days after he had received the necessary documents. He prayed that the preliminary objections be overruled.

In rejoinder, Mr. Emanuel reiterated his submissions in chief with an addition that rules of procedure, must be adhered to.

I have enthusiastically gone through the petition of appeal, preliminary objections filed and parties' submissions for and against the preliminary objections. I think, the first preliminary objection should not detain me. On where the appeal was lodged, the Petition of appeal speaks loud. As rightly submitted by the appellant, two stamps are perceptible, on the said petition. One, appearing at the top right -front page, is a stamp by the District Court of Shinyanga dated 31/12/2019 the date on which this appeal was first lodged by the appellant. This stamp is supported by the registry officers' signature and date at the end of the petition of appeal

that shows the date on which the same was presented for filing. Section 25 (3) of the Magistrate court Act, Cap 11 R. E. 2019 provides:

"Every Appeal to 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."

This is the position in the case of **Sophia Mdee v. Andrew Mdee & 3 Others**, Civil Appeal No. 5 of 2016 (unreported), where the Court held that:

"... it is clear that if one intends to appeal to the High Court the decision or order of the District Court in matters originating from the Primary Court, he has to lodge his petition of appeal in the District Court which handed down the decision and the District Court shall immediately forward the same to the High Court. "

Appellant did comply with the above provisions. The first preliminary objection is baseless.

The second point of preliminary objection is that the appeal is time barred as the appellant filed his appeal after expiration of 30 days prescribed by

the law. Indeed, judgment in Civil Appeal No. 37 of 2018 was delivered on 27/8/2019 and the appeal was filed on 31/12/2019 after 136 days.

Strictly speaking, appeals from the decisions of the District Courts on matters originating from primary courts are guided by the provisions of section 25 of the Magistrate Court Act, Cap 11 R.E 2019 and The Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules 1963 (GN 312/1964) .Section 25 (1) (b) provides:-

"25.-(1) Save as hereinafter provided

(a) N/A

(b) in any other proceedings any party, 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 there from to the High Court; ..." (emphasis added).

The cited provision above requires a person who is aggrieved by the decision of the District Court exercising its revisional or appellate jurisdiction on matters originating from primary court to appeal to the High Court within a period of thirty days after the date of the decision of the District court.

It is also clear from the above provision that, attachment of a copy of judgment (or decree) along with the petition of appeal is not a legal requirement. This position was discussed at length by the Court of Appeal in the case of **Sophia Mdee v. Andrew Mdee & 3 Others**, (Supra), where after referring to Rules 2 and 4 (1) and (2) of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, 1963, Government Notice No. 312 of 1964, the Court concluded that attachment of a copy of a judgment or decree along with the petition of appeal is not a legal requirement in instituting appeals to the High Court on matters originating from the Primary Court.

Similarly, in the case of **Kisioki Emanuel V. Zakaria Emmanuel**, Civil Appeal No 140 of 2016, (Unreported) Court of Appeal sitting at Arusha had this to say in connection with appeals originating from the Primary court:

"Limitation periods being a creature of principal or subsidiary legislation can only be subject to exemption or exclusion on the basis of the law. ... The High Court, we think, ought to have applied Government Notice No. 311 of 1964, which, unfortunately, has no provisions that mirror section 19 of the LMA. Accordingly, we hold that there was no legal basis for excluding the time the respondent herein waited for a copy of judgment or decree to lodge his petition of appeal to trigger the appellate process to the High Court. His appeal, lodged on the fifty-eighth day after the impugned judgment was delivered on 10th October 2012, was time-barred as the thirty days' limitation period prescribed by section 25 (1) (b) of the MCA had elapsed. He ought to have sought and obtained enlargement of time under the proviso to the aforesaid provisions instead of lodging the appeal without leave. We thus find merit in the first ground of appeal."

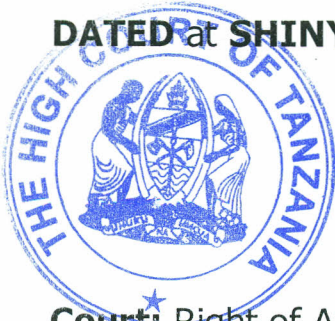
It is uncontroverted fact that appellant's appeal originates from the primary court as the decision sought to be impugned is from Civil appeal No. 37 of 2018 originating from Civil Case No.166 of 2018. This being the case,

appellant ought to have filed his appeal within thirty days after the District Court's decision.

Guided by the above position of the law and cases cited, I find the second preliminary point of objection with merit. I sustain it and dismiss the appeal with costs.

It is so ordered.

DATED at **SHINYANGA** this 3rd day of August, 2020.



E.Y. Mkwizu
E.Y. MKWIZU
JUDGE
3/8/2020

Court: Right of Appeal explained.

E.Y. Mkwizu
E.Y. MKWIZU
JUDGE
3/8/2020